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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE**

ANDREA BRAZELL and NICHOLE SMITH,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

OROVILLE HOSPITAL, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV00573

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE § 226;
- (2) VIOLATION OF LABOR CODE §§ 201-203, 226.7 AND 512;
- (3) VIOLATION OF LABOR CODE § 2802;
- (4) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1174, 1194, 1198 AND 1199 AND WAGE ORDER NO. 5-2001;
- (5) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197 and 1197.1;
- (6) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197 and 1197.1;
- (7) VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*; AND
- (8) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000

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1 Plaintiffs Andrea Brazell (“Brazell”), Nichole Smith (“Smith”), and Susana Carrillo
2 (“Carrillo”) (collectively, “Plaintiffs”) hereby submit this Third Amended Class Action Complaint
3 against Defendants Oroville Hospital, a California corporation (“Defendant” or the “Company”), and
4 Does 1-50 (hereinafter collectively referred to as “Defendants”), individually and on behalf of a class
5 of all other similarly situated current and former employees of Defendants for penalties and/or
6 damages for failure to provide accurate itemized wage statements, pay reporting time wages, pay
7 minimum, regular and overtime wages, reimburse business expenses, and provide off-duty meal
8 periods as follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-
11 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, and 2802, the
12 Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*, and the
13 applicable Wage Orders of the Industrial and Welfare Commission (the “IWC”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code, IWC Wage Orders, and the UCL against employees of
16 Defendants.

17 3. Plaintiffs are informed and believe and based thereon allege that Defendants jointly and
18 severally have acted intentionally and with deliberate indifference and conscious disregard to the
19 rights of all employees by failing to provide accurate itemized wage statements to these employees.

20 4. Plaintiffs are informed and believe and based thereon allege that Defendants have acted
21 willfully in violating the Labor Code in failing to provide off-duty meal periods as required by law
22 and/or to pay the requisite premium wages for said meal period violations, pay reporting time wages,
23 pay minimum, regular, and overtime wages, and reimburse business expenses.

24 5. The policies, practices and customs of defendants described above and below have
25 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
26 routinely adhere to the strictures of the California Labor Code and the California Business and
27 Professions Code.

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7. Venue is proper in Butte County because Plaintiffs worked for Defendant in the City of Oroville in the County of Butte.

8. Brazell began employment with Defendant in or around March 2020, and her last day of employment was on or about May 7, 2020. Brazell worked for Defendant as a non-exempt Patient Access Clerk. Smith began employment with Defendant on or about August 6, 2016, and her employment ended on or about June 5, 2020. Smith worked as a non-exempt Medical Assistant. Carrillo worked for Defendant from in or around 2007, until on or about December 28, 2021, as a non-exempt Medical Assistant. Plaintiffs were and are victims of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiffs of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, and 2802, the IWC Wage Orders, the UCL.

10. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

12. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint

1 when the true names and capacities are known. Plaintiffs are informed and believe and based thereon
2 allege that each of said fictitious Defendants was responsible in some way for the matters alleged
3 herein and proximately caused Plaintiffs and members of the general public and class to be subject to
4 the illegal employment practices, wrongs and injuries complained of herein.

5 13. At all times herein mentioned, each of said Defendants participated in the doing of the
6 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
7 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
8 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
9 scope of said agency and employment.

10 14. Plaintiffs are informed and believe and based thereon allege that at all times material
11 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer
12 of, or working in concert with each of the other co-Defendants and was acting within the course and
13 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
14 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
15 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

16 15. At all times herein mentioned, Defendants, and each of them, were members of, and
17 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
18 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

19 16. At all times herein mentioned, the acts and omissions of various Defendants, and each
20 of them, concurred and contributed to the various acts and omissions of each and all of the other
21 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
22 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
23 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
24 and omissions of each and all of the other Defendants in proximately causing the damages as herein
25 alleged.

