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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DEBORAH HEINS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MEDICREDIT, INC., a Missouri Company;
PARALLON REVENUE CYCLE
SERVICES, INC., a Tennessee Company;
HCA HEALTH SERVICES of
CALIFORNIA, INC., a Tennessee Company;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: **CVRI2101967**

COMPLAINT

CLASS ACTION COMPLAINT

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Unlawful Deduction of Wages;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements; and
- (6) Unfair and Unlawful Competition

PAGA CLAIMS

- (7) PAGA Assessment for Failure to Pay Minimum Wages;
- (8) PAGA Assessment for Failure to Pay Overtime Wages;
- (9) PAGA Assessment for Unlawful Deduction of Wages;
- (10) PAGA Assessment for Failure to Timely Pay Wages;
- (11) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Deborah Heins (“Plaintiff”) on behalf of herself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her former employer, Defendants Medcredit,
5 Inc., Parallon Revenue Cycle Services, Inc., HCA Health Services of California, Inc. and DOES
6 1 through 10, (collectively, the “Defendants”) on behalf of all current and former non-exempt
7 employees employed by Defendants in California (hereinafter, the “Class” or “Represented
8 Employees”), for California Labor Code violations stemming from Defendants’ failure to pay all
9 wages owed, including minimum, regular, overtime wages, unlawful deduction of wages, failure
10 to timely pay wages, and failure to provide accurate itemized wage statements.

11 2. Plaintiff Heins was employed by Defendants as a non-exempt employee from
12 approximately October 31, 2016 through March 25, 2021.

13 3. Plaintiffs allege on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiffs were subjected during their employment.

16 4. At all relevant times, Plaintiff was not provided proper minimum and overtime
17 wages due to Defendants’ failure to accurately compensate for all hours worked. Specifically,
18 Plaintiffs allege that Defendants utilized a rounding policy and practice that routinely
19 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
20 other words, Defendants’ rounding policy is not neutral and systematically undercompensates
21 Plaintiff and the Represented Employees, leading to a failure to pay proper minimum, regular,
22 and overtime wages.

23 5. Plaintiff further alleges that Defendants engaged in the practice of failing to pay
24 all wages due and owing to Plaintiff and the Represented Employees each pay period (Labor
25 Code § 204) and at the time employment ended with Defendants (Labor Code §§ 201 – 203),
26 including, but not limited to regular wages, minimum wages, overtime wages, among others.

27 6. Plaintiff also alleges that they and the Represented Employees did not receive
28 accurate itemized wage statements that fully complied with the requirements of Labor Code §

226(a) due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; and, failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

7. Plaintiff alleges that Defendants' violations of the wage and hour components of the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its competitors.

8. At all material times, Defendants and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112.

9. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of themselves and the Represented Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 256, 510, 512, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted. Plaintiffs also reserve the right to name additional representatives throughout the State of California.

II. JURISDICTION

10. This Court has jurisdiction over the claims for relief of Plaintiff and the Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

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1 **III. VENUE**

2 11. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure §§ 395(a) and 395.5. Defendants transact business in Riverside County and the
4 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
5 Riverside County. Furthermore, Defendants employed or employ Plaintiff and Represented
6 Employees in Riverside County.

7 **IV. PARTIES**

8 **Plaintiff**

9 12. Plaintiff and Class Representative Deborah Heins was employed by Defendants
10 from approximately October 31, 2016 through March 25, 2021 and performed work for
11 Defendants in Riverside County.

12 **Defendants**

13 13. Plaintiff is informed and believes and thereon alleges that Defendant Medcredit,
14 Inc., is a Missouri company, is authorized to and doing business in Riverside County, California,
15 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
16 applicable statutory periods.

17 14. Plaintiff is informed and believes and thereon alleges that Defendant Parallon
18 Revenue Cycle Services, Inc., is a Tennessee company, is authorized to and doing business in
19 Riverside County, California, and is and/or was the legal employer of Plaintiff and the
20 Represented Employees during the applicable statutory periods.

21 15. Plaintiff is informed and believes and thereon alleges that Defendant HCA Health
22 Services of California, Inc., is a Tennessee company, is authorized to and doing business in
23 Riverside County, California, and is and/or was the legal employer of Plaintiff and the
24 Represented Employees during the applicable statutory periods.

25 16. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
27 inclusive, but on information and belief alleges that those Defendants are legally responsible for
28 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of

1 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
2 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
3 Defendants when ascertained.

