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all Aggrieved Employees, and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

STEPHANIE PUCKETT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WELLPATH LLC, a Delaware Limited
Liability Company; CALIFORNIA HEALTH
AND RECOVERY SOLUTIONS PC, a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.: CIVSB2109315

**AMENDED CLASS AND PAGA ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) FAILURE TO TIMELY PAY WAGES OWED DURING EMPLOYMENT;
- (6) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
- (7) FAILURE TO PROVIDE/PAY ALL SICK TIME WAGES;
- (8) UNLAWFUL DEDUCTIONS FROM WAGES;
- (9) UNFAIR COMPETITION;
- (10) FAILURE TO MAINTAIN PAYROLL RECORDS;
- (11) FAILURE TO PROVIDE/PAY ALL VACATION WAGES;
- (12) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (13) WAITING TIME PENALTIES; and
- (14) PAGA PENALTIES

DEMAND FOR JURY TRIAL

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1 Plaintiffs STEPHANIE PUCKETT, ABIODUN ADEBAYO, ANA TAPIA, ELIZABETH
2 OBODOAGHA, and CINDY VILLANUEVA (collectively, “Plaintiffs”), on behalf of themselves,
3 all other similarly situated non-exempt employees, and on behalf of the general public as private
4 attorney general, allege and complain of Defendants WELLPATH LLC, CALIFORNIA HEALTH
5 AND RECOVERY SOLUTIONS PC, CALIFORNIA FORENSIC MEDICAL GROUP, INC., and
6 DOES 1 to 50, and each of them (collectively, “Defendants”), as follows:

7 **INTRODUCTION**

8 1. Defendants WELLPATH LLC (“WELLPATH”), CALIFORNIA HEALTH AND
9 RECOVERY SOLUTIONS PC (“CHRS”), and CALIFORNIA FORENSIC MEDICAL GROUP,
10 INC. (“CFMG”) provide medical and healthcare services to patients across the U.S., including
11 California.

12 2. Plaintiffs bring this class and PAGA representative action against Defendants for
13 alleged violations of the California Labor Code and Business and Professions Code. Plaintiffs
14 conservatively estimate there are in excess of 100 non-exempt employees who work or have worked
15 for Defendants over the last year.

16 3. As set forth below, Plaintiffs, on behalf of themselves, individually, and all others
17 similarly situated, allege that Defendants have a uniform payroll practice and policy that unlawfully
18 and unevenly rounded and continues to round Plaintiffs’ and other non-exempt employees’ time
19 entries and failed to account for time spent lining up for and going through security and COVID-19
20 screening checkpoints prior to clocking in for shifts. As a result, Plaintiffs and other similarly situated
21 employees were not paid for all hours worked. Plaintiffs further allege that Defendants failed to pay
22 all overtime compensation, sick pay and vacation wages at the legal rate, and that Defendants’ meal
23 and rest period policies and practices failed to provide him and all other similarly situated employees
24 with compliant/timely meal and rest periods, or premium wages at the appropriate legal rate in lieu
25 thereof. Additionally, Plaintiffs allege that Defendants failed to provide non-exempt employees with
26 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
27 employment. Furthermore, Plaintiffs allege that Defendants failed to reimburse them and other non-
28 exempt employees for necessary business expenditures. Additionally, Plaintiffs allege that

1 Defendants unlawfully deducted earned wages. Finally, Plaintiffs allege that Defendants failed to
2 maintain all payroll records.

3 4. Based on these alleged Labor Code violations, Plaintiffs now bring this class and
4 PAGA action to recover unpaid wages, restitution, penalties, and other related relief on behalf of
5 themselves and all others similarly situated.

6 **JURISDICTION AND VENUE**

7 5. Plaintiffs, on behalf of themselves, individually, and all other similarly situated
8 employees, hereby bring this class and PAGA representative action for recovery of unpaid wages and
9 penalties under Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 246,
10 510, 511, 512, 516, 558, 1102.5, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197 *et seq.*, 1197.1,
11 1198, 1199, 2802, 2698 *et seq.*, 2699, 2699(a), 2802, and applicable IWC Wage Orders, and
12 California Code of Regulations, Title 8, section 11000 *et seq.*, in addition to seeking declaratory relief
13 and restitution pursuant to California Business and Professions Code § 17200, *et. seq.*, as well as
14 reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226, 1194, and Code of Civil
15 Procedure § 1021.5, and prejudgment interest on all due and unpaid wages pursuant to California
16 Labor Code § 218.6 and Civil Code §§ 3287 and 3289.

17 6. This class action is brought pursuant to California Code of Civil Procedure § 382.

18 7. This Court has jurisdiction over Defendants' violations of the California Labor Code
19 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
20 minimum.

21 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
22 §§ 395(a) and 395.5, Defendants own and/or operate within the County of San Bernardino, and/or
23 otherwise are found within the County of San Bernardino and Defendants are within the jurisdiction
24 of this Court for purposes of service of process.

25 **PARTIES**

26 9. At all relevant times herein, Plaintiffs, who are over the age of 18, were and currently
27 are California residents residing in the State of California.

28 10. Plaintiffs are informed and believe and thereon allege that Defendants are companies

1 and/or corporations authorized to do business in California and are and/or were the legal employers
2 of Plaintiffs and the Classes during the applicable statutory periods. Plaintiffs were, and are, victims
3 of Defendants' policies and/or practices complained of herein and have been deprived of the rights
4 guaranteed to them by California Labor Code §§201, 202, 203, 204, 210, 212, 213, 221, 223, 226,
5 226.3, 226.7, 246, 510, 511, 512, 516, 558, 1102.5, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197
6 *et seq.*, 1197.1, 1198, 1199, 2802, 2698 *et seq.*, 2699, 2699(a), 2802. Therefore, Plaintiffs also seek
7 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*
8 *seq.*, as well as reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226, 1194, and
9 Code of Civil Procedure § 1021.5, and prejudgment interest on all due and unpaid wages pursuant to
10 California Labor Code § 218.6 and Civil Code §§ 3287 and 3289.