26 **CLASS ACTION ALLEGATIONS**

27 17. **Definition:** The named Plaintiffs seek class certification, pursuant to California Code
28 of Civil Procedure § 382, of the following classes and subclass:

1 a. All of Defendant’s past and present non-exempt California employees who
2 worked for Defendant at any time from September 14, 2016, through the present (“CLASS”).

3 b. All of Defendant’s past and present California employees who were paid any
4 wages at any time from September 14, 2019, through the present (“WAGE STATEMENT
5 CLASS”);

6 c. All of Defendant’s past and present non-exempt California employees who
7 worked for Defendant and was paid any shift differential and/or shift premium wages at any
8 time from September 14, 2019, through the present (“SHIFT PREMIUM WAGE
9 STATEMENT SUB-CLASS”);

10 d. All of Defendant’s past and present non-exempt California employees who
11 worked any shift longer than 5 hours at any time from September 14, 2016, through the present
12 (“MEAL PERIOD CLASS”); and

13 e. All of Defendant’s past and present non-exempt California employees who
14 earned any non-discretionary remuneration, including without limitation ,bonuses and/or
15 incentives, which covered any pay period in which the employee also was paid overtime
16 and/or double time wages at any time from September 14, 2016, through the present
17 (“REGULAR RATE CLASS”).

18 18. **Numerosity and Ascertainability:** The members of the Class are so numerous that
19 joinder of all members would be impractical, if not impossible. The identity of the members of the
20 Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs
21 are informed and believe and based thereon allege that Defendants failed to: (a) provide accurate
22 itemized wage statements in violation of Labor Code § 226; (b) provide off-duty meal periods in
23 violation of Labor Code §§ 201-203, 226, 226.7, and 512, and the IWC Wage Orders; (c) pay
24 reporting time wages in violation of Labor Code §§ 201-204, 510, 558, 1174, 1198, and 1199, and
25 Wage Order No. 5-2001(5); (d) failed to pay minimum, regular, and overtime wages for time spent
26 undergoing COVID-19 checks in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and
27 1197.1; (e) failed to pay all overtime and double time wages by not including all non-discretionary
28 remuneration into the regular rate of pay for purposes of paying said wages in violation of Labor Code

§§ 201-204, 510, 558, 1194, 1197 and 1197.1; and (f) reimburse business expenses in violation of Labor Code § 2802.

19. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

20. Defendants uniformly administered a corporate policy, practice of failing to: (a) provide accurate itemized wage statements in violation of Labor Code § 226; (b) provide off-duty meal periods in violation of Labor Code §§ 201-203, 226, 226.7, and 512, and the IWC Wage Orders; (c) pay reporting time wages in violation of Labor Code §§ 201-204, 510, 558, 1174, 1198, and 1199, and Wage Order No. 5-2001(5); (d) failed to pay minimum, regular, and overtime wages for time spent undergoing COVID-19 checks in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1; (e) failed to pay all overtime and double time wages by not including all non-discretionary remuneration into the regular rate of pay for purposes of paying said wages in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1; and (f) reimburse business expenses in violation of Labor Code § 2802.

21. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning Defendants failing to: (a) provide accurate itemized wage statements in violation of Labor Code § 226; (b) provide off-duty meal periods in violation of Labor Code §§ 201-203, 226, 226.7, and 512, and the IWC Wage Orders; (c) pay reporting time wages in violation of Labor Code §§ 201-204, 510, 558, 1174, 1198, and 1199, and Wage Order No. 5-2001(5); (d) failed to pay minimum, regular, and overtime wages for time spent undergoing COVID-19 checks in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1; (e) failed to pay all overtime and double time wages by not including all non-discretionary remuneration into the regular rate of pay for purposes of paying said wages in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1; and (f) reimburse business expenses in violation of Labor Code § 2802.

22. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class in that Plaintiffs have suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Plaintiffs are victims of Defendant's violation Labor Code § 226. Plaintiffs' wage statements did not identify the correct total hours worked. In particular, whenever shift differential/premium wages were paid, the wage statements issued by Defendant did not identify the accurate total hours worked. Similarly, when the hours shown on the wage statements are added up, they do not appear to add up to the actual total hours worked. Second, whenever wages were paid to Plaintiffs and Class Members, the wage statements issued by Defendant did not identify the accurate pay period start date that for which the wages were being paid. Rather, whenever wages were paid, the wage statements only identified the period end date. Plaintiffs are also victims of Defendant's violations of Labor Code §§ 201-203, 226.7, and 512, the IWC Wage Orders, and the UCL. Defendant violated Labor Code §§ 201-203, 226.7 and 512 by not providing a duty-free 30-minute meal period within the first 5 hours of work for shifts in excess of 5 hours to Plaintiffs and Class Members. Due to staffing issues, Plaintiffs and Class Members routinely were not allowed to take a full 30 minutes for their meal breaks within the first 5 hours of their work shifts. Plaintiffs were also not paid reporting time wages as required by Labor Code §§ 201-204, 510, 558, 1174, 1198, and 1199, and Wage Order No. 5-2001(5). Whenever Defendant cancelled Plaintiffs and Class Members' work shifts early without having worked at least half of their scheduled shifts, Plaintiffs and Class Members were not paid at least half of their scheduled shift. Plaintiffs and Class Members were also not paid all minimum, regular and overtime wages for all hours worked in violation of Labor Code §§ 201-204, 226, 510, 1194, 1197, and 1197.1. Specifically, Plaintiffs and Class Members were required to wait in line and undergo temperature checks and fill out Covid questionnaires, which were done off-the-clock. Plaintiffs and Class Members were also not paid all applicable overtime and double-time wages. Specifically, Plaintiffs and Class Members earned non-discretionary remuneration, including, but not limited to bonuses and incentives. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying Plaintiffs and Class Members their overtime wages. However, whenever Defendant paid Plaintiffs and Class Members their overtime wages during periods in which they earned such non-discretionary

1 remuneration, the overtime wages were not paid at 1.5 time the regular rate of pay, but rather were
2 paid at 1.5 times the base rate of pay. Further, as a result of such violations, the total wages earned and
3 total hours worked as shown on Plaintiffs and Class Members' wage statements were inaccurate in
4 violation of Labor Code § 226. Additionally, because Defendant willfully failed to pay said wages,
5 such that Defendant is liable for waiting time penalties under Labor Code §§ 201-203. Plaintiffs and
6 Class Members were also not reimbursed for business expenses in violation of Labor Code § 2802.
7 Specifically, Plaintiffs and Class Members were required to use their personal cell phones for their
8 work. Defendant, however, did not reimburse Plaintiffs and Class Members for these cell phone costs.
9 As such, Plaintiffs are members of the Class and has suffered the alleged violations of California
10 Labor Code § 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698, *et*
11 *seq.*, and 2802, the IWC Wage Orders and the UCL.

12 23. The California Labor Code and upon which Plaintiffs base these claims is broadly
13 remedial in nature. These laws and labor standards serve an important public interest in establishing
14 minimum working conditions and standards in California. These laws and labor standards protect the
15 average working employee from exploitation by employers who may seek to take advantage of
16 superior economic and bargaining power in setting onerous terms and conditions of employment.

17 24. The nature of this action and the format of laws available to Plaintiffs and members of
18 the Class identified herein make the class action format a particularly efficient and appropriate
19 procedure to redress the wrongs alleged herein. If each employee were required to file an individual
20 lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would
21 be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
22 superior financial and legal resources. Requiring each Class member to pursue an individual remedy
23 would also discourage the assertion of lawful claims by employees who would be disinclined to file an
24 action against their former and/or current employer for real and justifiable fear of retaliation and
25 permanent damage to their careers at subsequent employment.

