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Attorneys for Plaintiff and Proposed Plaintiffs Class

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

JOANNA MAGPIONG, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

CARELINX, INC., and DOES 1-100,
inclusive,
Defendants.

Case No.: 21-CIV-03038

CLASS and REPRESENTATIVE ACTION

**STIPULATION AND [PROPOSED]
ORDER GRANTING PLAINTIFF LEAVE
TO FILE SECOND AMENDED
COMPLAINT**

Assigned For All Purposes to the Honorable
Marie S. Weiner (Dept. 2)

Date: March 29, 2022

Time: 2:00 p.m.

Location: Dept. 2 (Hon. Marie S. Weiner)

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Joanna
Magpiong ("Plaintiff") and Defendant CareLinx, Inc. ("Defendant") (collectively "the Parties")
that the following Order be entered in the above-captioned matter as follows:

I. Original Complaint Filed: WHEREAS, on June 3, 2021, Plaintiff filed a class
action Complaint, captioned *Magpiong v. Carelinx, Inc.*, Case No. 21-CIV-03038, in the San
Mateo County Superior Court (the "Complaint" or the "Action"). The Complaint alleged seven
(7) causes of action on behalf of Plaintiff and putative class including: (1) Failure to Pay
Overtime Wages, (2) Failure to Pay Minimum Wage, (3) Failure to Provide Meal Breaks, (4)
Failure to Provide Rest Breaks, (5) Failure to Furnish Timely/ Accurate Wage Statements, (6)
Failure to Pay All Wages Due at Discharge in Timely Manner, and (7) Unlawful Business
Practices.

1 **II. Original PAGA Notice Sent:** WHEREAS, on June 3, 2021 (the same date the
2 original complaint was filed), Plaintiff electronically filed with the California Labor Workforce
3 and Development Agency (“LWDA”) a notice letter pursuant to the California Labor Code
4 Private Attorney General Act of 2004, California Labor Code § 2698, et seq (“PAGA”), and sent
5 a copy of the PAGA notice letter to Defendant. This letter included factual and legal allegations
6 to support Plaintiff’s PAGA allegations and, as an attachment to the PAGA Notice letter, Plaintiff
7 provided a copy of a draft proposed First Amended Complaint (“FAC”), which included an
8 additional 8th cause of action for alleged violations of PAGA.

9 **III. First Amended Complaint (“FAC” Filed/Served):** WHEREAS, on August 10,
10 2021, Plaintiff filed and served the FAC with the addition of an 8th cause of action for alleged
11 violations of the PAGA.

12 **IV. Parties Agree to Early Class Mediation:** WHEREAS, on August 25, 2021, the
13 Parties agreed to participate in an early mediation with experienced JAMS mediator Michael
14 Loeb, and the Parties also agreed that Defendant would provide an informal production of Class-
15 related data and other information, in response to Plaintiff’s requests, for purposes of mediation
16 and settlement discussions only.

17 **V. Mediation Proceedings Successful:** WHEREAS, on November 4, 2021, the
18 Parties participated in an all-day mediation that ran late into the evening. After the mediation, the
19 Parties executed a confidential memorandum of understanding regarding preliminary settlement
20 terms. After further negotiations, the Parties ultimately reached a tentative settlement of class and
21 PAGA claims pending this Court’s approval, which included an agreement to settle all claims
22 alleged in the FAC and an additional claim alleged by Plaintiff in connection with the mediation
23 for alleged failure to reimburse necessary business expenses. The Parties further negotiated and
24 executed a long form settlement agreement in the form of a Joint Stipulation of Class Action
25 Settlement Agreement and Release (“Settlement Agreement”).

26 **VI. Amended PAGA Notice Sent with additional 9th Cause of Action under**
27 **California Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses):**
28 WHEREAS, on December 14, 2021, in accord with the Parties’ tentative settlement agreement,

1 Plaintiff filed with the LWDA and served on Defendant an Amended PAGA Notice letter with an
2 attached draft Second Amended Complaint (“SAC”), which included additional factual and legal
3 allegations and a 9th Cause of Action under California Labor Code § 2802 for failure to
4 reimburse necessary business expenses.

5 **VII. Amended PAGA Notice Exhaustion Period is February 17, 2022:** WHEREAS,
6 the PAGA Notice exhaustion period for Plaintiff’s Amended PAGA Notice letter is estimated to
7 run on or about February 17, 2022, as 65 days will have then passed since the filing and service
8 of the Amended PAGA Notice on December 14, 2022. Plaintiff will at that time, under PAGA, be
9 permitted to move the Court to file her SAC.

10 **VIII. Preliminary Approval Hearing Set:** WHEREAS, the Court has scheduled the
11 hearing on Plaintiff’s Motion for Preliminary Approval on March 29, 2022 at 2 p.m. in this Court;

12 **IX. At the time of the Preliminary Approval Hearing, the Parties Request that the**
13 **Court Grant Plaintiff Leave to File the Second Amended Complaint (“SAC”), for**
14 **Settlement Purposes Only:** WHEREAS, for settlement purposes only, and in conjunction with
15 the filing and hearing of Plaintiff’s Motion for Preliminary Approval of Class Settlement, the
16 Parties have agreed to stipulate to Plaintiff’s seeking leave to file the SAC, which includes an
17 addition 9th Cause of Action under California Labor Code § 2802 for alleged failure to reimburse
18 necessary business expenses.

19 Liberal Pleading Standards: Plaintiff contends that amendment is proper under California
20 authority. Courts “exercise liberality” in permitting amendments at any stage of the proceeding.
21 See Code of Civ. Proc. § 473, *Klopstock v. Superior Court*, 17 Cal.2d 13, 19 (1941); *Ramos v.*
22 *City of Santa Clara*, 35 Cal.App.3d 93, 95 (1973) (liberal amendment “of any pleading at any
23 stage of the proceedings”).

24 Second Amended Complaint (“SAC”): The Parties agree that permitting Plaintiff to file
25 and serve her SAC without motion practice promotes judicial economy; facilitates the proposed
26 class and PAGA settlement; and should not affect the Court’s schedule or the calendar in this
27 matter. For purposes of settlement only, Defendant does not oppose the filing of the amendment
28 but Defendant does not stipulate to and in fact disputes and denies the allegations in the SAC. A

1 red-lined copy of the SAC, showing the proposed amendment, has previously been provided to
2 Defendant prior to the filing of this Stipulation and [Proposed] Order. A copy of the draft SAC is
3 attached as Exhibit A to the long form Settlement Agreement and again attached to this
4 Stipulation and [Proposed] Order, also as **Exhibit A: SAC**.

5 Stipulation Dependent on Court Approval of Motion for Preliminary Approval of
6 Settlement: If the Court does not approve the Motion for Preliminary Approval or the Settlement
7 Agreement is not approved or does not become final for any reason stated in Section 6.3 of the
8 Settlement Agreement, the Parties agree that this Stipulation will be null and void, as the purpose
9 of this Stipulation is to facilitate the proposed class and PAGA settlement that is the subject of
10 Plaintiff's Motion for Preliminary Approval.

11 **STIPULATION:** Accordingly, the Parties, by and through their counsel of record,
12 hereby stipulate and request an Order that:

13 1. Plaintiff be permitted to file the attached Second Amended Complaint ("SAC")
14 (**See Exhibit A**) in connection with the Court's ruling on Plaintiff's Motion for Preliminary
15 Approval and on a date after February 18, 2022; and

16 3. As per the Motion for Preliminary Approval, if the proposed Settlement
17 Agreement is preliminarily approved, the action is stayed and suspended until further notice from
18 the Court as to all discovery and pretrial proceedings and deadlines except for such actions as are
19 necessary to implement the Agreement and a Preliminary Approval Order. Therefore, Defendant
20 need not answer or otherwise respond to the SAC unless and until such time that stay is lifted. If
21 and when the stay is lifted Defendant will have 30 days from that date to file a responsive
22 pleading to the SAC. If Defendant does not file a response then Defendant's Answer currently on
23 file will be deemed its response.