11 11. Plaintiffs are informed and believe, and based thereon allege, that during the four years
12 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
13 do) business in the State of California, County of San Bernardino.

14 12. Plaintiffs do not know the true names or capacities, whether individual, partner, or
15 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
16 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
17 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,
18 and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners,
19 or corporate, were responsible in some manner for the acts and omissions alleged herein, and
20 proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices
21 alleged herein.

22 13. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all
24 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
25 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
26 them, were the agents, servants, and employees of each and every one of the other Defendants, as
27 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
28 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,

1 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

2 14. At all times mentioned herein, Defendants, including WELLPATH LLC,
3 CALIFORNIA HEALTH AND RECOVERY SOLUTIONS PC, CALIFORNIA FORENSIC
4 MEDICAL GROUP, INC., were members of and engaged in a joint venture, partnership, and
5 common enterprise, and acting within the course and scope of and in pursuance of said joint venture,
6 partnership, and common enterprise. Further, Plaintiffs allege that all Defendants and herein named
7 related entities were joint employers for all purposes of Plaintiffs and all members of the Classes.

8 **COMMON FACTUAL ALLEGATIONS**

9 15. Defendants are providers of healthcare services to correctional facilities throughout
10 California. Defendants employed each of the Plaintiffs as non-exempt employees, to work out of
11 Defendants' California facilities.

12 16. Plaintiffs and other similarly situated non-exempt employees were responsible for all
13 aspects of healthcare and other services provided by Defendants in all California prisons they serve.

14 17. At all relevant times, Defendants have had a uniform payroll policy/practice of
15 rounding Plaintiffs' and other non-exempt employees' time entries to the nearest 15-minute interval.
16 As a result of this rounding policy/practice, Plaintiffs and other non-exempt employees were and are
17 not compensated for all the hours that they work and all the overtime hours they work in violation of
18 Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. *See's Candy Shops*
19 *v. Superior Court* (2012) 210 Cal. App. 4th 889, 907 [rounding time policies can be lawful, "if the
20 rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result,
21 over a period of time, in failure to compensate the employees properly for all the time they have
22 actually worked,' See 29 C.F.R. § 785.48; see DLSE Manual, supra, §§ 47.1, 47.2.)"].

23 18. Here, Defendants' rounding policy/practice is not neutral and non-exempt employees
24 were subject to discipline, including termination, for being tardy in reporting to work. Moreover,
25 because Defendants can track the time worked by non-exempt employees to the minute, the rounding
26 policy/practice itself exists not for the convenience or benefit of the employees who are trying to
27 report their time on timecards or computer log, but for Defendants' benefit.

28 19. As a result of the rounding policy, Plaintiffs and other non-exempt employees were

1 uniformly underpaid for all hours worked, including all minimum and overtime wages, in violation
2 of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage Orders. Accordingly,
3 Plaintiffs and other non-exempt employees are entitled to recover liquidated damages for violations
4 of Labor Code § 1197.1 and penalties under Labor Code § 1199.

5 20. Further, at all relevant times, Defendants have had a uniform payroll policy/practice of
6 not crediting Plaintiffs' and other non-exempt employees' time entries with the time spent going
7 through security and screening checkpoints. As a result of Defendants' security checkpoint and
8 COVID-19 temperature checks, Plaintiffs and other non-exempt employees were not fully
9 compensated for all hours worked, including minimum and overtime wages as required by the
10 California Labor Code and applicable Wage Orders. Defendants have no valid defense to this claim
11 given the California Supreme Court's recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8
12 Cal.5th 1038, which held that employees "must be paid" during security checks since "it is clear that
13 [employees] are subject to [the employer's] control while awaiting, and during, [the] exit searches."

14 21. Consequently, Plaintiffs and other non-exempt employees were not properly paid for
15 all hours worked, including overtime hours, in violation of Cal. Labor Code §§ 204, 510, 1194,
16 1197.1, 1199, and applicable Wage Orders. Additionally, Plaintiffs and other non-exempt employees
17 similarly situated were not properly paid at the correct overtime rate for hours worked in excess of
18 eight hours per shift.

19 22. As a result of the security and COVID-19 screening policy, Plaintiffs and other non-
20 exempt employees were uniformly underpaid for all hours worked, including all minimum and
21 overtime wages, in violation of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage
22 Orders. Accordingly, Plaintiffs and other non-exempt employees are entitled to recover liquidated
23 damages for violations of Labor Code § 1197.1 and penalties under Labor Code § 1199.

24 23. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were not
25 properly paid at the correct overtime rate for all hours worked in excess of eight hours per workday
26 or 40 hours per workweek. When Plaintiffs and the other non-exempt employees worked overtime
27 hours, Defendants failed to include all forms of compensation, including, but not limited to non-
28 discretionary bonus payments and shift differentials when calculating the regular rate of pay used in

1 overtime calculations. For instance, although Defendants consistently and regularly paid non-exempt
2 employees non-discretionary shift differentials, Defendants omitted the bonus payments when
3 calculating the regular rate of pay used in overtime calculations and when paying overtime to
4 Plaintiffs and the other non-exempt employees.

5 24. Under the California Labor Code (as well as the FLSA), courts have held that regularly
6 paid non-discretionary incentive pay/bonuses must be included in determining an employee's
7 "regular rate of pay" for purposes of calculating overtime. See *Haber v. The Americana Corp.* 378 F.
8 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in
9 calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057
10 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the
11 grounds, that defendant improperly calculated overtime by excluding annual bonuses paid to
12 employees from the "regular rate of compensation"].

13 25. Labor Code § 510 requires an employer to compensate an employee who works more
14 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
15 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for
16 an employee. In addition, Labor Code § 510 obligates employers to compensate employees at no less
17 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
18 more than eight (8) hours on the seventh consecutive day of work.

19 26. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
20 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
21 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
22 40 hours in the workweek. By their policy of requiring Plaintiffs and the other non-exempt employees
23 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
24 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
25 violated the provisions of Labor Code §§ 510 and applicable Wage Orders.

26 27. As a result of Defendants' failure to include all forms of compensation in calculating
27 the regular rate as set forth above, Defendants failed to compensate Plaintiffs and other non-exempt
28 employees for all overtime wages at the proper rates. Accordingly, Plaintiffs and other non-exempt

1 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

2 28. Next, at all relevant times, Plaintiffs and other non-exempt employees were denied
3 legally compliant and timely off-duty meal periods of at least thirty (30) minutes due to Defendants'
4 unlawful policies/practices (including, but not limited to, rough demands of the job and staffing
5 shortages) that often prevented Plaintiffs and other non-exempt employees from taking compliant 30-
6 minute first meal periods before the end of the fifth hour of work, and second meal periods before the
7 end of the tenth hour of work as required by California law.

8 29. Additionally, Defendants failed to adequately pay Plaintiffs and other non-exempt
9 employees' payment for meal period premiums for non-compliant meal periods in compliance with
10 *Ferra v. Loews Hollywood Hotel, LLC* (2021) No. S259172. In *Ferra*, the California Supreme Court
11 made clear that payment of meal and rest period premiums must include more than just the
12 employee's base hourly rate. The California Supreme Court held that the amount to be paid for
13 meal/rest premiums is not the employees' base hourly rate but their "regular rate of pay," which is
14 used to calculate overtime pay, which includes other forms of compensation, including, but not
15 limited to, non-discretionary bonuses and shift pay, and is often higher than the base hourly rate.
16 Throughout Plaintiffs' employment, Defendants failed to adequately pay missed meal and rest period
17 premiums at the appropriate regular rate of pay.

18 30. Based on the foregoing, Plaintiff seeks to recover on behalf of themselves, individually,
19 and other non-exempt employees' meal period premiums and penalties. Consequently, Defendants
20 have violated Labor Code §§ 226.7, 512, 516 and applicable Wage Orders.

21 31. Additionally, at all relevant times, Defendants failed and continue to fail to authorize
22 and permit Plaintiffs and other non-exempt employees from taking legally compliant rest periods as
23 a result of its unlawful rest period policy/practices that requires non-exempt employees to remain on
24 premises during rest periods. Further, Plaintiffs and other non-exempt employees were also often
25 unable to take legally compliant rest periods due to the demands of the job, staffing shortages and job
26 responsibilities. As a result, Plaintiffs and other non-exempt employees were and are routinely unable
27 to take (10) minute duty free rest periods for every major fraction of four hours worked. This includes
28 a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10

1 hours in a workday.

2 32. By requiring non-exempt employees to remain on the Company premises during
3 breaks, non-exempt employees are not relieved of all duties during rest periods. See *Augustus v. ABM*
4 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers
5 must relieve employees of all duties and relinquish control over how employees spend their time.”].
6 In *Augustus*, the court expressly rejected the employers’ assertion that it could provide an on-duty
7 rest period to employees who worked as security guards and further explained “that employers [must]
8 relinquish any control over how employees spend their break time and relieve their employees of all
9 duties.” *Id.* at 273.

10 33. Each time Plaintiffs and other non-exempt employees were unable to take a compliant
11 rest period, Defendants failed and continues to fail to adequately pay rest period premium payments
12 at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel,*
13 *LLC* as detailed above.

14 34. As a result of Defendants’ unlawful rest period policies and practices, Plaintiffs seek
15 to recover on behalf of themselves, individually, and all non-exempt employees rest period premiums
16 and penalties. Consequently, Defendants have violated Labor Code §§ 204, 210, 226.7, 510, 512 and
17 applicable Wage Orders.

18 35. Moreover, at all relevant times, Plaintiffs and other non-exempt employees, at the
19 direction of Defendants and/or with Defendants’ knowledge and acquiescence, have used their
20 personal cell phones to communicate with their supervisors, managers, and co-workers in the
21 discharge of their duties for Defendants. Defendants require that Plaintiffs and other non-exempt
22 employees respond to phone calls and text messages and expect these employees to initiate calls and
23 texts to meet business needs. Defendants required Plaintiffs and all other non-exempt employees to
24 incur the costs associated with business use of their personal cell phones and did not provide any
25 reimbursement of these costs.

26 36. Defendants do not maintain an expense reimbursement policy and/or practice stating
27 that Defendants will affirmatively reimburse Plaintiffs and the other non-exempt employees for a
28 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in

1 their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
2 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-
3 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
4 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
5 is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell
6 phone reimbursement class action and setting forth the applicable law for these claims).

7 37. Although Plaintiffs and the other non-exempt employees used their personal cell
8 phones in the discharge of their job duties with the knowledge and/or acquiescence of Defendants,
9 they were not reimbursed in any amount for expenses incurred throughout the relevant liability
10 period. Defendants' failure to reimburse Plaintiffs and the other non-exempt employees for their on-
11 going cell phone business expenses incurred in their discharge of their duties continues through the
12 present day. Indeed, any reimbursement is absent from Plaintiffs' wage statements during their
13 employment.

14 38. As a result of Defendants' failure to pay Plaintiffs and other non-exempt employees all
15 minimum and overtime wages, and failure to provide all statutorily-mandated meal and rest periods,
16 or proper compensation in lieu thereof, Defendants also intentionally failed and continues to fail to
17 furnish Plaintiffs and other non-exempt employees with accurate itemized wage statements that
18 reflect the correct amount of gross wages earned, net wages earned and premium wages due for
19 missed meal and rest periods as required by Labor Code § 226(a)(1),(5),(9).

20 39. As a further result of Defendants' Labor Code violations stated herein above,
21 Defendants also failed to pay Plaintiffs and other non-exempt employees all wages owed during
22 employment and at their time of separation from employment in violation of Labor Code §§ 201-203.
23 Pursuant to Labor Code §§ 201-202, an employer must provide a non-exempt employee wages due
24 and owed at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor
25 Code § 203 provides "if an employer willfully fails to pay ... any wages of an employee who is
26 discharged or who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days.

27 40. Moreover, at all relevant times, Defendants failed in its obligation to provide Plaintiffs
28 and other non-exempt employees the legally required paid sick days at the legal "regular rate of pay"

1 pursuant to Labor Code §§ 246(a),(b).

2 41. Pursuant to Labor Code §§ 246(a),(b), "[a]n employee who, on or after July 1, 2015,
3 works in California for the same employer for 30 or more days within a year from the commencement
4 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
5 worked, beginning at the commencement of employment." Additionally, Labor Code § 246(l)(1)
6 provides that paid sick time for non-exempt employees must be "calculated in the same manner as
7 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
8 the employee actually works overtime in that workweek." Furthermore, Labor Code § 246(l)(2) states
9 that the paid sick time must be "calculated by dividing the employee's total wages, not including
10 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90
11 days of employment." Finally, Labor Code § 246(i) requires employers to "provide an employee with
12 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
13 employer provides in lieu of sick leave, for use on either the employee's itemized wage statement
14 described in Section 226 or in a separate writing provided on the designated pay date with the
15 employee's payment of wages."

16 42. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiffs and
17 other non-exempt employees the legally required paid sick days at the "regular rate of pay" pursuant
18 to Labor Code §§246(a),(b). Instead, Defendants paid sick time at the non-exempt employees' base
19 rate of pay, rather than the "regular rate of pay" as required by Labor Code §§246(l)(1-2).

20 43. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees
21 are entitled to recover unpaid sick wages and penalties for violations of Labor Code § 246.

22 44. Moreover, Labor Code section 227.3 provides that whenever a contract of employment
23 or employer policy provides for paid vacations, and an employee is separated without having used
24 his or her vested vacation time, all vested vacation time shall be paid as wages at their final rate in
25 accordance with such contract of employment or employer policy respecting eligibility or time.

26 45. At all relevant times, Defendants held a policy and practice of providing paid vacation
27 time or paid time off to Plaintiffs and other non-exempt employees. However, at all relevant times,
28 Defendants failed in its obligation to provide Plaintiffs and other non-exempt employees the legally

1 required paid vacation time or paid time off at the time of their separation of employment with
2 Defendants, pursuant to Labor Code section 227.3. As such, Defendants have violated Labor Code
3 section 227.3 with respect to Plaintiff and other non-exempt employees.

4 46. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees
5 are entitled to recover unpaid vacation wages and penalties for violations of Labor Code § 227.3.

6 47. Furthermore, at all relevant times, Defendants, as the relevant employers here, were
7 required to maintain certain employment and payroll records for Plaintiffs and other non-exempt
8 employees.

9 48. Pursuant to Labor Code § 1174, subdivision (d), an employer shall keep at a central
10 location in the state or at the plants or establishments at which employees are employed, payroll
11 records showing the hours worked daily by and wages paid to employees employed at the respective
12 plants or establishments. These records must be kept in accordance with rules established for this
13 purpose by the commission, but in any case, shall be kept on file for not less than two years.

14 49. Defendants have intentionally and willfully failed to keep accurate and complete
15 records showing the daily hours worked and wages paid to Plaintiffs and other non-exempt
16 employees. Thus, Plaintiffs and the other non-exempt employees have been denied their legal right
17 and protected interest in having available at a central location at the plant or establishment where they
18 are employed accurate and complete payroll records showing the hours worked daily and the wages
19 paid to, employees at those respective locations pursuant to Labor Code § 1174.

20 50. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees
21 are entitled to recover a civil penalty of \$500 for an employer's failure to maintain accurate and
22 complete records pursuant to Labor Code § 1174.5.

23 51. Finally, at all relevant times, Defendants have unlawfully taken deductions from
24 Plaintiffs' and other similarly situated non-exempt employees' compensation. Specifically,
25 Defendants' deducted amounts from Plaintiffs' and other similarly situated non-exempt employees'
26 wages for "Accidentpt," listed on employee paystubs.

27 52. Labor Code § 221 provides that: "It shall be unlawful for any employer to collect or
28 receive from an employee any part of wages therefore paid by said employer to said employee."

53. Labor Code § 223 provides “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

54. Because of these unlawful deductions from Plaintiffs' and other similarly situated non-exempt employees' compensation, Defendants are liable to Plaintiffs and other similarly situated non-exempt employees' for the compensation that should have been paid but for the unlawful deductions pursuant to Labor Code §§ 221 and 223 and applicable IWC Wage Orders.

55. As a result, Defendants are liable to Plaintiffs and other similarly situated non-exempt employees for penalties, reasonable attorneys' fees, and costs pursuant to Labor Code 1194.

CLASS ACTION ALLEGATIONS

56. Plaintiffs brings this action on behalf of themselves, individually, and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All non-exempt employees who work or worked for Defendants in California during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”);

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift during the four years immediately preceding the filing of the Complaint through the date of trial. (“Overtime Subclass”);

All non-exempt employees who work or worked for Defendants in California during one year immediately preceding the filing of the Complaint through the date of trial. (“Wage Statement Subclass”)

All non-exempt employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)
(collectively “the Classes”)

57. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of

Defendants' employment and payroll records.

58. Common Questions of Law and Fact Predominate/Well Defined Community of

Interest: There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants' pay policies/practices resulted in a failure to pay all minimum wages because Defendants required off the clock work and did not record off the clock hours worked;

2. Whether Defendants' pay policies/practices resulted in a failure to pay all overtime wages because Defendants required off the clock work and did not record off the clock hours worked.

3. Whether Defendants' pay policies/practices resulted in a failure to pay all overtime wages at the "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

4. Whether Defendants' payroll policies/practices resulted in a failure to pay all sick pay at the "regular rate of pay";

5. Whether Defendants' payroll policies/practices resulted in a failure to pay all vacation or paid time off wages at the separation of employment with Defendants;

6. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Class;

7. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

8. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful;

9. Whether the timing and amount of payment of wages made to members of the Class during employment were unlawful;

10. Whether Defendants failed to maintain necessary personnel and payroll records;

11. Whether Defendants failed to reimburse necessary business expenses; and

12. Whether Defendants unlawfully deducted wages for "Accidentpt," listed on employee

1 paystubs.

2 59. **Predominance of Common Questions:** Common questions of law and fact
3 predominate over questions that affect only individual members of the Classes. The common
4 questions of law set forth above are numerous and substantial and stem from Defendants' policies
5 and/or practices applicable to each individual class member, such as but without limitation,
6 Defendants' failure to pay all minimum, overtime, sick and vacation wages, including paying
7 overtime wages, sick pay and vacation pay at the "regular rate" including all forms of compensation,
8 Defendants' practice of failing to provide all compliant meal and rest periods or adequate
9 compensation at the "regular rate of pay" in lieu thereof, Defendants' practice of failing to reimburse
10 all necessary business expenses incurred by non-exempt employees, Defendants' practice of
11 deducting "Accidentpt," listed on employee paystubs, Defendants' resulting failure to provide
12 accurate itemized wage statements and to pay for all wages due throughout employment and upon
13 separation of employment, and Defendants' failure to maintain all employee personnel and payroll
14 records. As such, the common questions predominate over individual questions concerning each class
15 member's showing as to his or her eligibility for recovery or the amount of his or her damages.

16 60. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
17 Plaintiffs were employed by Defendants as non-exempt employees in California during the statute(s)
18 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
19 Plaintiffs, like the members of the Classes, was deprived of minimum wages, overtime wages, sick
20 pay and vacation pay at the "regular rate," was subject to Defendants' meal and rest period
21 policies/practices, was not provided accurate itemized wage statements, was not reimbursed for all
22 business expenses, was the victim of unlawfully deducted wages and Defendants' failure to maintain
23 all personnel and payroll records, and was not paid all wages owed during employment and upon
24 separation of employment.

25 61. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
26 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs'
27 attorneys are ready, willing, and able to fully and adequately represent the members of the Classes.
28 Plaintiffs' attorneys have prosecuted and are actively litigating several wage-and-hour class actions

1 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
2 members of the Classes.

3 62. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
4 important public interest in establishing minimum working conditions and standards in California.
5 These laws and labor standards protect the average working employee from exploitation by
6 employers who have the responsibility to follow the laws and who may seek to take advantage of
7 superior economic and bargaining power in setting onerous terms and conditions of employment. The
8 nature of this action and the format of laws available to Plaintiffs and members of the Classes make
9 the class action format a particularly efficient and appropriate procedure to redress the violations
10 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
11 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
12 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

13 63. Moreover, requiring each member of the Classes to pursue an individual remedy would
14 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
15 against their former and/or current employer for real and justifiable fear of retaliation and permanent
16 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
17 the individual class members, even if possible, would create a substantial risk of inconsistent or
18 varying verdicts or adjudications with respect to the individual class members against Defendants
19 herein and which would establish potentially incompatible standards of conduct for Defendants;
20 and/or legal determinations with respect to individual class members which would, as a practical
21 matter, be dispositive of the interest of the other class members not parties to adjudications or which
22 would substantially impair or impede the ability of the class members to protect their interests.
23 Further, the claims of the individual members of the class need to be sufficiently large to warrant
24 vigorous individual prosecution, considering all of the concomitant costs and expenses attending
25 thereto. As such, the Classes identified in Paragraph 56 are maintainable as Classes under § 382 of
26 the Code of Civil Procedure.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 64. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully
5 set forth herein.

6 65. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
7 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
8 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
9 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
10 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
11 the unpaid wages and interest accrued thereon.

12 66. At all relevant times herein, Defendants failed to conform their pay practices to the
13 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
14 and unlawful practice of failing to pay for all off-the clock work and rounding of time entries, which
15 resulted in these individuals not being paid for all hours actually worked. Accordingly, Plaintiffs and
16 members of the Classes were not compensated for all hours worked including, but not limited to, all
17 hours they were subject to the control of Defendants and/or suffered or permitted to work under the
18 California Labor Code and applicable Wage Orders.

19 67. Labor Code § 1198 makes unlawful the employment of an employee under conditions
20 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
21 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
22 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
23 due and interest thereon.

24 68. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
25 Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid
26 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
27 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
28 violations of the California Labor Code and applicable Wage Orders.

69. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

70. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

71. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

72. At all times relevant herein, Defendants were required to properly pay Plaintiffs and members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

73. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime hours but did not compensate Plaintiffs or members of the Classes at one and one-half times their regular rates of pay for such hours.

74. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of (1) unlawful rounding of time entries, (2) failing to pay for all pre-shift time spent on temperature screening and security checks, and (3) failing to account for non-discretionary bonuses and shift

differential pay in calculating the regular rate for calculating members of the Classes and Overtime Subclass overtime rate which resulted in these individuals not being paid all overtime wages owed.

75. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiffs and the members of the Classes and Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

76. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

77. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all non-exempt employees, including Plaintiffs and members of the Classes, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Factual Allegations section of this Complaint.

78. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

79. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

80. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

81. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiffs and members of the Classes to take any rest periods to which they were legally entitled, including failing to allow non-exempt employees to leave the premises during rest periods. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiffs and members of the Classes at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

82. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED DURING EMPLOYMENT

(AGAINST ALL DEFENDANTS)

83. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

84. Labor Code 2208(a) states in pertinent part the following: “(a) 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

85. As set forth above, Plaintiffs and members of the Classes must be compensated for a reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v.*

1 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial summary
2 judgment on the Mr. Toys' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*,
3 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and
4 adopting the logic of Cochran).

5 86. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
6 Class Members for all necessary business-related expenses and costs. Plaintiffs and the Class
7 Members are entitled to recover from Defendants their business-related expenses and costs incurred
8 during the course and scope of their employment, plus interest accrued from the date on which the
9 employee incurred the necessary expenditures at the same rate as judgments in civil actions in the
10 State of California as well as penalties, reasonable attorneys' fees and costs of suit.

11 **SIXTH CAUSE OF ACTION**

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

13 **(AGAINST ALL DEFENDANTS)**

14 87. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
15 fully set forth herein.

16 88. Labor Code 226(a) states in pertinent part the following:

17 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his
18 or her employee, either as a detachable part of the check, draft, or voucher paying the
19 employee's wages, or separately if wages are paid by personal check or cash, an accurate
20 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
21 employee... (4) all deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
23 dates of the period for which the employee is paid, (7) the name of the employee and only the
24 last four digits of his or her social security number or an employee identification number other
25 than a social security number, (8) the name and address of the legal entity that is the employer,
26 and (9) all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.

28 89. As set forth above, during the Class Period, Defendants issued and continues to issue
wage statements to its employees including Plaintiffs and members of the Wage Statement Penalty
Subclass, which are inadequate under Labor Code Section 226(a).

90. As a result of Defendants failure to pay Plaintiffs and the Classes for all overtime
wages at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to

1 include required information on Plaintiffs' and the Classes' wage statements, including, but not
2 limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226a.
3 Additionally, Defendants' wage statements issued failed to state the name and address of the legal
4 entity that is the employer in violation Labor Code Section 226(a)(8).

5 91. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
6 and intentional.

7 92. As a result of Defendants' issuance of inaccurate itemized wage statements to
8 Plaintiffs and members of the Classes in violation of section 226(a) of the California Labor Code,
9 Plaintiffs and members of the Classes are each entitled to recover an initial penalty of \$50, and
10 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
11 Plaintiff and per every member of the Classes from Defendants pursuant to section 226(e) of the
12 Labor Code, costs, and reasonable attorneys' fees.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE/PAY ALL SICK TIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

16 93. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
17 fully set forth herein.

18 94. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
19 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid
20 at the regular rate, including all forms of compensation/remuneration.

21 95. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
22 members of the Classes for all accrued sick leave taken, pursuant to California Labor Code § 246.

23 96. Defendants failed to conform their pay practices to the requirements of the law. This
24 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice
25 of failing to include all forms of compensation, including but not limited to shift differentials, non-
26 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
27 pay," which resulted in Plaintiffs and the Class not being paid all sick time wages owed.

28 97. The foregoing policies and practices are unlawful and creates an entitlement to

1 recovery by Plaintiffs and the members of the Class in a civil action for the unpaid amount of sick
2 time wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
3 according to Labor Code §§ 233, 234, 246, 246.5, 558, 1194.2, 1197.1, 1198, the applicable Wage
4 Orders, and Code of Civil Procedure § 1021.5.

5 **EIGHTH CAUSE OF ACTION**

6 **UNLAWFUL DEDUCTIONS FROM WAGES**

7 **(AGAINST ALL DEFENDANTS)**

8 98. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
9 fully set forth herein.

10 99. Labor Code § 221 provides that: "It shall be unlawful for any employer to collect or
11 receive from an employee any part of wages therefore paid by said employer to said employee."

12 100. Labor Code § 223 provides "Where any statute or contract requires an employer to
13 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
14 purporting to pay the wage designated by statute or by contract.

15 101. During the relevant time period, Defendants have unlawfully taken deduction from
16 Plaintiffs' and Class Members' compensation for Defendants' "Accidentpt" listed on employee
17 paystubs. Because of these unlawful deductions from Plaintiffs' and Class Members' compensation,
18 Defendants are liable to Plaintiffs and Class Members for the compensation that should have been
19 paid but for the unlawful deductions pursuant to Labor Code §§ 221 and 223 and applicable IWC
20 Wage Orders.

21 102. As a result, Defendants are liable to Plaintiffs and Class members for penalties,
22 reasonable attorneys' fees, and costs pursuant to Labor Code § 1194.

23 **NINTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

26 103. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
27 fully set forth herein.

28 104. Defendants have engaged and continue to engage in unfair and/or unlawful business

1 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
2 without limitation, failing to pay all minimum, overtime, and sick wages at the legal rate, by failing
3 to provide all legally required meal and rest periods or pay premium payments at the regular rate of
4 pay in lieu thereof, by failing to provide accurate wage statements, by failing to pay all earned wages
5 at the time of separation from employment, by unlawfully deducting wages, by failing to maintain
6 payroll records, by failing to pay all vacation wages, by failing to reimburse necessary business
7 expenses, and by way of all other unlawful conduct of Defendants as described herein.

8 105. Defendants' utilization of these unfair and/or unlawful business practices deprived
9 Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally
10 entitled. Thus, Defendants' conduct constitutes unfair and/or unlawful competition, and provides an
11 unfair advantage over Defendants' competitors who have been and/or are currently employing
12 workers and attempting to do so in honest compliance with applicable wage and hour laws.

13 106. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
14 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full restitution
15 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
16 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

17 107. The acts complained of herein occurred within the last four years immediately
18 preceding the filing of the Complaint in this action.

19 108. Plaintiffs were compelled to retain the services of counsel to file this court action to
20 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf
21 of Defendants' current hourly non-exempt employees and to enforce important rights affecting the
22 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
23 which they are entitled to recover under Code of Civil Procedure § 1021.5.

24 **TENTH CAUSE OF ACTION**

25 **FAILURE TO MAINTAIN PAYROLL RECORDS**

26 **(AGAINST ALL DEFENDANTS)**

27 109. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
28 fully set forth herein.

110. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for at least two years.

111. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

112. Defendants have intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiffs and the Classes. Thus, Plaintiffs and the Classes have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code § 1174.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE/PAY ALL VACATION WAGES

(AGAINST ALL DEFENDANTS)

113. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

114. Labor Code section 227.3 provides, in part, that when “an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.”

115. At all relevant times, Defendants maintained a vacation or paid time off policy, yet Defendants failed to pay all vacation time to Plaintiffs and similarly situated non-exempt employees at their respective final rates of pay at their time of separation.

116. Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is separated without having used his or her vested vacation time, all vested vacation time shall be paid as wages at their final rate in

1 accordance with such contract of employment or employer policy respecting eligibility or time. At
2 all relevant times, Defendants maintained such a paid vacation policy, yet Defendants failed to pay
3 all vacation time to the non-exempt employees at their respective final rates of pay at their time of
4 separation. As such, Defendants have violated Labor Code section 227.3.

5 117. Accordingly, Plaintiffs and the Waiting Time Penalty Subclass are entitled to unpaid
6 vacation pay and to civil and statutory penalties to the extent permitted by law.

7 **TWELFTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **(AGAINST ALL DEFENDANTS)**

10 118. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
11 fully set forth herein.

12 119. It was necessary for Plaintiffs and Class members to incur various expenses as
13 outlined above in the discharge of their job duties. These expenses include but are not limited to
14 expenses associated with using a personal cell phone with a data plan and expenses related to the
15 performance of their job duties. Although Plaintiffs and members of the Class incurred these
16 expenses at the direction of Defendants and/or in the direct discharge of their job duties, Defendants
17 did not adequately reimburse these employees for such necessary work expenditures during the four
18 years preceding the filing of the Complaint.

19 120. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
20 states that “an employer shall indemnify his or her employees for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
22 or her obedience to the directions of the employer.”

23 121. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
24 states that “any contract or agreement, express or implied, made by any employee to waive the
25 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
26 employee or his personal representative of any right or remedy to which he is entitled under the laws
27 of this State.”

28 122. As a proximate result of Defendants’ policies and/or practices in violation of Labor

1 Code §§ 2802 and 2804, Plaintiffs and members of the Classes were damaged in sums, which will
2 be shown according to proof at trial.

3 123. Plaintiffs and members of the Classes are entitled to attorneys' fees and costs of suit
4 pursuant to Labor Code § 2802(c) for bringing this action.

5 124. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
6 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs
7 and members of the Classes are entitled to interest, which shall accrue from the date on which they
8 incurred the initial necessary expenditure.

9 **THIRTEENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

12 125. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
13 fully set forth herein.

14 126. The actionable period for this cause of action is three years prior to the filing of this
15 Complaint through the present, and on-going until the violation is corrected, or the class is certified.

16 127. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
17 owing to Plaintiffs and the Waiting Time Class during the actionable period for this cause of action
18 at or around the time that their employment is or was terminated or ended.

19 128. Labor Code § 203 provides that if an employer willfully fails to pay compensation
20 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
21 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

22 129. Defendants willfully failed to pay Plaintiffs and the Waiting Time Subclass for all
23 hours worked, including all minimum and overtime wages, and their meal and rest period premiums
24 at the "regular rate of pay", prior to or upon termination or separation from employment with
25 Defendants as required by Labor Code §§ 201 and 202.

26 130. As a result, Defendants are liable to Plaintiffs and the Waiting Time Subclass for
27 waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time
28 Subclass pursuant to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of*

1 wages due upon termination entitles an employee to recover waiting time penalties).

2 **FOURTEENTH CAUSE OF ACTION**

3 **PAGA PENALTIES**

4 **(AGAINST ALL DEFENDANTS)**

5 131. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though
6 fully set forth herein.

7 132. Defendants have committed several Labor Code violations against Plaintiffs and
8 other similarly situated non-exempt employees.

9 133. Plaintiffs, “aggrieved employees” within the meaning of Labor Code § 2698 *et seq.*,
10 acting on behalf of themselves, individually, and other non-exempt employees, brings this
11 representative action against Defendants to recover the civil penalties due to Plaintiffs, other non-
12 exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a)
13 and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
14 violation per employee per pay period for those violations of the Labor Code for which no civil
15 penalty is specifically provided based on the following Labor Code violations:

- 16 a. Failing to pay Plaintiffs and other non-exempt employees for all hours worked,
17 including all minimum and overtime wages in violation of Labor Code §§ 204,
18 210, 510, 1194, 1197, 1198, and 1182.12;
- 19 b. Failing to pay Plaintiffs and other non-exempt employees overtime wages at the
20 “regular rate of pay”, including all forms of non-hourly compensation, in violation
21 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 22 c. Failing to provide Plaintiffs and other non-exempt employees with all of their
23 statutorily mandated meal periods or compensation at the “regular rate of pay” in
24 lieu thereof in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- 25 d. Failing to authorize and permit Plaintiffs and other non-exempt employees with all
26 of their statutorily mandated rest periods or compensation at the “regular rate of
27 pay” in lieu thereof in violation of Labor Code §§ 226.7, and 516;
- 28 e. Failing to reimburse Plaintiffs and other non-exempt employees for all necessary

- 1 business expenses in violation of Labor Code § 2208;
- 2 f. Failing to furnish Plaintiffs and other similarly situated employees with complete,
- 3 accurate, itemized wage statements in violations of Labor Code § 226(a)(1), (5),
- 4 and (9);
- 5 g. Failing to accurately record and pay Plaintiffs and other similarly situated
- 6 employees all sick leave in violations of Labor Code § 246, 558, 1194.2, 1197.1,
- 7 1198, and 1199;
- 8 h. Taking unlawful deductions from Plaintiffs’ and other similarly situated employees’
- 9 wages in violations of Labor Code §221 and 223 and applicable IWC Wage
- 10 Orders;
- 11 i. Failing to maintain Plaintiffs’ and other similarly situated employees’ accurate
- 12 records in violations of Labor Code § 1174;
- 13 j. Payment of wages to Plaintiffs and other similarly situated employees through a non-
- 14 Labor Code compliant instrument in violations of Labor Code § 226;
- 15 k. Failing to Pay Plaintiffs and other similarly situated employees vacation wages in
- 16 violation of Labor Code § 227.3; and
- 17 l. Failing to timely compensate Plaintiffs and similarly non-exempt employees with
- 18 all earnings at their separation of employment in violation of Labor Code §§ 201-
- 19 203.

20 134. On April 9, 2021, Plaintiff Stephanie Puckett complied with notice requirements
21 pursuant to Labor Code section 2699.3. Sixty five days have passed and the LWDA has not indicated
22 intent to investigate the claims. Therefore, Plaintiff Stephanie Puckett may proceed with this action
23 in a representative capacity. The substance and violations set forth in this Complaint of which the
24 LWDA was provided timely notice, Plaintiff Stephanie Puckett has also sent a copy of this PAGA
25 Representative Action Complaint to the LWDA.