26 25. The prosecution of separate actions by the individual class members, even if possible,
27 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
28 Class members against the Defendants and which would establish potentially incompatible standards

of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

26. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class identified herein, in a civil action, for unpaid overtime, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code § 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5.

27. Proof of a common business practice or factual pattern, which the named Plaintiffs experienced and are representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

28. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(AGAINST ALL DEFENDANTS BY PLAINTIFFS AND THE CLASS, WAGE STATEMENT CLASS AND SHIFT PREMIUM WAGE STATEMENT SUB-CLASS)

29. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

30. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Labor Code § 226 requires that an employer provide an itemized wage statement every time wages are paid to an employee. Here, Defendants violated Labor Code § 226 by failing to list the accurate total hours worked. In particular, whenever shift differential/premium wages were paid, the

1 wage statements issued by Defendant did not identify the accurate total hours worked. Similarly, when
2 the hours shown on the wage statements are added up, they do not appear to add up to the actual total
3 hours worked. Second, whenever wages were paid to Plaintiffs and Class Members, the wage
4 statements issued by the Company did not identify the accurate pay period start date that for which the
5 wages were being paid. Rather, whenever wages were paid, the wage statements only identified the
6 period end date. Plaintiffs are informed and believe and based thereon allege that non-exempt
7 employees who were paid any shift differentials received wage statements in the same format, i.e.,
8 showing an incorrect total hours worked and that all employees (both exempt and non-exempt) were
9 issued defective wage statements that omitted the pay period start date. Further, as alleged herein,
10 Defendant failed to pay reporting time pay as required by Labor Code §§ 201-204, 510, 558, 1174,
11 1198, and 1199, and Wage Order No. 5-2001(5). Defendant also failed to pay all applicable
12 minimum, regular and overtime wages for all time spent undergoing COVID-19 temperature checks
13 and filling out questionnaires. Defendant also failed to pay all applicable overtime and double-time
14 wages based on the correct higher regular rate of pay because Defendant did not include all non-
15 discretionary remuneration into the regular rate when paying said wages. Thus, the hours worked and
16 hourly rates, gross and net wages are inaccurate due to Defendant's failure to pay reporting time pay,
17 minimum, regular, overtime, and double-time wages.

18 31. Such a pattern, practice and uniform administration of corporate policy as described
19 herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class identified
20 herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
21 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE §§ 201-203, 226.7 AND 512**

24 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS, THE CLASS AND THE MEAL PERIOD**
25 **CLASS)**

26 32. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
27 fully set forth herein.

28 33. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which

1 require an employer to provide a 30-minute off-duty meal period within the first five hours of work.

2 34. Plaintiffs are informed and believe and based thereon allege that Defendant failed to
3 provide compliant meal periods to Plaintiffs and the Class, including with respect to the timing of the
4 meal periods. Defendant violated Labor Code §§ 201-203, 226.7 and 512 by not providing a duty-free
5 30-minute meal period within the first 5 hours of work for shifts in excess of 5 hours to Plaintiffs and
6 Class Members. Due to staffing issues, Plaintiffs and Class Members routinely were not allowed to
7 take a full 30 minutes for their meal breaks within the first 5 hours of their work shifts.

8 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants' willful
9 failure to provide all meal period premium pay and/or wages due and owing them upon separation
10 from employment results in a continued payment of wages up to thirty (30) days from the time the
11 wages were due. Therefore, Plaintiffs and other members of the Class who have separated from
12 employment are entitled to compensation pursuant to Labor Code § 203.

13 36. Such a pattern, practice and uniform administration of corporate policy as described
14 herein is unlawful and creates an entitlement to recovery by the Plaintiffs and Class Members
15 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
16 pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC Wage Order,
17 including interest thereon, penalties, and costs of suit.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 2802**

20 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

21 37. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
22 fully set forth herein.