24 **IT IS SO STIPULATED.**

25 **DATED:** February 18, 2022

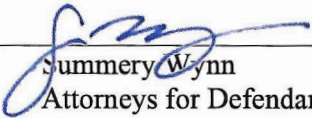
DA VEGA | FISHER | MECHTENBERG LLP

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27 By: 
28 Matthew S. Da Vega
Attorneys for Plaintiff and Class

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DATED: February 18, 2022

COOLEY LLP

By: 
Summery Wynn
Attorneys for Defendant CareLinx, Inc.

1
2 **[PROPOSED] ORDER**

3 For good cause appearing the Court hereby ORDERS the following:

4 1. Plaintiff is granted leave to file her Second Amended Complaint (“SAC”) after
5 February 18, 2022;

6 2. The action is stayed and suspended until further notice from the Court, as to all
7 discovery and pretrial proceedings and deadlines except for such actions as are necessary to
8 implement the Settlement Agreement and any Preliminary Approval Order. Therefore, Defendant
9 need not answer or otherwise respond to the SAC unless and until such time the stay is lifted. If
10 and when the stay is lifted, Defendant will have 30 days from that date to file a responsive
11 pleading to the SAC. If Defendant does not file a response then Defendant’s Answer currently on
12 file in this action will be deemed its response.

13 **IT IS SO ORDERED.**

14
15 Dated: _____, 2022

16 San Mateo County Superior Court Judge
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EXHIBIT A
(SECOND AMENDED COMPLAINT)

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Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JOANNA MAGPIONG, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

CARELINX, INC., and DOES 1-100,
inclusive,

Defendants.

Case No. 21-CIV-03038

REPRESENTATIVE and CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME WAGES (CAL. LABOR CODE §§ 204, 510, 1194 and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (2) FAILURE TO PAY MINIMUM WAGE (CAL. LABOR CODE §§ 1182.12, 1194, 1197, 1197.1; and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (3) FAILURE TO PROVIDE MEAL BREAKS (CAL. LABOR CODE §§ 226.7, 512 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (4) FAILURE TO PROVIDE REST BREAKS (CAL. LABOR CODE § 226.7 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (5) FAILURE TO FURNISH TIMELY/ACCURATE WAGE STATEMENTS (RECORD-KEEPING VIOLATIONS) (CAL. LABOR CODE §§ 226, 1174);**
- (6) FAILURE TO PAY ALL WAGES DUE AT DISCHARGE IN TIMELY MANNER - "WAITING TIME PENALTIES" (CAL. LABOR CODE §§ 201-203);**
- (7) UNLAWFUL AND/OR UNFAIR**

BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)(“UCL”);

(8) VIOLATION OF PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)(CAL. LAB. CODE § 2698, *et seq.*;

(9) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE § 2802);

DEMAND FOR JURY TRIAL

Plaintiff Joanna Magpiong (“Magpiong”), brings this action on behalf of herself (“Plaintiff”), and all others similarly situated (“Class Members”), and on information and belief alleges against Defendants CareLinx, Inc. (“CareLinx”), and Does 1-100 (collectively “Defendants”) the following:

NATURE OF THE CASE

1. **Class Action and PAGA:** This case is brought as a class action under California Code of Civil Procedure (“CCP”) §382 to address Defendants’ violations of various California Labor Codes, Industrial Welfare Commission (“IWC”) wage orders, and Unfair Competition Law (“UCL”). This case is also brought as a representative action for recovery of penalties under the California Labor Code Private Attorney General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.*

2. **Plaintiff and Class Members are Nurse Employees for CareLinx:** Plaintiff is currently employed as a LVN (License Vocational Nurse), along with other RNs (Registered Nurses), CNAs (Certified Nurse Assistants), MAs [Medical Assistants], LPNs [Licensed Practical Nurses], and NPs [Nurse Practitioners] (collectively “Nurses”) who work/worked for Defendant CareLinx at its various client’s facilities / locations in and throughout California. Plaintiff alleges Defendants have engaged in, among other things a system of willful violations of the California Labor Code, applicable IWC wage orders, and UCL.

3. **Misclassification as Independent Contractors:** Defendants acted intentionally and with deliberate indifference and conscious disregard for the rights of Plaintiff and Class Members

1 by intentionally misclassifying CareLinx's Nurses as "Independent Contractors", when in fact.
2 Plaintiff and Class Members are/were Defendants' employees, all of which is in violation of
3 Labor Code § 226.8 and/or §2753, and, in so doing, have denied Plaintiff the benefits and
4 protections of California employment law.

5 4. Failure to Pay Overtime, Failure to Pay Overtime at the Correct Overtime Rates,
6 Failure to Pay Minimum Wage, Failure to Provide Duty-Free Meal/Rest Periods, Failure to
7 Provide Timely/Accurate Wage Statements, Waiting Time Penalties, Failure to Reimburse
8 Necessary Business Expenses: Defendants further failed to pay Plaintiff and Class Members for
9 all wages earned including for overtime hours at the appropriate rate (Defendants paid only a flat
10 rate plus small additional premium for overtime hours and not the correct overtime rates of 1.5x
11 or 2 x flat hourly rates for overtime hours), minimum wages, or for "on-duty" meal periods or
12 "on-duty" rest breaks, failed to keep and provide accurate and timely records of wages earned and
13 other legally mandated records, failed to reimburse Plaintiff and Class Members for necessary
14 business expenses (i.e. use of personal cell phones and vehicles for Defendants' business) and
15 failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily
16 resigned or were terminated) a final payment of his or her wages in a prompt and timely manner
17 in conformity with Labor Codes §§ 201, 202, 203, 204, 216, 226, 226.3, 226.7, 226.8, 510, 512,
18 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2802, and other unfair
19 and unlawful conduct in violation of the Business & Professional Code §17200, et seq. The
20 policies, practices and customs of Defendants described herein are also violations of California
21 Industrial Welfare Commission (I.W.C.) Wage Order 5-2001, 8 Cal. Code of Reg. § 11050
22 ("Wage Order 5-2001"), California I.W.C. Wage Order 15-2001, 8 Cal. Code of Reg. § 11150
23 ("Wage Order 15-2001").

24 5. The policies, practices and customs of Defendants described herein have resulted
25 in unjust enrichment of Defendants and an unfair business advantage over businesses that
26 routinely adhere to the strictures of the California Labor Code and IWC wage orders, and thus
27 violate the UCL.
28

1 6. **The “Class Period”** is designated as the time from June 3, 2017 (4 years prior to
2 the filing date of the original complaint on June 3, 2021), through the entry of judgment, based on
3 the allegation that the violations of California’s wage and hour laws and UCL, as described
4 herein, have been ongoing for at least the four (4) years prior to the filing of the original
5 Complaint and are continuing.

6 7. During the relevant Class Period, Defendants have had a standard and uniform
7 policies that violate California’s Labor Codes, I.W.C. orders, and UCL as follows:

- 8 a. Defendants intentionally misclassified Plaintiff and Class Members
9 (current and former California-based Nurses) as “Independent Contractors”
10 in violation of Labor Codes §§ 226.8 and 2753;
- 11 b. Defendants required Plaintiff and Class Members working for Defendants
12 to perform work without full compensation during overtime hours, and/or
13 paid minimum wage for said hours. On a daily basis Nurses are required to
14 perform work for which they were not lawfully compensated in violation
15 of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198,
16 and 1199 (and I.W.C. Orders 5-2001 and 15-2001);
- 17 c. Defendants required Plaintiff and Class Members to work through/during
18 their meal and/or rest breaks on a regular basis, failed to relieve the Nurses
19 of all their duties, did not permit Nurses a reasonable opportunity to take
20 an uninterrupted 30 minute meal break and/or 10 minute rest break,
21 impeded/discouraged them from taking said meal and/or rest breaks, and/or
22 failed to provide compensation for said “on-duty” meal/rest periods in
23 violation of Labor Code §§ 226.7, 512 (and I.W.C. Orders 5-2001 and 15-
24 2001);
- 25 d. Defendants failed to provide Plaintiff and Class Members, with accurate
26 and timely pay stubs (accurate, semi-monthly, itemized statements of the
27 total number of hours each of them worked, applicable hourly rate of pay,
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and/or wages earned) --- in violation of Labor Code § 226; and

- e. Defendants have willfully failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily resigned or were terminated) a final payment of his or her total wages in a prompt and timely manner ---- in violation of Labor Codes §§ 201 - 203;
- f. Defendants have willfully failed to reimburse Plaintiff and Class Members for necessary business expenses (i.e. use of personal cell phones and vehicles for Defendants' business).