4 17. Plaintiff is informed and believes and thereon alleges that he worked under the
5 joint direction and control of Defendants and that Defendants, and each of them, acted in all
6 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
7 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
8 attributable to the other Defendants. On information and belief, a unity of interest and ownership
9 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
10 and other similarly situated employees.

11 18. Plaintiff is informed and believes and thereon alleges that, in conducting
12 themselves in the manner described herein, Defendants, and each of them, were acting in active
13 concert with one another such that the acts of each were and are fully attributable to the others in
14 all material respects. Plaintiff is further informed and believes that at all relevant times
15 Defendants and each of them are now, and at all material times herein mentioned were, the
16 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
17 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
18 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
19 their remaining co-Defendants.

20 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
21 Defendants, and each of them, are an integrated enterprise and should be treated as a single
22 employer because these entities share an interrelation of operations, with common human
23 resources and personnel policies and shared common offices and facilities. Additionally,
24 Defendants also have a shared website, common management, a centralized control of labor
25 operations, and common ownership or financial control.

26 20. Plaintiff is further informed and believes that at all relevant times, Defendant
27 Decker Truck Lines, Inc. has been inadequately capitalized to conduct business, have failed to
28 follow appropriate corporate formalities, and have simply been a shell and instrumentality

1 through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs.
2 Accordingly, the corporate veil should be pierced and any liability attached, Defendant ITS
3 Logistics, LLC, should be imposed jointly and severally against Defendants DOES 11 through
4 20. Adherence to the fiction of the separate existence of these corporate entities would permit
5 abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

6 21. Pursuant to Labor Code § 2699.3(a), on April 23, 2021 Plaintiff gave written
7 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
8 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
10 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
11 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
12 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
13 the LWDA chooses not to investigate the allegations herein.

14 **V. CLASS ACTION ALLEGATIONS**

15 22. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 23. Plaintiff brings this action on behalf of himself and all others similarly situated as
18 a class action, pursuant to Code of Civil Procedure § 382.

19 24. The relevant time period for this class action is defined as the time period
20 beginning four years prior to the filing of this action until class certification (the “Relevant Time
21 Period”).

22 25. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
23 represent is defined as follows:

24 **California Class**

25 All current and former non-exempt employees who were
26 employed by Defendants at any time during the Relevant
27 Time Period.

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26. Plaintiff also seeks to represent the following subclasses:

Waiting Time Penalties Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action until class certification.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action until class certification.

27. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

28. Plaintiff, as Class Representative, is a member of the class that he seeks to represent.

29. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

30. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

31. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the class, including without limitation:

i. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay wages to Plaintiffs and the Represented Employees for all hours worked;

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1 ii. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to pay proper overtime wages to Plaintiffs and the Represented
3 Employees;

4 iii. Whether Defendants violated the California Labor Code by unlawfully
5 deducting wages from Plaintiffs and the Represented Employees;

6 iv. Whether Defendants violated the California Labor Code by failing to pay
7 all wages due upon separation of employment between Defendants and Plaintiffs and the Waiting
8 Time Penalties Subclass, whether such separation was voluntary or involuntary;

9 v. Whether Defendants violated the California Labor Code by failing to
10 provide Plaintiffs and Wage Statement Penalties Subclass with complete, accurate, itemized wage
11 statements;

12 vi. Whether Defendants violated California Business & Professions Code §§
13 17200 et seq. due to the: failure to pay all wages owed, including minimum, regular, and overtime
14 wages; and, failure to timely pay final wages;

15 vii. Whether Defendants violated § 17200 et seq. of the California Business and
16 Professions Code and, without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.3, 256, 510, 1194, 1194.2, and 1197 among possibly other sections
18 inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false,
19 fraudulent, unlawful, unfair and deceptive business practices; and

20 viii. Whether Plaintiffs and Represented Employees are entitled to equitable
21 relief pursuant to California Business & Professions Code §§ 17200 et seq.

22 32. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
23 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
24 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
25 wages owed, including minimum, regular, overtime wages, unlawfully deducting wages, failure
26 to timely pay final wages, and failure to provide accurate itemized wage statements.

27 33. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
28 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in

1 conflict with those of the Class. Class Representative's counsel are competent and experienced in
2 litigating large employment class actions and other complex litigation matters, including cases
3 like this case.

4 34. **Superiority of Class Action.** Class certification is appropriate because a class
5 action is superior to other available means for the fair and efficient adjudication of this
6 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
7 law and fact common to the Class predominate over any questions affecting only individual
8 members of the Class. Each Represented Employee has been damaged and is entitled to
9 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
10 treatment will allow those similarly situated persons to litigate their claims in the manner that is
11 most efficient and economical for the parties and the judicial system.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

15 (*Plaintiff and the Represented Employees Against All Defendants*)

16 35. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 36. Plaintiff and the Represented Employees were not exempt from the requirement
19 to be paid at least the applicable California minimum wage throughout the statutory period for
20 each hour worked.