23 38. This cause of action is brought pursuant to Labor Code § 2802, which provides that
24 employees are entitled to be indemnified for expenses and losses in discharging the duties of their
25 employers. During the relevant time-period, Defendants, on a company-wide basis, required that
26 Plaintiffs and Class Members use their own personal cellular phones and/or cellular phone data to
27 carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related
28 cell phone expenses. Although Defendants required Plaintiffs to regularly utilize their personal

cellular phones to carry out work-related responsibilities, Defendants failed to reimburse Plaintiffs in full for this cost.

39. Defendants engaged in a systematic, company-wide policy to not reimburse its Class Members for necessary business expenses. Defendants could have provided Plaintiffs and Class Members with the actual tools for use on the job, including company phones, or reimbursed employees for their cellular phone usage, but instead, Defendants passed these operating costs off onto Plaintiffs and Class Members.

40. Defendants' company-wide policy and/or practice of passing its operating costs on to Plaintiffs and Class Members is in violation of California Labor Code section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and Class Members for necessary business-related expenses and costs.

41. Plaintiffs and other Class Members are therefore entitled to recover damages, penalties, prejudgment interest, attorneys' fees and costs pursuant to Labor Code § 2802.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1174, 1194, 1198 AND 1199 AND WAGE ORDER NO. 5-2001

(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)

42. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

43. Wage Order No. 5-2001(5) states as follows: "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

44. As a pattern and practice, Defendants regularly required Plaintiffs and other members of Class to report to work, but then cancelled their shifts without payment of reporting time wages. Specifically, whenever Defendant cancelled Plaintiffs and Class Members' work shifts early without

1 having worked at least half of their scheduled shifts, Plaintiffs and Class Members were not paid at
2 least half of their scheduled shift. Further, as a result of such violations, the total wages earned and
3 total hours worked as shown on Plaintiffs and Class Members' wage statements were inaccurate in
4 violation of Labor Code § 226.

5 45. Plaintiffs are informed and believe and based thereon allege Defendants willfully failed
6 to pay employees all reporting time wages. Plaintiffs are informed and believe and based thereon
7 allege Defendants' willful failure to provide all reporting time wages due and owing them upon
8 separation from employment results in a continued payment of wages up to thirty (30) days from the
9 time the wages were due. Therefore, all members of the Class who have separated from employment
10 are entitled to compensation pursuant to Labor Code §§ 201-203.

11 46. Such a pattern, practice and uniform administration of corporate policy regarding illegal
12 employee compensation as described herein is unlawful and creates an entitlement to recovery by
13 Plaintiffs in a civil action, for the unpaid balance of the full amount of reporting time wages owing,
14 including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE §§ 201-204, 226, 510, 1194, 1197, AND 1197.1**

17 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS AND THE CLASS)**

18 47. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
19 fully set forth herein.

20 48. Labor Code §§ 510, 558, 1194, 1197, and 1197.1 require payment of wages for all
21 hours worked by non-exempt employees, which includes time that the employee is under the control
22 of the employer and suffered and/or permitted to work. As a pattern and practice, Defendants suffered
23 and permitted employees to work without payment of minimum and/or regular wages for all hours
24 worked in a workday and workweek and/or overtime wages for all hours worked in excess of 8 hours
25 in a workday and/or 40 hours in a workweek. Here, Defendants required Plaintiffs and the Class to
26 undergo temperature checks and complete COVID-19 questionnaires on the way into work before
27 they were allowed to clock in. Thus, the COVID check time was off-the-clock and unpaid.
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1 49. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to recovery
3 by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of damages
4 owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate
5 of California Labor Code §§ 201-203, 1194, 1197 and 1197.1.