8. Plaintiff, on behalf of herself and the proposed Class, seeks unpaid compensation (including unpaid/underpaid regular hours, overtime hours, minimum wages, wages for missed meal and rest periods), interest thereon, waiting time penalties, penalties and relief for failure to provide accurate and timely itemized statements of total hours worked/wages earned, reimbursement of unpaid necessary business expenses, and reasonable attorneys' fees and costs, under Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 226.8, 510, 512, 581, 1174, 1194, 1197.1, 1199, 2699.3, 2699.5, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001, 15-2001). Plaintiff also claims civil penalties for the above acts, which violate the California Labor Code, under the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 et seq.

9. Under California Business & Professions Code ("Cal. Bus. & Prof. Code") §§ 17200, *et seq.* ("UCL"), and pursuant to class action procedures provided for in these statutes, Plaintiff, on behalf of herself and all others similarly situated also seeks injunctive relief and restitution of all benefits the Defendants have received from their violations, as described herein, during the relevant Class Period.

JURISDICTION AND VENUE

10. **Jurisdiction:** This Court has jurisdiction over this matter pursuant to the laws of the State of California including Code of Civil Procedure § 410.10. Defendants own and/or lease property in San Mateo County. Defendants regularly do business in San Mateo County.

1 Defendant's headquarters are located in Burlingame, California in San Mateo County.
2 Defendants employ and/or employed over 100 (one hundred) Nurses within San Mateo County
3 and have obtained the benefits of the laws of the State of California and the California labor
4 market. This Court has jurisdiction over Plaintiff's and Class Members' claims for: intentional
5 misclassification of Nurses as Independent Contractors; failure to pay overtime and minimum
6 wages; failure to provide required meal/rest breaks (or pay a premium in lieu thereof); penalties
7 for failure to provide itemized statements of hours worked and all applicable hourly rates; failure
8 to reimburse necessary business expenses; penalties for failure to pay wages of discharged
9 employees; and injunctive relief and restitution of ill-gotten benefits arising from Defendants'
10 unlawful business practices.

11 11. **Venue:** Venue is proper in this county pursuant to California Code of Civil
12 Procedure §§395(a) and/or 395.5. Defendants transact business and may be found within San
13 Mateo County. The unlawful acts, as well as the course of conduct alleged herein, occurred in
14 San Mateo County. Defendants maintain offices, transact business, have agents, and employ
15 numerous Class Members in San Mateo County (estimated at 1700 or more currently/formerly
16 employed Nurses), and are otherwise within this Court's jurisdiction for purposes of service of
17 process. The unlawful acts alleged herein have had a direct effect on Plaintiff and those similarly
18 situated within the State of California and within San Mateo County.

19 12. **Original PAGA Notice (June 3, 2021):** California Labor Code §§ 2699 et seq.,
20 the "Labor Code Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved employees to
21 sue directly for various civil penalties under the California Labor Code. On **June 3, 2021** (the
22 same date of the original filing of the Complaint in this matter) Plaintiff provided written notice
23 ("PAGA Notice") and a draft copy of a First Amended Complaint ("FAC"), which included the
24 additional cause of action for alleged PAGA violations, by certified mail and electronic filing to
25 the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
26 and to the Defendants with the specific provisions of the California Labor Code alleged to have
27 been violated, including the facts and theories to support the alleged violations, pursuant to
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1 California Labor Code §2699.3. A true and correct copy of the PAGA Notice showing
2 compliance with Labor Code §2699.3 was attached as **Exhibit A** to the original June 3, 2021 -
3 PAGA Notice. No notice of cure by Defendants was provided and the LWDA did not provide
4 Plaintiff with notice that it intent to investigate this violation, although more than 65 days elapsed
5 as of August 8, 2021 since the postmark date of Plaintiff's PAGA Notice. Plaintiff then filed her
6 FAC on August 10, 2021.

7 13. **Amended PAGA Notice (December 14, 2021):** On December 14, 2021, in
8 accord with a tentative class action settlement awaiting court approval, Plaintiff provided an
9 amended written notice ("Amended PAGA Notice") and a draft copy of a Second Amended
10 Complaint ("SAC"), which included the additional cause of action for Failure to Reimburse
11 Necessary Business Expenses (9th Cause of Action) by certified mail, email, and electronic filing
12 to the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
13 and to the Defendants with the specific provisions of the California Labor Code alleged to have
14 been violated, including the facts and theories to support the alleged violations, pursuant to
15 California Labor Code §2699.3. A true and correct copy of the **Amended PAGA Notice**
16 showing compliance with Labor Code §2699.3 was attached as **Exhibit 1** to the Amended PAGA
17 Notice. No notice of cure by Defendants was provided and the LWDA did not provide Plaintiff
18 with notice that it intended to investigate this violation, although more than 65 days elapsed (as of
19 **February 17, 2022**) since the postmark date of Plaintiff's Amended PAGA Notice. Plaintiff will
20 therefore, with leave of court, file her SAC.

21 **THE PARTIES**

22 14. **Plaintiff Joanna Magpiong ("Magpiong"):** Magpiong is a single adult 23 year
23 old Asian-American female. She is a resident and citizen of Hayward, CA in Alameda County.
24 She was employed as a LVN ("Nurse") by Defendants from approximately April 28, 2021 to the
25 present (as of the filing of original complaint she was still employed by Defendants). Defendants
26 misclassified her, and other Nurses, as "Independent Contractors" despite controlling every
27 aspect of their work (i.e. rate of pay, hours work, location of work, instructions, tools and
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1 supplies, unilateral right to hire and fire, etc.). Defendants also classified Plaintiff and other
2 Nurses as non-exempt hourly workers. Plaintiff's hourly rate is/was \$38.00 per hour. While
3 employed by Defendants, she and other Nurses would typically work over 8 hours in a day (for
4 Plaintiff typically 3 p.m. until 11:30 p.m. , 2 to 3 days a week, although she was sometimes
5 required to work 14 or 17 hour shifts). Despite working numerous hours of overtime the
6 Defendants failed to compensate Plaintiff and other Nurses their fully owed wages for all hours
7 worked at the appropriate overtime rate. Defendants only paid Nurses their regular flat hourly
8 rate plus a small premium (i.e. additional \$1/hr. for shifts within 25-35 miles of Class Members
9 home address; additional \$2/hr. for shifts within 35-50 miles of Class Members home address,
10 etc.), thus failing to pay them the correct overtime rate of one and one half times (1.5x) or double
11 time (2x) the flat hourly rate for overtime hours worked above 8 hours a day or 40 hours in a
12 workweek. Furthermore, Plaintiff and the other Nurses were not permitted to report duty-filled
13 meal and/or rest breaks although they were often required to work through and/or during meal
14 and/or rest periods. Plaintiff and other Nurses were denied duty-free meal and/or rest breaks on a
15 regular basis. Defendants did not provide compliant itemized wage statement in writing
16 showing gross wages, total hours worked, all deductions, net wages, applicable hourly rates, etc.
17 and did not reimburse Plaintiff for use of her personal cell phone (i.e. use of CareLinx mobile
18 application, phone calls and text messages to/from CareLinx managers/third party care facilities)
19 or personal vehicle (mileage/travel to and from third party care facilities).

20 **15. Defendant CareLinx Inc. ("CareLinx"):** At all relevant times, Defendant
21 CareLinx was and is a corporation organized under the laws of the State of Delaware, and
22 authorized and qualified to do business in San Mateo County. CareLinx is headquartered at 1350
23 Bayshore Hwy, Ste 850, Burlingame, CA 94010 in San Mateo County. CareLinx is a California
24 based employment agency providing caregivers (i.e. Nurses including RNs, LVNs, and CVAs) to
25 skilled nursing facilities, residential care facilities, and private homes. CareLinx,
26 employs/employed hundreds of Nurses during the Class Period, and has intentionally
27 misclassified them as "Independent Contractors" despite controlling their schedules, tracking
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1 their time, processing their payroll, setting their wages, unilateral power of hiring/firing, etc. It
2 currently employs 100+ Nurses in California. It also employs over 50+ administrative and
3 non-Nurse support staff. Plaintiff alleges that the practices and policies that are complained of in
4 this Complaint have been occurring throughout the Class Period and are currently applied by
5 CareLinx in California. CareLinx is, and at all relevant times has been, an employer subject to
6 the California Labor Code.

8 FICTITIOUS DEFENDANTS

9 16. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their
10 true names and capacities are unknown to Plaintiff at this time. When their true names and
11 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
12 capacities. Plaintiff is informed and believe, and thereon allege that each of the fictitiously-
13 named Defendants is responsible in some manner for the occurrences alleged herein and that
14 Plaintiff's' and the proposed Class Members' damages and penalties alleged herein were
15 proximately caused by such Defendants.

16 AGENCY

17 17. Plaintiff is informed, believe, and thereon allege that each of the Defendants herein
18 was, at all times relevant in this action, the agent, employee, representing partner, and/or joint
19 venture of the remaining Defendants and was acting within the course and scope of that
20 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
21 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
22 Defendants.

23 CLASS ACTION ALLEGATIONS

24 18. Plaintiff brings this action individually and as a class action on behalf of opt-out
25 classes (the "Class") defined as follows:

26 **All current and former California based Nurse employees who**
27 **were misclassified as "Independent Contractors" and worked**
28 **for Defendants from June 3, 2017 until the entry of judgment.**

1 19. Plaintiff is a member of the proposed class and representative of other Nurse
2 employees and are acting on behalf of their interests. Plaintiff believes this includes, but is not
3 limited to, Defendants' employees misclassified as Independent Contractors and working as
4 Registered Nurses (RNs), License Vocational Nurses (LVNs), and Certified Nurse Assistants
5 CNAs), Medical Assistants (MAs), Licensed Practical Nurses (LPNs), Nurse Practitioners
6 (NPs)(collectively "Nurses") as their specific titles may have changed over time. Plaintiff
7 reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the class
8 description with greater specificity or further division into a subclasses or limitations to particular
9 issues.

10 20. The Plaintiff and Class Members assert the following claims:

- 11 a. Plaintiff and Class Members were intentionally misclassified as
12 "Independent Contractors" in violation of Labor Codes §§ 226.8 and 2753;
- 13 b. Plaintiff and Class Members were not paid all wages owed for all hours
14 work including regular hours, overtime hours, and/or minimum wage for
15 said hours worked as required by California Labor Code §§ 204, 510,
16 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and I.W.C. Orders;
- 17 c. Plaintiff and Class members were not provided duty-free meal breaks (or
18 paid in lieu thereof) as required by California Labor Code §§226.7; 512
19 and I.W.C. Orders;
- 20 d. Plaintiff and Class members were not provided duty-free rest breaks (or
21 paid in lieu thereof) as required by Labor Code §226.7 and I.W.C. Orders;
- 22 e. Plaintiff and Class members were not paid upon their separation from
23 employment with Defendants as required by Labor Code §§ 201 - 203;
- 24 f. Plaintiff and Class members did not receive pay stubs in conformity with
25 Labor Code §226;
- 26 g. Plaintiff and Class members were not reimbursed for necessary business
27 expenses (i.e. use of personal cell phones and vehicles for Defendants'
28

business).

21. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)) as to violations of California Labor Codes, I.W.C. Wage Orders, and UCL for unpaid regular hours worked, overtime hours worked, and/or minimum pay for said hours, wages for missed meal and rest break violations, waiting time penalties, failure to furnish timely, itemized wage statements, failure to reimburse necessary business expenses, and attorneys' fees and costs. The similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' own employment records. There is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. As described below, this action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and superiority requirements of these provisions.

22. **Numerosity:** A class action is the only available method for the fair and efficient adjudication of this controversy. Although the exact number and identities of all Class Members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believe that the Class includes over 100 persons. On information and belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all members is impractical, if not impossible. Membership in the Class will be determined upon analysis of, *inter alia*, records maintained by Defendants.

23. **Commonality and Predominance:** The Plaintiff and the Class share a community of interest because there are numerous common issues of fact and law that predominate over any questions and issues solely affecting individual members. Such common factual and legal issues include, but are not limited to, the following:

- a. Whether Plaintiff and Class Members served Defendants as employees rather than "Independent Contractors" under California law;
- b. Whether Defendants intentionally misclassified Plaintiff and Class Members as "Independent Contractors" in violation of Labor Codes §§

226.8 and 2753;

- c. Whether Defendants knowingly and willfully violated Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199, by failing to pay all wages for regular hours worked, overtime hours worked, and/or minimum wage for said hours, to Plaintiff and Class Members;
- d. Whether Defendants violated Labor Code §§226.7, 512 by failing to provide duty-free meal breaks (or one additional hour of pay in lieu thereof) to Plaintiff and Class Members;
- e. Whether Defendants violated Labor Code §226.7 by failing to provide duty-free rest breaks (or one additional hour of pay in lieu thereof) to Plaintiff and Class Members;
- f. Whether Defendants violated Labor Code §§226 and 1174 by failing to keep or provide accurate records of Plaintiff's and Class Members' gross wages, total hours worked, deductions, net wages, dates of the pay period, hourly rates, etc.;
- g. Whether Defendants violated Labor Code §§201, 202, 203 by failing to pay all wages due and owing at the time that Plaintiff's and Class Members' employment with Defendants terminated;
- h. Whether former employees are entitled to "waiting time" penalties pursuant to Labor Code §203;
- i. Whether Defendant violated Labor Code §2802 for failing to reimburse Plaintiff's and Class Members' necessary business expenses;
- j. Whether Defendants knowingly and willfully violated the above wage and hour laws; and
- k. Whether Defendants various violation of the Labor Code, described above, serve as a predicate violations of Business & Professions Code §§17200, *et seq.* ("UCL").

1 24. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all members of the Class sustained injuries and damages arising out of, and caused by,
3 Defendants' common course of conduct in violation of law as alleged herein.

4 25. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class
5 in that Plaintiff have the same interests in the litigation of this case as the Class Members as they
6 include current and former Nurses working for Defendants. Plaintiff is committed to vigorous
7 prosecution of this case and have retained competent counsel who are experienced in class
8 actions and wage and hour litigation of this nature. Plaintiff is not subject to any individual
9 defenses different from those conceivably applicable to the Class as a whole.

10 26. **Superiority of Class Action:** A class action is superior to other available
11 methods for the fair and efficient adjudication of this controversy because individual litigation of
12 the claims of all Class Members is impractical.

13 27. The California Labor Code and Wage Order provisions upon which Plaintiff and
14 Class Members assert these claims are broadly remedial in nature. These laws and labor standards
15 serve an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who may seek to take advantage of superior economic and bargaining
18 power in setting onerous terms and conditions of employment.

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

1 29. Even if every Class Member could afford individual litigation, the court system
2 could not. It would be unduly burdensome to the courts in which individual litigation of
3 numerous cases would proceed. Individualized litigation would also present the potential for
4 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
5 parties and to the court system resulting from multiple trials of the same complex factual issues.
6 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
7 presented herein, presents fewer management difficulties, conserves the resources of the parties
8 and the court system, and protects the rights of each Class Member. Plaintiff anticipate no
9 management difficulties in this litigation.