21 37. At all relevant times, Plaintiff and the Represented Employees were not provided
22 proper minimum wages due to Defendants' failure to accurately compensate for all hours
23 worked. Therefore, this resulted in unpaid minimum wages on each such occasion.

24 38. In addition, Defendants utilized a rounding policy and practice that routinely
25 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
26 other words, Defendants' rounding policy is not neutral and systematically undercompensates
27 Plaintiffs and the Represented Employees, leading to a failure to pay proper minimum wages.

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1 39. Consequently, Defendants violated California Labor Code laws and minimum
2 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 40. Plaintiff is informed and believes and thereon alleges that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 41. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
8 Represented Employees were entitled to be paid wages throughout the statutory period for each
9 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
10 accordance thereto.

11 42. At all material times, Defendants DOES 1 through 10 were and/or are the
12 employer of Plaintiff and the Represented Employees, or were persons acting on behalf of said
13 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
14 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
15 Labor Code regulating hours and days of work respectively.

16 43. During employment of Plaintiff and the Represented Employees, Defendants
17 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

18 44. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
19 Employees have been damaged in amounts to be proven at trial.

20 45. Plaintiff, on behalf of herself and the Represented Employees, seek recovery of all
21 unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit,
22 pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at
23 trial.

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

(Plaintiff and the Represented Employees Against All Defendants)

46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

47. Plaintiff and the Represented Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

48. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

49. At all relevant times, Plaintiff and the Represented Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked, as well as the non-neutral rounding policy described herein, Plaintiff and the Represented Employees did not receive proper overtime compensation.

50. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

51. Plaintiff are informed and believe and thereon allege that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

52. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid proper overtime wages throughout the statutory

1 period, yet Defendants chose not to pay them in accordance thereto.

2 53. At all material times, Defendants DOES 1 through 10 were and/or are the
3 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
4 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
5 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
6 Labor Code regulating hours and days of work respectively.

7 54. During the employment of Plaintiff and the Represented Employees, Defendants
8 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

9 55. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
10 Employees have been damaged in amounts to be proven at trial.

11 56. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
12 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
13 Defendants in an amount to be proven at trial.

14 **THIRD CAUSE OF ACTION**

15 **UNLAWFUL DEDUCTION OF WAGES**

16 (Labor Code § 221)

17 (*Plaintiff and the Represented Employees Against All Defendants*)

18 57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

20 58. California Labor Code § 221 states that "[i]t shall be unlawful for any employer to
21 collect or receive from an employee any part of wages theretofore paid by said employer to said
22 employee." Labor Code § 221 reflects "'California's strong public policy favoring the protection
23 of employees' wages.'" *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166,
24 quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.

25 59. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221
26 cannot "be contravened or set aside by a private agreement." Therefore, the rights under Labor
27 Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166.
28 Also, under Labor Code §§ 219 and 221, an employer may not "require its employees to consent

1 to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34
2 Cal.App.4th 1109, 1124.

3 60. As previously alleged herein, Defendant engaged in the unlawful deduction of
4 wages when it deducted amounts from the wages of Plaintiff and the Represented Employees.

5 61. As a result of Defendants’ violations of Labor Code § 221, Plaintiff and the
6 Represented Employees seek to recover the total amount of wages unlawfully deducted, as well
7 as penalties, interest, attorneys’ fees, and costs as permitted under California law.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY FINAL WAGES**

10 (Labor Code § 201 – 203)

11 *(Plaintiff and the Waiting Time Penalties Subclass Against All Defendants)*

12 62. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 63. Plaintiff and the Waiting Time Penalties Subclass are and/or were “non-exempt”
15 employees of Defendants who did not receive proper protections and benefits of the laws
16 governing the timing and payment of wages.

17 64. Labor Code § 201 requires that the employer immediately pay any wages, without
18 abatement or reduction, to any employee who is discharged.

19 65. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
20 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
21 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

22 66. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
23 penalty from the due date thereof at the same rate until paid or until an action therefore is
24 commenced, but the wages shall not continue for more than thirty (30) days.

25 67. At all relevant times here, Defendants did not provide Plaintiff and the Waiting
26 Time Penalties Subclass with all wages due and owing upon separation of employment,
27 including, but not limited to, minimum, regular, overtime wages, as well as meal and rest period
28 premiums, within the time specified by Labor Code §§ 201 – 203.