26 135. On July 28, 2021, Plaintiff Abiodun Adebayo complied with notice requirements
27 pursuant to Labor Code section 2699.3. Sixty five days have passed and the LWDA has not indicated
28 intent to investigate the claims. Therefore, Plaintiff Abiodun Adebayo may proceed with this action

1 in a representative capacity. The substance and violations set forth in this Complaint of which the
2 LWDA was provided timely notice, Plaintiff Abiodun Adebayo has also sent a copy of this PAGA
3 Representative Action Complaint to the LWDA.

4 136. On August 25, 2023, Plaintiff Ana Tapia complied with requirements pursuant to
5 Labor Code section 2699.3. Sixty five days have passed and the LWDA has not indicated intent to
6 investigate the claims. Therefore, Plaintiff Ana Tapia may proceed with this action in a representative
7 capacity. The substance and violations set forth in this Complaint of which the LWDA was provided
8 timely notice, Plaintiff Ana Tapia has also sent a copy of this PAGA Representative Action Complaint
9 to the LWDA.

10 137. On July 28, 2021 Plaintiff Elizabeth Obodoagha complied with requirements pursuant
11 to Labor Code section 2699.3. Sixty five days have passed and the LWDA has not indicated intent to
12 investigate the claims. Therefore, Plaintiff Elizabeth Obodoagha may proceed with this action in a
13 representative capacity. The substance and violations set forth in this Complaint of which the LWDA
14 was provided timely notice, Plaintiff Elizabeth Obodoagha has also sent a copy of this PAGA
15 Representative Action Complaint to the LWDA.

16 138. Plaintiffs were compelled to retain the services of counsel to file this court action to
17 protect their interests and the interests of similarly non-exempt employees, and to assess and collect
18 the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys' fees and costs,
19 which they are entitled to receive under California Labor Code § 2699.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs pray for judgment for themselves, individually, and for all others
22 on whose behalf this suit is brought against Defendants, as follows:

- 23 1. For an order certifying the proposed Classes;
- 24 2. For an order-appointing Plaintiffs as representatives of the Classes;
- 25 3. For an order appointing all Counsel for Plaintiffs as Counsel for the Classes;
- 26 4. Upon the First Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 204, 210, 558, 558.1, 1182.12, 1194,
28 1194.2, 1197, 1197.1, 1198, and 1199;

- 1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 3 6. Upon the Third Cause of Action for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 5 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 226.7 and 516.
- 7 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
8 special damages according to proof and statutory penalties pursuant to Labor Code §§ 200, 204, 210,
9 216, 218, and 218.5;
- 10 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
11 reasonable costs and attorneys' fees;
- 12 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 14 11. Upon the Eighth Cause of Action, for penalties, reasonable attorneys' fees, and costs
15 pursuant to Labor Code § 1194;
- 16 12. Upon the Ninth Cause of Action, for restitution to Plaintiffs and members of the
17 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
18 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 19 13. Upon the Tenth Cause of Action, for statutory penalties pursuant to Labor Code §§
20 226(a), 1174, and 1174.5;
- 21 14. Upon the Eleventh Cause of Action, for compensatory, consequential, general and
22 special damages according to proof and statutory penalties pursuant to Labor Code § 227.3;
- 23 15. Upon the Twelfth Cause of Action, for repayment of unreimbursed expenses,
24 penalties, and attorneys and costs pursuant to Labor Code § 2802;
- 25 16. Upon the Thirteenth Cause of Action, for statutory waiting time penalties pursuant
26 to Labor Code §§ 201-203;
- 27 17. Upon the Fourteenth Cause of Action, for civil penalties due to Plaintiffs, other non-
28 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code

1 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
2 subsequent violation per employee per pay period for those violations of the Labor Code for which
3 no civil penalty is specifically provided under the Labor Code;

4 18. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
5 § 218.6 and Civil Code §§ 3287 and 3289;

6 19. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and
7 Code of Civil Procedure § 1021.5; and

8 20. For such other relief that the Court may deem just and proper.

9

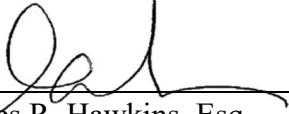
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11 Dated: October 15, 2024

JAMES HAWKINS APLC

12

13

By: 

James R. Hawkins, Esq.

14

Gregory Mauro, Esq.

15

Michael Calvo, Esq.

16

Attorneys for Plaintiffs

17

STEPHANIE PUCKETT,

18

ELIZABETH OBODOAGHA,

CINDY VILLANUEVA,

and the Putative Classes

19

Dated: October 15, 2024

FALAKSSA LAW, P.C.

20

BOKHOUR LAW GROUP, P.C.

21

22

By: /s/ Mehrdad Bokhour (with permission)

23

Joshua Falakassa, Esq.

24

Mehrdad Bokhour, Esq.

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Attorneys for Plaintiff ABIODUN ADEBAYO

26

and the Putative Classes

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Dated: October 15, 2024

BRADLEY/GROMBACHER, LLP
GAINES & GAINES, APLC

By: /s/ Marcus Bradley (with permission)

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Attorneys for Plaintiff ANA TAPIA
and the Putative Classes

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On October 15, 2024, I served on the interested parties in this action the following document(s) entitled:

AMENDED CLASS AND PAGA ACTION COMPLAINT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

Elizabeth Staggs-Wilson estaggs-wilson@littler.com James Payer, Bar No. 292158 jpayer@littler.com LITTLER MENDELSON P.C. 633 West 5th Street, 63rd Floor Los Angeles, California 90071 Telephone: 213.443.4300 Fax No.: 213.443.4299	Jyoti Mittal, Bar No. 288084 jmittal@littler.com LITTLER MENDELSON P.C. 2049 Century Park East, 5th Floor Los Angeles, California 90067.3107 Telephone: 310.553.0308 Fax No.: 310.553.5583
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Attorneys for Defendants
WELLPATH LLC and CALIFORNIA HEALTH AND RECOVERY SOLUTIONS PC

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on October 15, 2024, at Irvine, California

Alma Chavarin

Alma Chavarin

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Attorneys for Plaintiff ANA TAPIA, all Aggrieved
Employees, and the Putative Classes

Via LWDA Website Only

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Ste 801

Oakland, CA 94612

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