10 30. Further, the Defendants have also acted, or have refused to act, in respects
11 generally applicable to the Class, thereby making appropriate relief with regard to the members of
12 the Class as a whole, as requested herein.

13 **COMMON FACTUAL ALLEGATIONS**

14 31. Plaintiff is informed and believes and based thereon allege the following:

15 32. Defendants have for years intentionally misclassified Class Members as
16 Independent Contractors in violation of Labor Code § 226.8 and/or §2753, and, in so doing, have
17 denied them the benefits and protections of California employment law.

18 33. Defendants failed to: 1) pay Class Members all wages due for work performed
19 including regular hours, overtime hours, and/or minimum wage for said hours worked; 2) provide
20 Class Members the opportunity to take duty-free meal periods/rest breaks (or pay premiums for
21 failure to provide duty-free meal periods/rest breaks); 3) provide Class Members accurate and
22 timely wage statements; 4) provide reimbursement of necessary business expenses, and 5) pay all
23 wages due upon termination; thereby enjoying a significant competitive edge over their
24 competitors.

25 34. Defendants have and had a consistent and uniform policy, practice and procedure
26 of willfully failing to comply with California's wage and hour laws, I.W.C orders and UCL as
27 described herein.
28

1 35. **Misclassification as “Independent Contractors”:** Plaintiff and Class Members
2 are current and former persons employed by Defendants as Nurses providing services for
3 Defendants’ employment agency providing caregiver Nurses to Defendants’ clients (i.e.
4 residential skilled nursing facilities). Defendants hired Plaintiff and Class Members as
5 “Independent Contractors” despite the fact that Defendants retained control over all aspects of
6 Class Members work including but not limited to their rate of pay, hours work, training,
7 instructions, tools and supplies, and the unilateral right to hire and fire. By intentionally
8 misclassifying Plaintiff and Class Members as Independent Contractors in violation of Labor
9 Code § 226.8 and/or §2753, Defendants purposely and willfully attempted to avoid their
10 obligations under California labor law. If an employer has “willfully” misclassified an employee
11 it shall be fined not less than \$5,000 and up to \$15,000 per violation. Further, if that entity is
12 found to have engaged in a “pattern or practice” of misclassification (as is the case here), then
13 those fines are ratcheted up to a minimum of \$10,000 per violation, with a cap of \$25,000 per
14 violation in addition to other penalties authorized by law.

15 36. **Regular Time, Overtime, and Minimum Wage Violations:** Specifically, as
16 alleged above, Defendants failed to compensate Plaintiff and Class Members all wages owed for
17 all hours worked including failing to pay minimum wages, regular wages, and overtime wages.
18 Therefore, Plaintiff and Class Members are entitled to recover wages and/or penalties as provided
19 by Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and
20 applicable IWC Wage Orders.

21 37. **Meal and Rest Break Violations:** Defendants’ practices and policies regarding
22 meal and rest breaks as described herein, resulted in the systemic and uniform failure to provide
23 Plaintiff and Class Members with meal and/or rest breaks as required by Labor Code § 226.7,
24 Labor Code § 512. Defendants have failed to provide Plaintiff and Class Members with a full 30-
25 minute duty-free meal period for each workday. When Plaintiff and other Class Members were
26 not provided duty-free and/or on-time meal periods they were not provided with an additional
27 premium hours pay as required by California Labor Codes.

1 38. Defendants have also failed to provide Plaintiff and Class Members duty-free rest
2 periods based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
3 (4) hours or major fraction thereof. When Plaintiff and Class Members were not provided their
4 duty-free rest periods they were not provided with additional compensation pursuant to Labor
5 Code § 226.7. Defendants intentionally and knowingly understaffed, overworked, and required
6 Nurses to work through and/or during meal and/or rest breaks and by also delaying the taking of
7 such meal and/or rest breaks past the legally required times. Plaintiff estimate that they, and other
8 Nurses at Defendants, would typically be required to work through/during and/or be delayed in
9 taking numerous meal periods and rest breaks on an almost daily basis.

10 39. Therefore, Plaintiff and Class Members are entitled to recover wages and/or
11 penalties as provided by Labor Code § 558 and applicable IWC Wage Orders. Since Defendants
12 required these employees to work during meal periods in violation of Labor Code § 226.7, these
13 current and/or former aggrieved employees seek wages of one additional hour of pay as permitted
14 by Labor Code § 226.7(c) as well as all available penalties as set forth in Labor Code § 2699(f).

15 40. Further, Plaintiff and Class Members were also at all times entitled to rest breaks
16 as authorized and permitted by applicable I.W.C. Wage Order. Defendants failed to authorize or
17 permit rest breaks as required by Labor Code § 226.7, Labor Code § 512, and I.W.C. Orders.
18 Therefore, Plaintiff, on behalf of the Class Members, seeks recovery of wages and/or penalties as
19 provided by Labor Code § 558 and applicable IWC Wage Orders. Because Defendants required
20 its employees to work during rest periods in violation of Labor Code § 226.7, Plaintiff and Class
21 Members also seeks wages of one additional hour of pay as permitted by Labor Code § 226.7(c)
22 as well as all available penalties as set forth in Labor Code § 2699(f.)

23 41. Plaintiff estimates, based on observation and conversations with other Class
24 Members, that typically Nurses were not provided the opportunity for duty-free meal periods a
25 couple times a week and/or duty-free rest breaks a couple times a week, including taking such
26 meal periods after the 5th hour and lack of or late second meal period on shifts longer than 10
27 hours. Further, Defendants were not accurately keeping track of Class Members meal/rest breaks
28

1 periods. Defendants despite knowing that the employees were not provided their duty-free meal
2 periods/rest breaks the Class Members were not being paid an additional hours wage for the
3 rest/meal periods.

4 42. Defendants' uniform failure to allow duty-free rest and/or meal periods to these
5 employees during their workday and other derivative claims were done with a systematic policy
6 of nonpayment of an additional one-hour's wage per day per violation at the Class Members'
7 regular rate of pay, or alternatively, premium compensation, if applicable. Defendants' failure to
8 provide such compensation in lieu of meal periods or rest breaks violated Labor Code §§ 204 and
9 204(b), such that penalties are recoverable as set forth in Labor Code § 210 and/or § 1194, et.seq

10 43. **Wage Statement Violations:** Defendants' practices and policies, as described
11 above, resulted in the systemic and uniform failure to provide timely and/or accurate wage
12 statements in violation of Labor Code §§ 226, 226.3, and 1174. Despite knowledge of Plaintiff's
13 and Class Members' entitlement to additional pay for hours worked (including regular hours,
14 overtime hours, and minimum wage) and failure to provide a duty-free/on-time meal periods
15 and/or rest breaks, Defendants have violated California Labor Code §1174 by failing to provide
16 or require the use, maintenance, or submission of accurate time records by members of the Class.
17 Defendants failed to take appropriate steps to correct its mistakes. As described above, Class
18 Members' were not provided paystubs at all, let alone accurate and timely ones, in part due to
19 being misclassified as "Independent Contractors". The payments received by Class Members did
20 not accurately reflect all of the hours worked or correct pay rates, including work performed
21 during meal periods and/or rest breaks, and Defendants did not provide its Nurses payment of an
22 additional hour(s) of pay at the employee's/Class Member's regular rate for each duty-free meal
23 period and/or rest break that was not provided. Defendants' failure to provide Plaintiff and Class
24 Members with timely and/or accurate, semi-monthly itemized statements was done knowingly
25 and intentionally.

26 44. **Wages Owed Upon Separation/Termination Violations:** Defendants' practices
27 and policies resulted in the systemic and uniform failure to provide Plaintiff and Class Members,
28

1 upon termination or separation, the total wages they were owed. Plaintiff and Class Member's
2 employees who quit, were laid off, or were terminated were not paid the wages owed them in
3 accord with Labor Code §§ 201, 202, 203, 206, 226.7, 512, and 1174.

4 **45. Failure to Reimburse Business Expenses:** Defendants' practices and policies
5 resulted in the systemic and uniform failure to provide Plaintiff and Class Members
6 reimbursement for necessary business related expenses (i.e. use of personal cell phone and
7 vehicles for Defendants' business). Plaintiff and Class Member's employees were not reimbursed
8 in accord with Labor Code §2802.

9 **46.** As a direct and proximate result of Defendants' unlawful conduct, as set forth
10 herein, Plaintiff and the Class Members have sustained damages, including for the lack of pay for
11 all hours worked (including regular hours, overtime hours, and/or minimum wage for said hours),
12 wages for failure to provide duty-free/on-time meal periods and/or rest breaks and loss of interest
13 on those wages, and reimbursement of necessary business expenses, in an amount to be
14 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
15 set forth herein, many Class Members herein are entitled to recover "waiting time" penalties and
16 penalties for failure to provide accurate and timely semi-monthly statements, all in amounts to be
17 established at trial. Plaintiff and the Class Members are also entitled to recover prejudgment
18 interest, attorneys' fees and costs, pursuant to statute.

19 **47.** At all times herein set forth, PAGA was applicable to the Plaintiff's employment
20 by Defendants. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
21 employee," who is any person that was employed by the alleged violator and against whom one
22 or more of the alleged violations was committed.

23 **48.** Plaintiff were employed by Defendants and the Labor Code violations alleged
24 herein were committed against them and other employees during their time of employment, and
25 they are therefore aggrieved employees. Plaintiff and other Class Members are "aggrieved
26 employees" as defined by California Labor Code §2699(c) in that they are all current or former
27 employees of Defendants, and one or more of the Labor Code violations alleged herein were
28

1 committed against them.

2 49. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
3 may pursue a civil action arising under PAGA after the following requirements have been met:

4 50. The aggrieved employees shall give written notice by certified mail/electronic
5 filing on website (hereinafter "PAGA Notice") to the California Labor and Workforce
6 Development Agency ("LWDA") and the employer(s) of the specific provisions of the California
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations.

9 51. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
10 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
11 violation within sixty (60) calendar days of the postmark date of the PAGA Notice. Upon receipt
12 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
13 of the postmark date of the employees' PAGA Notice, the aggrieved employee may commence a
14 civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
15 other penalties to which the employee may be entitled.

16 52. On **December 14, 2021** Plaintiff provided a written **Amended PAGA Notice** and
17 draft copy of the Second Amended Complaint ("SAC") by certified mail, via email to
18 Defendants' counsel, and via the LWDA website, to the LWDA and to the employer Defendants,
19 of the specific provisions of the California Labor Code alleged to have been violated, including
20 the facts and theories to support the alleged violations, pursuant to California Labor Code
21 §2699.3.

22 53. Therefore, Plaintiff has complied with the PAGA written notice requirements set
23 forth in California Labor Code §2699.3(a). No notice of cure by Defendants was provided and
24 the LWDA has not provided Plaintiff with any LWDA Notice that it intends to investigate these
25 violations, although more than 65 days have elapsed since the postmark date of the Employee's
26 Amended PAGA Notice. Therefore as of **February 17, 2021**, (65 calendar days post Amended
27 PAGA notice) the administrative prerequisites under California Labor Code §2699.3(a) were
28

1 satisfied for filing this Second Amended Complaint with an additional cause of action for
2 Labor Code §2802 / PAGA violations, as provided by California Code of Civil Procedures and
3 recovery of civil penalties.
4

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES** 8 **(Labor Code §§ 204, 510, 1194, 1199)** 9 **(Plaintiff Against All Defendants and Does 1-100)**

10 54. Plaintiff incorporates by reference in this cause of action each allegation of all of
11 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
12 Does 1-100, and each of them, as follows:

13 55. During the Class Period Plaintiff and Class Members often worked in excess of 8
14 hours in a work day and/or 40 hours in a workweek without compensation in violation of Labor
15 Code §510. The precise number of hours will be proven at trial.

16 56. On information and belief, at all relative times, Defendants were aware of, and
17 were under a duty to comply with, various provisions of the California Labor Code. These
18 provisions include

19 a. Labor Code § 510: “Eight hours of labor constitutes a day’s work. Any
20 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
21 workweek and the first eight hours worked on the seventh day or work in any one workweek shall
22 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee . . .”

24 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
25 wage, any employee receiving less than . . . the legal overtime compensation applicable to the
26 employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . .
27 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

28 c. Labor Code § 1198: “The maximum hours of work and the standard
conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 d. Labor Code § 1199: “Every employer or other person acting either
4 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
5 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
6 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
7 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
8 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
9 chapter or any order of the commission.”

10 57. By refusing to compensate Plaintiff and the Class Members for overtime wages
11 earned, Defendants violated and continue to violate those California Labor Codes and I.W.C.
12 wage orders, including Labor Code §§ 204, 510, 1194, 1198, 1199 and Wage Orders 5-2001, 15-
13 2001).

14 58. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
15 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
16 unpaid hours of overtime worked on behalf of Defendants in an amount to be established at trial.
17 As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
18 Plaintiff and Class Members are entitled to recover interest on the overtime wages earned but not
19 paid, at a rate of 10% per year, as well as attorneys’ fees and costs per Labor Code §§ 218.5,
20 218.6, and 1194, and the assessment of any other statutory penalties provided by the Labor Code.

21
22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PAY MINIMUM WAGE**
(Labor Code §§ 1182.12, 1194, 1197, 1197.1;)
(Plaintiff Against All Defendants and Does 1-100)

24 59. Plaintiff incorporates by reference in this cause of action each allegation of all of
25 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
26 Does 1-100, and each of them, as follows:

27 60. Labor Code §§ 1182.12, 1194, 1197 and 1197.1 (and I.W.C. Wage Orders 5-2001
28

1 and 15-2001, establish and protect the right of employees in California to receive minimum
2 wages for their work, in amounts set by California law. The applicable minimum wage in
3 California during the Class Period has been \$8/hr. from the beginning of Class Period until June
4 30, 2014, \$9/hr. from July 1, 2014 to Jan. 1, 2016, and \$10/hr. from Jan. 1, 2016 on.

5 61. At all relevant times, Defendants failed to pay Plaintiff and Class Members the
6 applicable minimum wage for all hours worked due to its failure to compensate Plaintiff and
7 Class Members for all work performed, specifically for work performed pre and post scheduled
8 shifts and/or during meal and/or rest breaks, and by requiring Nurses to perform work prior to and
9 after regular scheduled shifts.

10 62. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff and
11 Class Members have been deprived of their minimum wages in an amount to be proven at trial,
12 and are entitled to recover such amounts, plus interest and penalties thereon, attorney's fees and
13 costs, under Labor Code §§ 218.5, 218.6, 558, 1182.12, 1194, 1194.2, 1197.1, I.W.C. Wage
14 Orders 5-2000 and 5-7 2001, and are entitled to injunctive relief.

15
16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MANDATED MEAL PERIODS**
(Labor Code §§ 226.7, 512)
(Plaintiff Against All Defendants and Does 1-100)

18 63. Plaintiff incorporates by reference in this cause of action each allegation of all of
19 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
20 Does 1-100, and each of them, as follows:

21 64. Plaintiff and Class Members regularly work in excess of five (5) hours per day
22 without being afforded a duty-free meal period of not less than 30 minutes as required by Labor
23 Code §§ 226.7, 512 and I.W.C Wage Orders 5-1001, 15-2001.

24 65. California Labor Code § 512 provides that an employer may not employ an
25 employee for a work period of more than five (5) hours per day without providing the employee
26 with a meal period of not less than 30 minutes.

27 66. Furthermore, California Labor Code § 226.7 provides that:
28

1 (a) No employer shall require any employee to work during any
2 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

3 (b) If an employer fails to provide an employee a meal period or
4 rest period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
5 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not
provided.

6 67. As a direct and proximate result of Defendants' unlawful conduct in not providing
7 for duty-free meal periods, Plaintiff and Class Members are entitled to one additional hour of pay
8 at their regular rate as wages under Labor Code §§ 226.7, 512 for each day in which the proper
9 meal period was not provided. In addition, Plaintiff and Class Members are entitled to interests,
10 penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MANDATED REST PERIODS**
(Labor Code § 226.7)
14 **(Plaintiff Against All Defendants and Does 1-100)**

15 68. Plaintiff incorporates by reference in this cause of action each allegation of all of
16 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
Does 1-100, and each of them, as follows:

17 69. Plaintiff and Class Members regularly work in excess of four (4) hours per day
18 without being afforded a rest period of not less than ten (10) minutes as required by Labor Code
19 § 226.7 and I.W.C Order 5-2001, 15-2001 (employees are entitled to 10 minutes rest for shifts
20 from 3 ½ hours to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30
21 minutes for shifts of more than 10 hours up to 14 hours, and so) (See *Brinker Restaurant Corp., et*
22 *al v. Superior Court (2012)*, 53 Cal. 4th 1004, 1029.

23 70. California Labor Code § 226.7 mandates that no employer shall require any
24 employee to work during any meal or rest period.

25 71. California Labor Code § 226.7 provides that:

26 (a) No employer shall require any employee to work during any
27 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

72. As a direct and proximate result of Defendants' unlawful conduct in not providing for duty-free rest periods, Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate as wages under Labor Code § 226.7, for each day in which the proper rest break was not provided. In addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS
(Labor Code § 226)
(Plaintiff Against All Defendants and Does 1-100)

73. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

74. Labor Code § 226(a) provides as follows:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . , (5) net wages earned . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

75. Labor Code § 226(e) provides as follows:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney fees.

76. During the relevant time period, Defendants failed to provide Plaintiff sand Class

1 Members with accurate, semi-monthly itemized statements of the total hours worked, all
2 applicable hourly rates in effect, and all gross and net wages earned during the pay period. On
3 information and belief, this was the direct and proximate result of a willful refusal by Defendants
4 to provide such accurate statements.

5 77. Defendants knowingly and intentionally failed to provide timely, accurate,
6 itemized wage statements to Plaintiff and Class Members in accordance with Labor Code
7 § 226(a). The statements provided to Plaintiff and Class Members have not accurately reflected
8 the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned
9 during the pay period.

10 78. As a direct and proximate result of Defendants' unlawful conduct in failing to
11 provide accurate itemized wages statements, Plaintiff and Class Members suffered actual
12 damages and harm by being unable to determine their applicable hourly rate or the amount of
13 regular time or overtime worked each pay period, which prevented them from becoming aware of
14 these violations and asserting their statutory protections under California law. Plaintiff and Class
15 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
16 initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for
17 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
18 dollars (\$4,000.00). Plaintiff and Class Members are entitled to seek penalties, and attorneys' fees
19 and costs as provided by Labor Code §§ 226(e), 226(h), 226.3, and 1174.5.

20
21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO PAY ALL WAGES DUE AT TERMINATION –**
23 **WAITING TIME PENALTIES**
(Labor Code §§ 201, 202, 203)
(Plaintiff Against All Defendants and Does 1-100)

24 79. Plaintiff incorporates by reference in this cause of action each allegation of all of
25 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
26 Does 1-100, and each of them, as follows:

27 80. California Labor Code § 201 requires Defendants to pay its discharged employees
28 all wages due immediately upon discharge or termination of employment.

1 81. California Labor Code § 202 requires that if an employee quits his or her
2 employment, “his or her wages shall become due and payable not later than 72 hours thereafter,
3 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
4 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
5 other provision of law, an employee who quits without providing a 72-hour notice shall be
6 entitled to receive payment by mail if he or she so requests and designates a mailing address.”

7 82. California Labor Code § 203 provides that if an employer willfully fails to timely
8 pay any wages that are due to an employee who quits or is discharged, the employer must, as a
9 penalty, continue to pay the employees’ wages until the back wages are paid in full or an action is
10 commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203
11 provides as follows:

12 If an employer willfully fails to pay, without abatement or
13 reduction, in accordance with Sections 201, 201.5, 202 and 205.5,
14 any wages of an employee who is discharged or who quits, the
15 wages of the employee shall continue as a penalty from the due date
thereof at the same rate until paid or until an action therefore is
commenced; but the wages shall not continue for more than
30 days.

16 83. Plaintiff and Class Members who have been discharged or who have quit are
17 entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received
18 such compensation.

19 84. During the relevant time period, Plaintiff and many Class Members were
20 employed by Defendants and were thereafter terminated or resigned from their positions with
21 Defendants. Defendants, however, did not pay such Plaintiff and Class Members all wages due
22 upon their termination or within 72 hours of their resignation of employment. On information
23 and belief, Plaintiff alleges that such non-payment was the direct and proximate result of a willful
24 refusal to do so by Defendants.

25 85. As a direct and proximate result of Defendants’ unlawful and willful conduct in
26 not paying compensation for all hours worked, many Class Members are entitled to up to 30 days
27 wages as a penalty (“waiting time penalty”) under Labor Code § 203, together with reasonable
28

1 attorneys' fees and costs.

2
3 **SEVENTH CAUSE OF ACTION**
4 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
5 **(California Business & Professions Code §§ 17200-17208)**
6 **(Plaintiff Against All Defendants and Does 1-100)**

7 86. Plaintiff incorporates by reference in this cause of action each allegation of all of
8 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
9 Does 1-100, and each of them, as follows:

10 87. Plaintiff brings this cause of action on behalf of herself and the Class as well as on
11 behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
12 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
13 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

14 88. The conduct of Defendants, as alleged herein, constitutes an unlawful business
15 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

16 89. Specifically, Defendants conducted business activities while failing to comply
17 with California Labor Codes and IWC wage orders as described in this Complaint. Defendants,
18 and each of them, have intentionally and improperly failed to pay Class Members for all hours
19 worked including regular hours, overtime hours, and/or minimum wage for said hours; additional
20 wages for their failure to provide duty-free meal periods and/or rest breaks; and failed to provide
21 other benefits in violation of the California Labor Code and IWC wage orders. Section 17200 of
22 the Business and Professions Code prohibits unfair competition by prohibiting unlawful, unfair,
23 or fraudulent business practices or acts. Defendants' failure to adopt policies in accordance
24 and/or adherence with these laws, all of which are binding upon and burdensome to Defendants'
25 competitors, engenders an unfair competitive advantage for Defendants, thereby constituting an
26 unfair business practice, as set forth in California Business and Professions Code §§ 17200, *et*
27 *seq.*

28 90. Furthermore, Defendants has under-reported to federal and state authorities the
wages earned by their employees and, therefore, have underpaid state and federal taxes, employer

1 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
2 Compensation premiums.

3 91. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
4 Members by wrongfully denying them earned wages, failing to pay them all wages due upon
5 termination of employment, and failing to provide accurate and timely itemized wage statements.
6 Such conduct was substantially injurious to Plaintiff and the Class.

7 92. Under the circumstances alleged herein, it would be inequitable and result in a
8 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
9 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
10 and disgorgement of Defendants' ill-gotten gains.

11 93. As a direct and proximate result of Defendants' unlawful and unfair business
12 practices, Plaintiff and Class Members are entitled to, and hereby do, seek restitution and
13 disgorgement of these ill-gotten gains, including but not limited to, restitution of all unpaid
14 wages, plus interest thereon, as well as attorney's fees and costs, and other appropriate injunctive
15 and other relief available under California Business and Professions Code §§ 17200, *et seq.*

16 **EIGHTH CAUSE OF ACTION**
17 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
18 **(California Labor Code §§ 2698, *et. seq.*)**
19 **(Plaintiff Against All Defendants and Does 1-100)**

20 94. Plaintiff incorporates by reference in this cause of action each allegation of all of
21 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
22 Does 1-100, and each of them, as follows:

23 95. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
24 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

25 96. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
26 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
27 under this part at any time within 60 days of the time periods specified in this part."

28 97. Defendants' conduct, as alleged herein, violates numerous sections of the
California Labor Code and I.W.C. Orders, including, but not limited to, the following: violation

1 of Labor Code § 226.8 and/or § 2753 (for willfully misclassifying Class Members as
2 “Independent Contractors”); violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197,
3 1197.1, 1198, and 1199 (for failure to pay wages for all hours worked including regular hours,
4 overtime hours, and/or paid minimum wage for said hours); violation of Labor Code §§ 226.7,
5 512 (for failure to provided duty-free meal periods/rest periods or pay a premium in lieu thereof);
6 violation of Labor Code § 226(a) (for failure to provide accurate wage statements as herein
7 alleged); violation of Labor Code § 2802 (for failure to reimburse employee necessary business
8 expenses) and violation of Labor Code §§ 201, 202, and 203 (for failure to timely pay all earned
9 wages upon discharge).

10 98. California Labor Code § 1198 makes it illegal to employ an employee under
11 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
12 requires that, " ... the standard conditions of labor fixed by the commission shall be the ...
13 standard conditions of labor for employees. The employment of any employee ... under
14 conditions of labor prohibited by the order is unlawful."

15 99. California Labor Code § 204 requires that all wages earned by any person in any
16 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th
18 day of the month during which the labor was performed, and that all wages earned by any person
19 in any employment between the 16th and the last day, inclusive, of any calendar month, other
20 than those wages due upon termination of an employee, are due and payable between the 1st and
21 the 10th day of the following month. California Labor Code § 204 also requires that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday for the
23 next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff
24 and other aggrieved employees all wages due to them, including, but not limited to, overtime
25 wages, within any time period specified by California Labor Code § 204.

26 100. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
28

1 by violating various sections of the California Labor Code as set forth above.

2 101. As set forth above, Defendants have violated numerous provisions of both
3 the Labor Code sections regulating hours and days of work as well as the applicable order of the
4 Industrial Welfare commission. Accordingly, Plaintiff seeks the remedies set forth in Labor Code
5 § 558 for themselves, the State of California, and all other aggrieved employees.

6 102. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
7 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
8 assessment and collection of unpaid wages and civil penalties for Plaintiff and all aggrieved
9 employees, and the State of California against Defendants, in addition to other
10 remedies, plus reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 201,
11 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226.3, 226.7, 226.8, 510, 512, 1174, 1194, 1197,
12 1197.1, 1198, 1199, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001,
13 15-2001).

14 **NINTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES**
16 **(California Labor Code §2802)**
17 **(Plaintiff Against All Defendants and Does 1-100)**

18 103. Plaintiff incorporates by reference in this cause of action each allegation of all of
19 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
20 Does 1-100, and each of them, as follows:

21 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 “An employer shall indemnify his or her employee for all necessary expenditures
23 or losses incurred by the employee in direct consequence of the discharge of his
24 or her duties, or of his or her obedience to the directions of the employer, even
25 though unlawful, unless the employee, at the time of obeying the directions believed them
26 to be unlawful.”

27 105. Pursuant to California Labor Code §2802, Defendants were required to reimburse
28 Plaintiffs and the Class Members for necessary business expenditures. The purpose of this
statute is to prevent employers from passing their operating costs and expenses onto their
employees. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

106. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing

1 to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the
2 discharge of their job duties for Defendants' benefit. Specifically, Defendants failed to reimburse
3 Plaintiff and Class Members for expenses which included, but were not limited to, the cost
4 associated with the use of their personal cellular phones and personal vehicles for Defendants'
5 benefit.

6 107. In order to work as a Nurse for Defendants, Plaintiff and other Class Members
7 were required to use Defendants' mobile application and as such it is mandatory to have a cell
8 phone that is compatible with Defendants' mobile application. As a result, in the course of their
9 employment with Defendants, Plaintiff and Class Members incurred unreimbursed business
10 expenses which included, but were not limited to, the costs related to the use of their personal
11 cellular phones (using CareLinx mobile phone application and making phone calls/text messages
12 to/from CareLinx managers and third party health care facilities) and personal vehicles (mileage /
13 travel to and from Defendants' client third party health care facilities [i.e. skilled nursing
14 facilities]) all on behalf of and for the benefit of Defendants. These expenses are necessary to
15 complete the Nurses' principal job duties.

16 108. Although these expenses are necessary expenses incurred by Plaintiff and Class
17 Members Defendants failed to indemnify and reimburse Plaintiff and Class members for these
18 expenses as an employer is required to do under the laws and regulations of California.

19 109. As a direct and proximate cause of Defendants' conduct, Plaintiff and Class
20 Members have suffered substantial losses according to proof, as well as pre-judgment interest,
21 costs, and attorneys' fees for the prosecution of this action. Plaintiff therefore demands
22 reimbursement for expenditures or losses incurred by Plaintiff and Class Members in the
23 discharge of their job duties for Defendants, or their obedience to the directions of Defendants,
24 with interest at the statutory rate and costs under Cal. Lab. Code § 2802. Further, by unlawfully
25 failing to indemnify Plaintiff and Class Members the Defendants are liable for reasonable
26 attorneys' fees and costs under Labor Code § 2802(c).

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1 J. That the Defendants are found to have committed unfair and unlawful business
2 practices in violation of California Business & Professions Code §§ 17200, et seq., by their
3 violations of the Labor Code and Wage Order(s) as described above;

4 K. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
5 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
6 §§ 17200, *et seq.*;

7 L. That Defendants further be ordered and enjoined to cease and desist from unlawful
8 activities in violation of Business & Professions Code §§ 17200, *et seq.*;

9 M. That Defendants' violations as described above are found to have been willful;

10 N. That Plaintiff and Class Members receive an award of damages for the amount of
11 unpaid compensation (including for regular hours, overtime hours, and minimum wage for said
12 hours, reimbursement of necessary business expenses, and failure to provided duty-free meal
13 periods/rest breaks), interest thereon, and liquidated damages and/or statutory penalties as set
14 forth herein, according to proof at trial;

15 O. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
16 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
17 218.6, 225.5, 226, 226 (a), 226.8, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1,
18 2699, et seq., 2802; Code of Civil Procedure § 1021.5; and/or other applicable law;

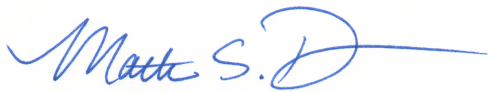
19 P. That Plaintiff and the Class Members be awarded pre-judgment and/or post-
20 judgment interest on all damages and other relief awarded pursuant to Labor Code § 218.6 and
21 Civil Code § 3287, and/or other applicable law;

22 Q. Actual and/or liquidated damages pursuant to Labor Code §226(e);

23 R. For penalties as provided, per violation, under the Private Attorneys General Act
24 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
25 accordance with the Act.

26 S. That Plaintiff and the Class Members receive an award of such other and further
27 relief as this Court may deem appropriate.

1
2 Dated: March 29, 2022

3 By: _____

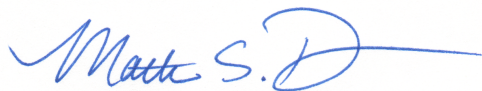
4 Matthew S. Da Vega
5 **DA VEGA | FISHER | MECHTENBERG, LLP**
6 Attorneys for the Plaintiff, the Proposed Plaintiff Class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury for all issues so triable.

Dated: March 29, 2022



By: _____

Matthew S. Da Vega
DA VEGA | FISHER | MECHTENBERG, LLP
Attorneys for the Plaintiff, the Proposed Plaintiff Class