1 68. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay to Plaintiff and the Waiting Time Penalties Subclass
3 all wages due and owing upon separation of employment as required by Labor Code §§ 201 and
4 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
5 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
6 according to proof at trial and within the jurisdiction of this Court.

7 **FIFTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

10 *(Plaintiff and the Wage Statement Penalties Subclass Against All Defendants)*

11 69. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 70. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
14 Defendants who did not receive proper protections and benefits of the laws governing the
15 provision of accurate itemized wage statements.

16 71. Labor Code § 226(a) requires that employers furnish its employees with written
17 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
18 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate by the employee.

21 72. Defendants violates Labor Code § 226(a) every pay period with respect to
22 Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass because
23 Defendants failed to provide a wage statement to Plaintiff, the Represented Employees and the
24 Wage Statement Penalties Subclass that complied with the requirements of Labor Code § 226(a)
25 by failing to accurately state gross wages earned, failure to accurately state total hours worked,
26 failure to accurately state all deductions, failure to accurately state net wages earned, and failure
27 to state all applicable hourly rates in effect during the pay period and the corresponding number
28 of hours at each hourly rate by the employee.

73. Defendants' failure to provide the required writing deprived Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass of the ability to know, understand, and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass had no way to dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to said Defendants. As a direct result, Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damages in amounts according to proof at trial.

74. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in that each was prevented from knowing, understanding and disputing the wage payments paid to them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an injury in that the failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the Wage Statement Penalties Subclass being denied all necessary deductions, payments, and withholdings owed by the employer, including, but not limited to, the failure to make all necessary contributions for unemployment benefits, social security benefits, proper payment of taxes and withholdings, and other mandated state and federal benefits.

75. Plaintiff has also been injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

76. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass who were injured by Defendants' failure to comply with Labor Code §

226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

SIXTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

(Plaintiff and the Represented Employees Against All Defendants)

77. Plaintiff incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

78. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Represented Employees, including Plaintiffs, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

79. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

80. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum wages, regular wages, overtime wages, unlawful deduction of wages, failure to pay vested vacation at final rate of pay, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

81. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations to which they were entitled.

82. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

83. Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiffs and all others similarly-situated.

1 84. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
4 Code of Civil Procedure § 1021.5.

5 85. A violation of California Business & Professions Code § 17200, et seq. may be
6 predicated on the violation of any state or federal law. All of the acts described herein as
7 violations of, among other things, the California Labor Code and IWC Wage Orders, are
8 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
9 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
10 practices in violation of California Business and Professions Code §§ 17200, et seq.

11 86. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
12 speedy, and/or adequate remedy at law to redress the injuries which she has suffered as a
13 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
14 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
15 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
16 harm unless Defendants, and each of them, are restrained from continuing to engage in said
17 unfair, unlawful and/or fraudulent business practices.

18 87. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
19 and does seek such relief as may be necessary to disgorge the profits which Defendants have
20 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
21 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
22 Represented Employees are not obligated to establish individual knowledge of the unfair
23 practices of Defendants in order to recover restitution.

24 88. Plaintiff, individually, and on behalf of the Represented Employees, is further
25 entitled to and does seek a declaration that the above-described business practices are unfair,
26 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
27 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
28 the future.

89. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and Represented Employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF ACTION
(Labor Code § 2698 – 2699.5)

90. Plaintiff is an "aggrieved employee" under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of herself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed.

91. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

SEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE

(Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)

92. Plaintiff realleges and incorporates the paragraphs 1-21 and 90-91 of the Complaint as if fully alleged herein.

93. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

94. At all relevant times herein, Plaintiff and the Aggrieved Employees were illegally not paid proper minimum and/or regular wages due to Defendants' failure to accurately

1 compensate for all hours worked..

2 95. In addition, Defendants utilized a rounding policy and practice that routinely
3 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
4 other words, Defendants' rounding policy is not neutral and systematically undercompensates
5 Plaintiffs and the Represented Employees, leading to a failure to pay proper minimum wages

6 96. Consequently, Defendants violated California Labor Code laws and minimum
7 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
8 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

9 97. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

12 **EIGHTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

14 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

15 98. Plaintiff realleges and incorporates the paragraphs 1-21 and 90-97 of the
16 Complaint as if fully alleged herein.

17 99. Plaintiff and the Aggrieved Employees were "non-exempt" employees of
18 Defendants who did not receive proper protections and benefits of the laws governing payment
19 of overtime wages.