6 50. Plaintiffs and Class Members whose employment ended are also entitled waiting-time
7 penalties pursuant to Labor Code §§ 201-203. Labor Code § 201 provides that all wages earned and
8 unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202
9 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than
10 72 hours thereafter, unless the employee has given 72 hours previous notice, in which case the
11 employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides
12 that an employer who willfully fails to pay such wages due to an employee who is discharged or quits
13 must pay that employee waiting-time penalties in the form of a day's wages up to 30 days until all of
14 the wages owed are paid. As a pattern and practice, Defendants regularly and willfully failed and
15 refused to pay all wages due and earned to discharged employees at the time of their termination, or
16 within 72 hours of employees who quit and/or have resigned, or at the time of termination for those
17 employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code §§ 201-
18 203 by, among other unlawful acts, refusing to pay minimum and overtime wages for time spent
19 undergoing temperature checks.

20 **SIXTH CAUSE OF ACTION**

21 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS AND THE REGULAR RATE CLASS)**

22 51. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
23 fully set for herein.

24 52. At all relevant times, Defendant was required to compensate its employees proper
25 overtime wages for overtime hours worked pursuant to California Labor Code §§ 510, 558 and 1194.
26 Plaintiffs and the Class were and are employed by Defendant as non-exempt employees and, thus,
27 Plaintiffs and the Class are entitled to overtime wages. During their employment with Defendant,
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1 Plaintiffs and the Class worked overtime hours. Specifically, Plaintiffs and the Class worked more
2 than 8 hours in a workday and/or 40 hours in a workweek, without being paid the proper amount of
3 overtime pay. During their employment with Defendant, including during pay periods wherein
4 Plaintiffs and the Class worked overtime and/or double-time, Plaintiffs and the Class also earned
5 additional non-discretionary incentive pay, including without limitation, bonuses and incentives.
6 Defendant, as a corporate-wide practice and policy, did not calculate and/or factor such remuneration
7 into the regular rate of pay for purposes of calculating revised and increased overtime and/or double-
8 time pay, and as such, owes Plaintiffs and the Class additional overtime and/or double-time pay.

9 53. Plaintiffs are informed and believes and based thereon alleges that Defendant's policy
10 and practice of requiring overtime work and not paying for said work according to the overtime and
11 double-time mandates of California law is, and at all times herein mentioned was in violation of
12 California Labor Code §§ 510 and 1194 and the IWC Wage Order(s). Defendant's employment
13 policies and practices wrongfully and illegally failed to compensate Plaintiffs the Class for overtime
14 compensation earned as required by California law.

15 54. Such a pattern, practice and uniform administration of corporate policy regarding
16 illegal employee compensation as described herein is unlawful and creates an entitlement to recovery
17 by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of overtime
18 premiums owing, including interest thereon, penalties, attorneys' fees, and costs of suit according to
19 the mandate of California Labor Code §§ 510, 1194 and 1197.1.

20 55. Plaintiffs are informed and believe and based thereon allege that Defendant willfully
21 failed to pay employees proper compensation for all hours worked. Plaintiffs are informed and
22 believe and based thereon allege that Defendant's willful failure to provide all wages due and owing
23 them upon separation from employment results in a continued payment of wages up to thirty (30) days
24 from the time the wages were due. Therefore, Plaintiffs and other members of the Class who have
25 separated from employment are entitled to compensation pursuant to Labor Code § 203.

26 SEVENTH CAUSE OF ACTION

27 VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*

(AGAINST ALL DEFENDANTS BY PLAINTIFFS AND THE CLASS, MEAL PERIOD CLASS, AND REGULAR RATE CLASS)

56. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

57. Defendant has engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by failing to provide off-duty meal periods, pay reporting time wages, pay minimum, regular and overtime wages for COVID-19 temperature checks and completing COVID-19 questionnaires, and paying overtime/double-time wages based on the regular rate of pay by not including all non-discretionary remuneration in the regular rate, and reimburse business expenses in violation of the California Labor Code and applicable IWC Wage Orders.

58. Defendant's utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

59. Plaintiffs seek individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiffs also seek injunctive relief to enjoin the unfair business practices alleged herein.

60. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiffs and other members of the Class the minimum working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

**(BY PLAINTIFFS AS PROXIES FOR STATE OF CALIFORNIA AGAINST ALL
DEFENDANTS)**

1 61. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
2 fully set forth herein.

3 62. Plaintiffs hereby bring this cause of action for violation of PAGA as proxies for the
4 State of California and in this capacity, seek penalties on behalf of all Aggrieved Employees from
5 September 14, 2019, through the present, for Defendant's violations of Labor Code sections 201-204,
6 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, arising from Defendant's practice
7 and policy of failing to: (a) provide proper meal breaks; (b) provide accurate, itemized wage
8 statements; (c) pay reporting time wages; (d) pay minimum, regular and/or overtime wages for time
9 spent undergoing COVID-19 temperature checks and completing COVID-19 questionnaires off-the-
10 clock; (e) pay overtime and double-time wages based on the correct, higher regular rate of pay as a
11 result of not including all non-discretionary remuneration in the regular rate; and (f) reimburse
12 business expenses.

13 63. Based on the above-stated Labor Code violations, Plaintiffs are "aggrieved employees"
14 as defined in Labor Code section 2699(a). As such, Plaintiffs bring this cause of action on behalf of
15 the State of California for violations committed against all similarly situated Aggrieved Employees of
16 Defendants.

17 64. On or about March 11, 2021, Brazell sent written notice to the California Labor &
18 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections 201,
19 202, 203, 226, 226.7, 512, pursuant to PAGA. On or about March 16, 2021, Smith sent written notice
20 to the LWDA of Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1198,
21 1199, 2802, and Wage Order No. 5-2001(7) and (11). On or about May 25, 2022, Carrillo sent written
22 notice to the LWDA of Defendant's violations of Labor Code §§ §§ 201-204, 226.2, 510, 558, 1194,
23 1197 and 1197.1. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
24 to Plaintiffs as to whether it intends to investigate the violations provided for in the written notice. In
25 addition to the LWDA, Plaintiffs also sent their written notices to Defendant via certified mail
26 according to Labor Code section 2699.3.

27 65. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any and
28 all applicable civil penalties for Defendant's violation of Labor Code sections 201-204, 226, 226.7,

510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, and Wage Order No. 5-2001(7) and (11), for the time period described above, on behalf of the State of California and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes and Subclasses;
2. For an order appointing Plaintiffs as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiffs as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code §§ 201-203, 226, 226.7, and 512, and for costs;
6. Upon the Third Cause of Action, for damages and/or penalties, attorneys' fees and costs as set forth in Labor Code § 2802;
7. Upon the Fourth Cause of Action, for unpaid wages, damages and/or penalties, attorneys' fees and costs as set forth in Labor Code §§ 201-204, 218.5, 226, 510, 558, 1174, 1198, and 1199, and Wage Order No. 5-2001(5);
8. Upon the Fifth Cause of Action, for for unpaid minimum, regular and/or overtime wages, damages and/or penalties, attorneys' fees and costs as set forth in Labor Code §§ 201-204, 218.5, 226, 510, 558, 1194, 1197 and 1197.1;
9. Upon the Sixth Cause of Action, for unpaid overtime and/or double-time wages, damages and/or penalties, attorneys' fees and costs as set forth in Labor Code §§ 201-204, 218.5, 226, 510, 558, 1194, 1197 and 1197.1;
10. Upon the Seventh Cause of Action, for restitution in the form of unpaid meal period premium wages and any available injunctive relief to enjoin the unfair business practices, and for costs;
11. Upon the Eighth Cause of Action, for civil penalties, attorneys' fees and costs pursuant

1 to Labor Code §§ 226.3 and 2699;

2 12. On all causes of action, for attorneys' fees and costs as provided by California Labor
3 Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

4 13. For such other and further relief as the Court may deem just and proper.
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6 DATED: September 30, 2022

DIVERSITY LAW GROUP, P.C.

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8 By: 
9 Larry W. Lee
Attorneys for Plaintiffs and the Class
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