20 100. Labor Code § 204 requires that the employer timely pay all overtime wages to its
21 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
22 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
23 any one workweek shall be compensated at the rate of no less than one and one-half times the
24 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
25 in one workday shall be compensated at twice the regular rate of pay for an employee.

26 101. At all relevant times, Plaintiff and the Aggrieved Employees were required by
27 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper
28 overtime compensation.

102. As a result of Defendants' failure to pay for off-the-clock work performed by the Aggrieved Employees, Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to pay Plaintiff and members of the Aggrieved Employees for all hours worked, including overtime hours, and required Plaintiff and the Aggrieved Employees to work without being properly compensated for all overtime wages earned.

103. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

104. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code § 221)

105. Plaintiff realleges and incorporates the paragraphs 1-21 and 90-104 of the Complaint as if fully alleged herein.

106. California Labor Code § 221 states that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code § 221 reflects "'California's strong public policy favoring the protection of employees' wages.'" *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40-41.

107. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot "be contravened or set aside by a private agreement." Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166. Also, under Labor Code §§ 219 and 221, an employer may not "require its employees to consent to unlawful deductions from their wages." *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

1 108. As previously alleged herein, Defendant engaged in the unlawful deduction of
2 wages when it deducted amounts from the wages of Plaintiff and the Represented Employees.

3 109. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the
6 PAGA.

7 **TENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES**

9 (Labor Code §§ 201 – 204)

10 110. Plaintiff reallege and incorporate the paragraphs 1-21 and 90-109 of the
11 Complaint as if fully alleged herein.

12 111. Plaintiff and the Represented Employees are and/or were “non-exempt”
13 employees of Defendants who did not receive proper protections and benefits of the laws
14 governing the timing and payment of wages.

15 112. Labor Code § 201 requires that the employer immediately pay any wages, without
16 abatement or reduction, to any employee who is discharged.

17 113. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
18 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
19 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

20 114. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
21 penalty from the due date thereof at the same rate until paid or until an action therefore is
22 commenced, but the wages shall not continue for more than thirty (30) days.

23 115. At all relevant times, Defendants engaged in the practice of failing to pay all
24 wages due and owing to Plaintiff and the Represented Employees upon separation of
25 employment, including, but not limited to minimum and overtime wages, wage premiums,
26 among others.

27 116. Furthermore, Labor Code § 204(a) states that all wages earned by a person are
28 due and payable twice during each calendar month, and further states that wages earned during

1 the first through fifteenth days of the month must be paid no later than the twenty-sixth day of
2 the month, and that wages earned between the sixteenth and last day of the month must be paid
3 by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this
4 section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
5 payroll if the wages are paid not more than seven calendar days following the close of the payroll
6 period.”

7 117. At all relevant times herein, Defendants did not provide Plaintiff and the
8 Represented Employees with all wages due and owing each pay period, including, but not
9 limited to, minimum, regular, and overtime wages, within the time specified by Labor Code §
10 204.

11 118. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay to Plaintiff and the Represented Employees all wages
13 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

14 119. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

17 **ELEVENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 120. Plaintiff realleges and incorporates the paragraphs 1-20 and 90-119 of the First
22 Amended Complaint as if fully alleged herein.

23 121. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
24 who did not receive proper protections and benefits of the laws governing the provision of
25 accurate itemized wage statements.

26 122. Labor Code § 226(a) requires that employers furnish its employees with written
27 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
28 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

123. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a) by failing to accurately state gross wages earned, failure to accurately state total hours worked, failure to accurately state all deductions, failure to accurately state net wages earned, and failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

124. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others similarly situated prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Seventh through Eleventh Causes of Action, the assessment of all applicable and available remedies under the PAGA in accordance with Labor § 2699 and/or any other damages permitted under the PAGA provided for by the California Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) as a result of Defendants' violations of the Labor Code as alleged herein;

2. For reasonable attorneys' fees and costs permitted under the PAGA;

3. That the First through Sixth Causes of Action be certified as a class action;

4. That Plaintiffs be appointed as Class Representatives;

5. That counsel for Plaintiffs be appointed Class Counsel;

6. For all applicable statutory penalties recoverable under the First through Sixth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;

7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;

8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;

9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 218.6, 221, 223, 226, 226.2, 510, 512, 558, 1194, 1194.2, and 1197, among other sections inadvertently omitted;

10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;

11. For pre- and post-judgment interest; and

12. For such other relief as the Court deems just and proper.

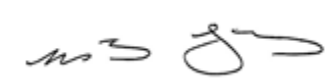
DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others similarly situated, hereby demands a jury trial as to the First through Eleventh Causes of Action pled herein.

Dated: April 23, 2021

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff