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24 MELISSA HEBDON and ANNETTE LEWIS, on behalf of themselves and all other similarly
25 situated employees

26 **SUPERIOR COURT OF CALIFORNIA**

27 **COUNTY OF MONTEREY**

28 MELISSA HEBDON, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

MISSION HEALTHCARE SERVICES,
LLC; HEALTHY LIVING NETWORK
RESOURCES, LLC; HEALTHY LIVING
AT HOME - MONTEREY, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000226

**INDIVIDUAL, CLASS AND
REPRESENTATIVE ACTION**

**SECOND AMENDED COMPLAINT FOR
DAMAGES, CIVIL PENALTIES AND
FOR INJUNCTIVE RELIEF**

COMES NOW Plaintiffs MELISSA HEBDON and ANNETTE LEWIS, who complain and allege against the above-captioned Defendants as follows:

1. Plaintiff Melissa Hebdon (“Plaintiff Hebdon”) is a competent adult who is, and at all times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff was employed by Defendants from approximately October 12, 2020, through approximately July 30, 2021, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and at all times as an employee not exempted from the California Labor Code. Plaintiff Hebdon is, and at all relevant times was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

2. Plaintiff Annette Lewis (“Plaintiff Lewis”) is a competent adult who is, and at all times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff was employed by Defendants from approximately May 21, 2018, through approximately September 30, 2021, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and at all times as an employee not exempted from the California Labor Code. Plaintiff Lewis is, and at all relevant times was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

3. Defendant MISSION HEALTHCARE SERVICES, LLC (“MISSION”) is, and at all times mentioned in this complaint has been, a corporation incorporated under the laws of the State of California and registered to do business in the State of California. Plaintiffs are informed and believe and thereon allege that MISSION is authorized to and does conduct business throughout the State of California, has purposefully availed itself of the privileges and benefits of doing business in the County of Monterey, State of California, and thus is subject to jurisdiction in the County of Monterey, in the State of California.

4. Defendant HEALTHY LIVING NETWORK RESOURCES, LLC (“HEALTHY

1 LIVING NETWORK””) is, and at all times mentioned in this complaint has been, a
2 corporation incorporated under the laws of the State of Delaware and registered to do business
3 in the State of California. Plaintiffs are informed and believe and thereon allege that
4 HEALTHY LIVING NETWORK is authorized to and does conduct business throughout the
5 State of California, has purposefully availed itself of the privileges and benefits of doing
6 business in the County of Monterey, State of California, and thus is subject to jurisdiction in
7 the County of Monterey, in the State of California.

8 5. Defendant HEALTHY LIVING AT HOME - MONTEREY, LLC (“HEALTHY
9 LIVING”) is, and at all times mentioned in this complaint has been, a corporation incorporated
10 under the laws of the State of California and registered to do business in the State of
11 California. Plaintiffs are informed and believe and thereon allege that HEALTHY LIVING is
12 authorized to and does conduct business throughout the State of California, has purposefully
13 availed itself of the privileges and benefits of doing business in the County of Monterey, State
14 of California, and thus is subject to jurisdiction in the County of Monterey, in the State of
15 California.

16 6. Plaintiffs are ignorant of the true names, identities, capacities and relationships of
17 the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants
18 by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of
19 these fictitiously named Defendants are responsible in some manner for the occurrences herein
20 alleged, and that Plaintiffs’ and the Class Members’ damages as herein alleged were
21 proximately caused by DOES 1 through 50. Plaintiffs will amend this Complaint to allege the
22 true names and capacities of said DOE Defendants when such information is ascertained.
23 Each reference to “Defendants,” and each reference to any particular Defendant herein, shall
24 be construed to refer to all Defendants, including, but not limited to, all of those fictitiously
25 named herein as a “DOE” Defendant, and each of them.

26 7. Plaintiffs are informed and believe, and thereon allege, that each of the
27 Defendants herein was at all times relevant to this action the agent, employee, representative,
28 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of

1 the Defendants herein was at all times acting within the course and scope of that relationship.
2 Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants
3 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
4 herein. The conduct of each of the Defendants was at all times herein in accordance with and
5 represents the official policy of Defendants. Additionally, at all times herein mentioned,
6 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
7 other Defendants, which proximately caused the damages herein alleged. Plaintiffs are further
8 informed and believe, and thereon allege, that all of the Defendants jointly employed the
9 Plaintiffs and Class Members herein and/or carried out a joint scheme, business plan and/or
10 uniform policy, and the acts and omissions of each Defendant are legally attributable to the
11 other Defendants such that they are deemed a single integrated enterprise and agents of one
12 another so that all Defendants are each jointly and severally liable for the acts and omissions
13 hereinafter alleged.

14 8. Defendants MISSION, HEALTHY LIVING NETWORK, HEALTHY LIVING,
15 and DOES 1 through 50 (collectively referred to herein as “Defendants”) are, and at all times
16 herein were, “persons” as defined in California Business and Professions Code § 17201.

17 9. At all times herein, Defendants directly or indirectly, or through an agent or
18 representative, exercised control over the wages, hours and/or working conditions of the
19 Plaintiffs and the Class Members, and directly or indirectly or through an agent or other person
20 engaged, suffered, or permitted Plaintiffs and the Class Members to work.

21 **JURISDICTION AND VENUE**

22 10. This Court has jurisdiction over this action pursuant to Article VI, section 10 of the
23 California Constitution. Plaintiffs bring this Complaint for violations of California law occurring
24 in the County of Monterey, including without limitation violations of the California Labor Code,
25 Business and Professions Code, Civil Code and common law, and the amount in controversy
26 exceeds the minimum jurisdictional amount of the Superior Court. Based on information and
27 belief, Defendants have intentionally availed themselves of the benefits and privileges available
28 within this State, economic or otherwise, so as to render the exercise of jurisdiction over them by

1 the courts of the State of California consistent with traditional notations of fair play and substantial
2 justice. Accordingly, this Court has jurisdiction over the parties and claims in this matter.

3 11. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial district
4 because Defendants now, and all times relevant herein, reside and/or transact business in the
5 County of Monterey. The conduct alleged herein and the damages resulting therefrom occurred in
6 the County Monterey, and at all times herein Defendants maintained their principal place of
7 business in the County of Monterey, California.

8 **ADMINISTRATIVE PROCEEDINGS**

9 12. Pursuant to California Labor Code § 2699.3, Plaintiff Hebdon gave written notice
10 on September 28, 2021, by electronic filing with the Labor and Workforce Development Agency,
11 and by certified mail to Defendants MISSION, HEALTHY LIVING NETWORK, and
12 HEALTHY LIVING, of factual and legal basis for the labor law violations alleged in this
13 Complaint.

14 13. Pursuant to California Labor Code § 2699.3, Plaintiff Hebdon seeks all applicable
15 penalties for violations which the Labor and Workforce Development Agency has failed or elected
16 not to investigate and/or failed or elected not to issue a citation. Plaintiff Hebdon has exhausted all
17 administrative remedies required by the Labor and Workforce Development Agency as a
18 prerequisite to filing this action.

19 14. Plaintiff Hebdon has met all jurisdictional requirements for proceeding with her
20 claims under the California Fair Employment and Housing Act (the “FEHA”), including without
21 limitation, California Government Code §§ 12960 and 12965, by timely filing an administrative
22 complaint against Defendants with the California Department of Fair Employment and Housing
23 (the “DFEH”) on or about January 24, 2022. On January 24, 2022, Plaintiff Hebdon received her
24 right-to-sue letter from the DFEH against Defendant. True and correct copies of the DFEH
25 complaint and right-to-sue letter are collectively attached hereto as **Exhibit A**.

26 **FACTUAL ALLEGATIONS PERTAINING TO PLAINTIFF HEBDON’S**
27 **INDIVIDUAL CLAIMS**

28 15. On or about September 21, 2020, Plaintiff Hebdon was extended an offer of
employment from Defendants via Darcie Keller, Recruiter for Healthy Living Network. The

1 written offer letter stated that Plaintiff Hebdon would be hired for the salaried, exempt position of
2 “Executive Director (RN) – Home Health” and would be working at the office of Defendant
3 HEALTHY LIVING AT HOME - MONTEREY, LLC, located at 2150 Garden Road, Suite B-2
4 in Monterey, California. The offer letter included an attached job description containing the
5 following Position Overview:

6 The Executive Director is responsible for supervising professional
7 and/or technical staff; monitoring and evaluating health programs for
8 delivery cost, effectiveness, and compliance with laws, regulations,
9 and standards; assessing community health care needs and
10 developing or modifying service delivery to meet those needs,
11 assist in developing correspondence and technical material for
public distribution. Additionally, the Executive Director is
responsible for the overall direction of home health clinical
services, establishes, implements and evaluates goals and
objectives for home health services that meet and promote the
standards of quality.

12 16. The above-referenced employment offer required Plaintiff Hebdon to begin her
13 employment with Defendants on October 12, 2020, giving Plaintiff Hebdon and her family less
14 than three weeks to relocate from Juneau, Alaska to Monterey, California. Plaintiff Hebdon
15 expressed concern to Ms. Keller regarding the short relocation timeline and costs, the ability to
16 find housing, and the high cost of living in Monterey County. In response, Defendants agreed to
17 pay for Plaintiff Hebdon’s relocation costs directly and assured Plaintiff Hebdon that her starting
18 base salary of \$130,000.00 per year would be reevaluated for a significant increase after 60 days of
19 employment.

20 17. At all times during Defendants’ recruitment of Plaintiff Hebdon, the position was
21 presented as an exempt management position whereby Plaintiff Hebdon would provide
22 supervision, guidance, and counseling to various workers employed by Defendants to provide in-
23 home healthcare to Defendants’ clients, including Clinical Supervisors/Nursing Supervisors,
24 healthcare coordinators, and agency operations employees. At absolutely no point in the
25 recruitment or offer process was there any mention of Plaintiff Hebdon's duties encompassing
26 nursing or case management duties directly for Defendants’ clients.

27 18. Following her relocation and employment with Defendants, however, Plaintiff
28 Hebdon soon learned that Defendants had misrepresented the time, character, and compensation of

1 work that she would perform while employed for Defendants. In addition to not receiving the
2 aforementioned substantial raise after 60 days of employment, Plaintiff Hebdon was forced to
3 spend substantially more than half her time performing non-exempt nursing and case management
4 tasks for Defendants' clients. Due to Defendants' deliberate understaffing of nurses and other
5 clinical staff, Plaintiff Hebdon was forced to work seven days per week, 11 to 13 hours per day on
6 most days, in order to perform non-exempt nursing/clinical duties for Defendants' clients.

7 Because Plaintiff Hebdon was hired as a purportedly exempt employee, she did not receive any
8 overtime pay. Consequently, nearly all of the subordinate clinicians working in Plaintiff Hebdon's
9 department earned higher hourly and gross wages than Plaintiff Hebdon each pay period while
10 working far fewer hours. At all times relevant herein, Plaintiff Hebdon was misclassified as an
11 exempt employee despite being required to spend well above 50% of her workday performing
12 non-exempt duties. Because of the misclassification of Plaintiff Hebdon as an exempt employee,
13 Defendants failed to pay minimum and overtime wages, failed to provide timely meal and rest
14 periods, and failed to provide compliant wage statements.

15 19. During her employment, Plaintiff Hebdon communicated her concerns to
16 Defendants regarding the potential negative impacts to patient safety resulting from Defendants'
17 severe understaffing of nurses and other clinical staff, emphasizing the urgency of the matter.

18 20. When Plaintiff Hebdon complained about having to perform primarily non-exempt
19 duties without appropriate compensation (i.e., her misclassification as an exempt employee), the
20 potential risk to patient safety caused by Defendants' severe understaffing of nurses and other
21 clinical staff, and the misrepresentations by Defendants concerning the time, character, and
22 compensation of work Plaintiff Hebdon was hired to perform, she was forced to take unpaid
23 administrative leave and was subsequently terminated. Despite having received consistently
24 positive evaluations and praise from the employer, Defendants justified the forced leave and
25 termination with unfounded allegations of insubordination. Such allegations were merely pretext
26 for Defendants' unlawful retaliation against Plaintiff Hebdon for having complained about
27 Defendants' misrepresentations in hiring Plaintiff Hebdon, about being forced to perform
28 primarily non-exempt tasks without proper compensation, and about potential risks to patient

safety caused by Defendants' severe understaffing of nurses and other clinical staff.

21. In addition to the aforementioned misrepresentations made by Defendants when inducing Plaintiff Hebdon to relocate from Alaska to work for Defendants, Plaintiff Hebdon is informed and believes and thereon alleges that Defendants made further intentional misrepresentations concerning her salary because of Plaintiff's sex (female). Specifically, Plaintiff Hebdon was told upon hire that \$130,000.00 per year was the highest starting salary that the company could extend to her. Following Plaintiff Hebdon's exemplary 6-month performance evaluation, wherein her manager noted that Plaintiff Hebdon had "exceeded expectations in all performance categories" and that "her teamwork and initiative has been exceptional," Plaintiff Hebdon was ultimately able to negotiate a raise in her base salary to \$149,700.00. During this negotiation process, Plaintiff Hebdon's manager represented \$149,700.00 to be the maximum salary that the company would pay to any director. However, Plaintiff Hebdon subsequently learned of at least one male Executive Director in her region who was, at the time, earning a base salary of at least \$185,000.00 per year to work in same geographic vicinity as Plaintiff Hebdon. Plaintiff Hebdon is informed and believes and thereon alleges that this male Executive Director had comparable work experience and credentials to Plaintiff Hebdon when hired less than a year prior to Plaintiff Hebdon's date of hire, yet he received a starting base salary that was \$55,000.00 per year higher than the starting salary offered to Plaintiff Hebdon. Plaintiff Hebdon believes that this discrepancy between the starting salary offered by Defendants to Plaintiff Hebdon versus that offered to her aforementioned male counterpart was due to Plaintiff Hebdon's sex/gender (female), as was her employer's continued practice of paying Plaintiff Hebdon less than her male counterpart for substantially similar work.

22. Plaintiff Hebdon is further informed and believes that none of her male colleagues, who was employed as an Executive Director during the same time period as Plaintiff Hebdon, was required by Defendants to spend more than half of his time performing non-exempt nursing and case management tasks.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action on behalf of themselves, the general public, and all

1 other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382.

2 All claims alleged herein arise under California law for which Plaintiffs seeks relief authorized
3 by California law. Plaintiffs seek to represent subclasses composed of and defined as follows:

4 A. Meal Period Subclass

5 All current and former employees of Defendants who
6 worked for Defendants in California and who worked any
7 work shift of more than 5 hours at any time within three (3)
years before the commencement of this action through the
date of the order granting class certification.

8 B. Rest Period Subclass

9 All current and former employees of Defendants who
10 worked for Defendants in California and who worked any
11 work shift of at least 3.5 hours or more at any time within
three (3) years before the commencement of this action
through the date of the order granting class certification.

12 C. Overtime Regular Rate Subclass:

13 All current and former employees of Defendants who
14 worked for Defendants in California and who received a
15 non-discretionary incentive payment which was not
16 incorporated into the calculation of the regular rate of pay
for overtime premium wages at any time within four (4)
years before the commencement of this action through the
date of the order granting class certification.

17 D. Sick Pay Regular Rate Subclass:

18 All current and former employees of Defendants who
19 worked for Defendants in California and who were paid
20 sick pay wages during the same time period in which the
21 employee earned non-discretionary incentive wages, and
whose employment ended (either voluntarily or
involuntarily) at any time within three (3) years before the
commencement of this action through the date of the order
granting class certification.

22 E. Vacation Pay Regular Rate Subclass:

23 All current and former employees of Defendants who
24 worked for Defendants in California and who were paid
25 vacation wages during the same time period in which the
26 employee earned non-discretionary incentive wages, and
27 whose employment ended (either voluntarily or
involuntarily) at any time within three (3) years before the
commencement of this action through the date of the order
granting class certification.

28 F. Weekly Wages Subclass:

1 All current and former employees of Defendants who were
2 assigned to work for one or more clients of Defendants in
3 California and who were not paid all wages on a weekly
4 basis at any time during the Class Period.

5 G. Wage Statement Subclass:

6 All current and former employees of Defendants in
7 California who were paid any wages for non-exempt work
8 at any time beginning one (1) year before the
9 commencement of this action through the date of the order
10 granting class certification.

11 24. Plaintiffs reserve the right under Code of Civil Procedure § 382 to amend or
12 modify the class description with greater specificity, further division into subclasses or with
13 limitations to particular issues.

14 25. This action has been brought and may be properly maintained as a class action
15 under the provisions of Code of Civil Procedure § 382 because the questions of law and fact at
16 issue herein are common and of general interest to Plaintiffs and the Class Members, the
17 parties are numerous, and it would be impracticable to bring the claims alleged herein before
18 the court as individual claims or through some other than a class action.

19 A. Numerosity

20 26. The Class Members are so numerous that joinder of all the members of the class
21 is not feasible and not practical. While the precise number of Class Members has not been
22 determined at this time, Plaintiffs are informed and believe that Defendants currently employ,
23 and during the Class Period regularly employed, more than 50 employees in California in
24 hourly wage or otherwise non-exempt positions. The identities of the Class Members are
25 readily ascertainable by inspection of Defendants' employment records. Moreover, joinder of
26 all members of the proposed class is not practicable, and individual damages for each member
27 is not anticipated to be sufficiently high to allow for practical resolution through
28 individualized litigation.

B. Commonality and Predominance

27 27. There are questions of law and fact common to each Class Member that
28 predominate over any questions affecting only individual Class Members. These common

1 questions of law and fact include, without limitation:

2 a. Whether Defendants violated California Labor Code §§ 226.7 and 512
3 and the Wage Order by failing to provide a 30-minute duty-free meal period within the first
4 five hours of each workday to Plaintiffs and Class Members on days they worked in excess of
5 five hours, and failing to compensate Plaintiffs and Class Members one hour of wages at their
6 regular rate of pay for each such missed meal period that was not provided;

7 b. Whether Defendants violated Labor Code § 226.7 and the Wage Order
8 by failing to provide a paid 10 minute duty-free rest period to Plaintiffs and Class Members for
9 every four-hour work period or major fraction thereof, by either not paying wages to Plaintiff
10 and Class Members or reducing their wages for time spent during any rest period that was
11 provided, and by failing to compensate Plaintiff and Class Members one hour of wages for
12 such missed and/or unpaid/underpaid rest periods;

13 c. Whether Defendants violated Labor Code §§ 510, 558, 1194, and the
14 IWC Wage Order by failing to pay Plaintiffs and Class Members overtime wages at the correct
15 regular rate of pay that incorporated any non-discretionary incentive payments;

16 d. Whether Defendants violated Labor Code §§ 201-203 and 246 by failing
17 to pay Plaintiffs and the Class Members their sick pay at their regular rate of pay that
18 incorporated any non-discretionary incentive payments;

19 e. Whether Defendants violated Labor Code §§ 201-203 and 227.3 by
20 failing to pay Plaintiffs and the Class Members their vacation pay at their regular rate of pay
21 that incorporated any non-discretionary incentive payments;

22 f. Whether Defendants violated California Labor Code § 226 by failing to
23 provide accurate itemized wage statements to Plaintiffs and the Class Members containing all
24 of the information required by Labor Code § 226;

25 g. Whether Defendants violated Labor Code §§ 201, 201.3, 202, and 204 by
26 failing to timely pay Plaintiffs and the Class Members for all wages and hours worked during
27 their employment;

28 h. Whether Defendants violated Labor Code § 1198 and the Wage Order for

1 failing to keep accurate records with respect to each employee;

2 i. Whether Defendants operated, at all relevant times, as a “Temporary
3 services employer” as defined by Labor Code § 201.3(a)(1).

4 j. Whether Defendants’ conduct as alleged throughout this complaint was
5 willful or reckless;

6 k. The appropriate amount of damages, restitution and/or monetary
7 penalties resulting from Defendants’ violations of California law;

8 l. Whether Plaintiffs and the Class members are entitled to equitable relief,
9 including but not limited to, injunctive and declaratory relief, pursuant to Business and
10 Professions Code §§ 17200 et seq.; and

11 m. Whether Defendants violated Business and Professions Code §§ 17200 et
12 seq. by failing to provide meal and rest periods mandated by Labor Codes § 226.7, 512 and the
13 Wage Order; by failing to compensate Plaintiffs and Class Members one (1) hour of pay for
14 meal periods and rest periods that were not provided, by failing to incorporate all non-
15 discretionary payments in Plaintiffs’ and the Class Members’ regular rate of pay for purposes
16 of calculating overtime, sick, and vacation pay; failing to provide complete and accurate wage
17 statements to Plaintiffs and the Class Members in accordance with Labor Code § 226; by
18 failing to pay Plaintiffs and the Class Members all wages due upon termination; and by failing
19 to timely provide all wages due to Plaintiffs and the Class Members in accordance with Labor
20 Code § 201.3.

21 **C. Typicality**

22 28. The claims of Plaintiffs are typical of the claims of the Class Members.
23 Plaintiffs and the Class Members sustained injuries and damages arising out of and caused by
24 the Defendants’ common course of conduct in violation of statutes, common law, wage orders
25 and/or regulations that have the force and effect of law, as alleged herein. Plaintiffs have a
26 well-defined community of interest with the Class Members and are qualified to, and will,
27 fairly and adequately protect the interests of each Class Member.

28 **D. Adequacy of Representation**

1 29. Plaintiffs will fairly and adequately represent and protect the interests of the
2 Class Members. Plaintiffs acknowledge their obligation to make known to the Court any
3 relationship, conflict or difference with any Class Member. Plaintiffs have incurred, and
4 throughout this action will continue to incur, costs and attorney's fees necessarily expended
5 for the prosecution of this action for the substantial benefit of each Class Members. Counsel
6 who represent Plaintiffs is competent and experienced in litigating class actions, versed in the
7 rules governing class action discovery certification, settlement and trial, and will vigorously
8 and competently pursue the claims of Plaintiffs and the Class Members.

9 **E. Superiority**

10 30. The nature of this action makes the use of class action adjudication superior to
11 other methods. The class action will achieve economies of time, effort and expense as
12 compared with separate individual lawsuits on behalf of each Class Member, and it will avoid
13 inconsistent outcomes because the same issues will be adjudicated in the same manner and at
14 the same time for the entire class.

15 **F. Public Policy Consideration**

16 31. Employers in the State of California violate employment and labor laws on a
17 daily basis. Employees are often intimidated and afraid to assert their rights out of fear that
18 they will be subjected direct or indirect retaliation by their employers. Former employees
19 (those who are no longer employed by a particular employer who had subjected them to
20 employment and labor law violations) are fearful of brining actions against their former
21 employers because they believe their former employers might damage their future endeavors
22 through negative references and/or other means. Class actions provide Class Members who
23 are not named in the complaint with vindication of their rights while also protecting their
24 privacy and shielding them from retaliation.

25 **FIRST CAUSE OF ACTION**
26 **Misrepresentation**
(Labor Code § 970)
(Plaintiff Hebdon against Defendants)

27 32. Plaintiff Hebdon alleges and incorporates by reference all of the allegations
28 contained in the preceding paragraphs as though fully set forth herein.

1 33. California Labor Code § 970 provides, in pertinent part: “employers are
2 prohibited from inducing employees to change their residence to, from or within California, by
3 making ‘knowingly false representations’ concerning in part: (1) the kind, character, or
4 existence of the work; or, (2) the length of the time the work will last; or, (3) the compensation
5 of the work; or (4) the sanitary or housing conditions relating to or surrounding the work.”

6 34. As alleged herein, Defendants used knowingly false representations concerning
7 the time, character, and compensation of work to influence, persuade or engage Plaintiff
8 Hebdon to accept employment with Defendants and thereby relocate her place of residence
9 from Juneau, Alaska to Monterey, California.

10 35. Plaintiff Hebdon justifiably relied upon such misrepresentations by relocating
11 her residence, along with her family, from Alaska to accept employment with Defendants in
12 Central California.

13 36. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiff
14 Hebdon suffered damages.

15 37. California Labor Code §972 provides that: “In addition to such criminal penalty,
16 any person, or agent or officer thereof who violates any provision of section 970 is liable to the
17 party aggrieved, in a civil action, for double damages resulting from such misrepresentations.”
18 Plaintiff Hebdon is therefore entitled to double damages resulting from such
19 misrepresentations.

20 38. WHEREFORE, Plaintiff Hebdon requests relief as herein prayed for.

21 **SECOND CAUSE OF ACTION**
22 **Violation of Equal Pay Act**
 (Labor Code § 1197.5)
23 **(Plaintiff Hebdon against Defendants)**

24 39. Plaintiff Hebdon alleges and incorporates by reference all of the allegations
25 contained in the preceding paragraphs as though fully set forth herein.

26 40. Plaintiff Hebdon is informed and believes and thereon alleges that, from at least
27 September 21, 2020 through at least July 30, 2021, Defendants discriminated against Plaintiff
28 Hebdon in violation of the California Equal Pay Act, California Labor Code § 1197.5, by
offering and paying Plaintiff Hebdon an annual base compensation that is less than the rate

1 paid to employees of the opposite sex/gender for substantially similar work, considering the
2 overall combination of skill, effort, and responsibility required, under similar working
3 conditions.

4 41. Defendants subjected Plaintiff Hebdon to discriminatory pay policies, including
5 but not limited to a discriminatory system of determining compensation and promotions,
6 resulting in non-male employees, such as Plaintiff Hebdon, receiving significantly lower
7 compensation than their male counterparts while employed in the same position and
8 performing substantially the same tasks as their male counterparts.

9 42. Plaintiff Hebdon is informed and believes and thereon alleges that the
10 differential between her pay and that of her male colleagues was not due to seniority, merit,
11 the quantity or quality of production, or a bona fide factor other than sex, such as education,
12 training, or experience, but rather was due to Plaintiff Hebdon's sex/gender. In the alternative,
13 to the extent that Defendants relied upon one or more of these factors in determining Plaintiff
14 Hebdon's annual compensation, said factor(s) were not reasonably applied and did not account
15 for the entire wage differential.

16 43. Plaintiff Hebdon is informed and believes and thereon alleges that the foregoing
17 conduct constitutes a willful violation by Defendants of the California Equal Pay Act,
18 California Labor Code § 1197.5.

19 44. As a direct, foreseeable, and proximate result of Defendants' disparate
20 compensation of Plaintiff Hebdon based on her sex/gender, she has suffered and continues to
21 suffer compensatory damages, including without limitation, lost wages, loss of future earnings
22 and earning capacity, loss of bonuses and deferred compensation, and loss of future
23 advancement, in the amount of at least \$25,000.00, according to proof at the time of trial,
24 which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited
25 civil action. Plaintiff Hebdon claims such amounts as damages, together with prejudgment
26 interest accruing from the date of the filing of this action pursuant to California Civil Code
27 Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment
28 interest.

45. WHEREFORE, Plaintiff Hebdon requests relief as herein prayed for.

THIRD CAUSE OF ACTION
Discrimination Based on Sex in Violation of the FEHA
(Plaintiff Hebdon against Defendants)

46. Plaintiff Hebdon alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

47. At all times mentioned herein, the FEHA, California Government Code Section 12900, et seq., was in full force and effect and was binding on Defendants, as Defendants regularly employed five or more persons.

48. California Government Code Section 12940(a) prohibits an employer from discriminating against a person in compensation or in terms, conditions, or privileges of employment because of that person's sex or gender.

49. As alleged herein, Defendants discriminated against Plaintiff Hebdon on account of her sex/gender (female), including Defendants' overt preferential treatment of Plaintiff Hebdon's male colleagues with regard to annual compensation for substantially similar work under similar working conditions.

50. As alleged herein, Defendants further demonstrated overt preferential treatment of Plaintiff Hebdon's male counterparts in that none of the male Executive Directors were required by Defendants to spend more than half of their time performing non-exempt nursing and case management tasks as was required of Plaintiff Hebdon each day.

51. As a direct, foreseeable, and proximate result of Defendants' disparate treatment of Plaintiff Hebdon based on her sex/gender, she has suffered and continues to suffer compensatory damages, including without limitation, lost wages, loss of future earnings and earning capacity, loss of bonuses and deferred compensation, and loss of future advancement, in the amount of at least \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff Hebdon claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

1 52. As a proximate result of Defendants' discrimination against Plaintiff, she has
2 been forced to hire attorneys to prosecute the claims alleged herein and has incurred, and is
3 expected to continue to incur, attorneys' fees. Pursuant to California Government Code
4 Section 12965(b), Plaintiff Hebdon requests the award of attorneys' fees against Defendants.

5 53. Defendants' conduct as described above was willful, knowing, and intentional
6 and done with reckless indifference to those statutorily protected rights of Plaintiff Hebdon and
7 others. In engaging in such conduct, Defendants were guilty of malice, oppression, and fraud
8 towards Plaintiff Hebdon, thereby entitling Plaintiff Hebdon to an award of punitive and
9 exemplary damages in an amount to be proven at trial.

10 54. As a further direct and proximate result of Defendants' conduct, it has become
11 necessary for Plaintiff Hebdon to expend sums to hire an attorney to enforce her rights, which
12 are the subject of this cause of action, in an amount to be proven at trial.

13 55. WHEREFORE, Plaintiff Hebdon requests relief as herein prayed for.

14 **FOURTH CAUSE OF ACTION**

15 **Retaliation**

16 **(California Labor Code § 1102.5)**

17 **(Plaintiff Hebdon against Defendants)**

18 56. Plaintiff Hebdon alleges and incorporates by reference all of the allegations
19 contained in the preceding paragraphs as though fully set forth herein.

20 57. Labor Code § 1102.5(b) states in relevant part that an employer "shall not
21 retaliate against an employee for disclosing information. . . to a person with authority over the
22 employee or another employee who has the authority to investigate, discover, or correct the
23 violation or noncompliance . . . if the employee has reasonable cause to believe that the
24 information discloses a violation of state or federal statute..."

25 58. As alleged above, Plaintiff complained to Defendants about being forced to
26 perform primarily non-exempt tasks each day without being paid daily or weekly overtime
27 wages like the nurses and other clinicians who performed the same daily tasks. Defendants
28 knew or should have known that Plaintiff was complaining about Labor Code violations
arising from her misclassification as an exempt employee. Plaintiff Hebdon further
complained about Defendants' misrepresentations in hiring Plaintiff and about the potential

1 risks to patient safety caused by Defendants' severe understaffing of nurses and other clinical
2 staff. In retaliation for her complaints, Plaintiff was wrongfully terminated in violation of
3 Labor Code § 1102.5.

4 59. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has
5 suffered and continues to suffer compensatory damages, including without limitation, lost
6 wages, loss of future earnings and earning capacity, loss of bonuses, commissions, loss of
7 future advancement, in the amount of at least \$25,000.00, according to proof at the time of
8 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
9 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
10 interest accruing from the date of the filing of this action pursuant to California Civil Code
11 Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment
12 interest.

13 60. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has
14 been forced to hire attorneys to prosecute the claims alleged herein and has incurred, and is
15 expected to continue to incur, attorneys' fees. Pursuant to California Labor Code 1102.5(j),
16 Plaintiff requests the award of attorneys' fees against Defendants.

17 61. Defendants committed the acts alleged herein maliciously, fraudulently, and
18 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
19 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
20 punitive damages in an amount according to proof.

21 62. WHEREFORE, Plaintiff requests relief as herein prayed for.

22 **FIFTH CAUSE OF ACTION**
23 **Wrongful Discharge in Violation of Public Policy**
24 **(Plaintiff Hebdon against Defendants)**

25 63. Plaintiff Hebdon alleges and incorporates by reference all of the allegations
26 contained in the preceding paragraphs as though fully set forth herein.

27 64. As alleged herein, Defendants unlawfully retaliated against Plaintiff Hebdon by
28 forcing her to take unpaid administrative leave and, ultimately, terminating her employment,
after she complained about having to perform primarily non-exempt duties without appropriate

1 compensation (i.e., her misclassification as an exempt employee), potential risks to patient safety
2 caused by Defendants' severe understaffing of nurses and other clinical staff, and the
3 misrepresentations by Defendants concerning the time, character, and compensation of work
4 Plaintiff Hebdon would perform for Defendants upon relocation from Alaska to California.

5 65. As a direct and proximate result of Defendants' unlawful discharge and
6 retaliation against Plaintiff Hebdon in violation of Labor Code §1102.5(b), Plaintiff Hebdon
7 has suffered economic damages in an amount to be proven at trial. Such damages include, but
8 are not limited to, lost past wages, lost future wages, and certain other incidental and
9 consequential expenses and losses.

10 66. As a further direct and proximate result of Defendants' conduct, Plaintiff
11 Hebdon has suffered general, special and non-economic damages, including but not limited to,
12 severe emotional distress, humiliation and anxiety, in an amount to be proven at trial.

13 67. As a further direct and proximate result of Defendants' conduct, it has become
14 necessary for Plaintiff Hebdon to expend sums to hire an attorney to enforce her rights, which
15 are the subject of this cause of action, in an amount to be proven at trial.

16 68. Defendants' conduct as described above was willful, knowing, and intentional
17 and done with reckless indifference to those statutorily protected rights of Plaintiff Hebdon and
18 others. In engaging in such conduct, Defendants were guilty of malice, oppression, and fraud
19 towards Plaintiff Hebdon, thereby entitling Plaintiff Hebdon to an award of punitive and
20 exemplary damages in an amount to be proven at trial.

21 69. WHEREFORE, Plaintiff Hebdon requests relief as herein prayed for.

22 **SIXTH CAUSE OF ACTION**
23 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
24 **(Labor Code §§ 226.7 and 1198; and the Wage Order)**
25 **(Plaintiffs and the Meal Period Subclass against Defendants)**

26 70. Plaintiffs allege and incorporate by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth herein.

28 71. California Labor Code § 226.7 provides that no employer shall require an
employee to work during any meal period mandated by an applicable order of the Industrial
Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to

1 provide an employee a meal period or rest period in accordance with an applicable order of the
2 Industrial Welfare Commission, the employer shall pay the employee one additional hour of
3 pay at the employee's regular rate of compensation for each workday that the meal or rest
4 period is not provided.

5 72. At all times relevant to this action, the Wage Order and California Labor Code §
6 1198 provided that an employer may not require, cause or permit an employee to work for a
7 period of more than five (5) hours per day without providing the employee with an
8 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
9 period per day of the employee is not more than six (6) hours, the meal period may be waived
10 by mutual consent of both the employer and the employee.

11 73. Throughout the Class Period, Defendants and/or their authorized supervisors
12 repeatedly failed to comply with the meal period requirements of the Labor Code and the
13 Wage Order by failing to provide Plaintiffs and Class Members with a thirty (30) minute
14 uninterrupted duty-free meal period within five (5) hours of the beginning of their shift, in
15 violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to
16 compensate Plaintiffs and Class Members one (1) hour of wages for any of the missed meal
17 periods not provided by Defendants, as alleged above, which failure also violated Labor Code
18 §§ 512 and 226.7 and the Wage Order.

19 74. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiffs and
20 Class Members are entitled to recover from Defendants one (1) additional hour of pay at their
21 regular hourly rate of compensation for each meal period violation as alleged herein.

22 75. Defendants were at all times aware of the Labor Code and Wage Order
23 requirements that they provide Plaintiffs and Class Members with such meal periods and were
24 aware that Plaintiffs and Class Members regularly worked more than five (5) hours in a shift
25 without receiving mandated meal periods. Thus, Defendants willfully violated the provisions
26 of Labor Code §§ 226.7 and 512 and the Wage Order.

27 76. As a result of the unlawful conduct of Defendants, Plaintiffs and Class Members
28 have been deprived of wages and other compensation in amounts to be determined at trial, and

are entitled to recovery of such amounts.

77. WHEREFORE, Plaintiffs and the Class Members request relief as herein prayed for.

SEVENTH CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and The Wage Order)
(Plaintiffs and the Rest Period Subclass against Defendants)

78. Plaintiffs allege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

79. California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission. Labor Code Section 226.7 further provides that 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 workday that the meal or rest period is not provided.

80. The Wage Order and California Labor Code § 226.7 provides that every employer shall provide and shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, and that the rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, unless the total daily work time is less than three and one-half hours.

81. Throughout the Class period, on days in which Plaintiffs and Class Members worked at least three and one-half hours, Defendants regularly and repeatedly required Plaintiffs and Class Members to work four (4) hours and/or a major fraction thereof without providing, authorizing or permitting at least one ten (10) minute rest period during which Plaintiffs and the Class Members were relieved of all duties (hereafter "rest period") per each four (4) hour period, or a major fraction thereof, worked.

82. At all times relevant herein, Defendants failed to pay Plaintiffs and Class Members a premium of one hour pay at Plaintiffs' and Class Members' regular rate of pay for

1 each rest period not provided, authorized, and permitted as alleged herein, pursuant to Labor
2 Code § 226.7.

3 83. Defendants were at all times aware of the Labor Code and Wage Order
4 requirements that they provide Plaintiffs and Class Members with the rest periods described
5 above and were aware that Plaintiffs and Class Members regularly worked more than four (4)
6 hours or major fraction thereof without receiving mandated rest periods. Defendants therefore
7 at all times willfully violated the provisions of Labor Code § 226.7 and the Wage Order.

8 84. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiffs and
9 Class Members are entitled to recover from Defendants one (1) additional hour of pay at their
10 regular hourly rate of compensation for each workday that a rest period was not provided. As a
11 result of the unlawful conduct of Defendant, Plaintiffs and Class Members have been deprived
12 of wages and compensation in amounts to be determined at trial, and are entitled to recovery
13 of such amounts.

14 85. WHEREFORE, Plaintiffs and Class Members request relief as herein prayed for.

15 **EIGHTH CAUSE OF ACTION**
16 **Failure to Pay Hourly and Overtime Wages**
(California Labor Code §§ 1194 and 1198; and The Wage Order)
17 **(Plaintiffs and the Overtime Regular Rate Subclass against Defendants)**

18 86. Plaintiffs allege and incorporate by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth herein.

20 87. Plaintiffs base this cause of action upon Defendants' willful and intentional
21 violations of the California Labor Code and Industrial Welfare Commission requirements that
22 Defendants pay Plaintiffs and Class Members for all hours worked, including the requirement
23 to pay premium overtime wages to Plaintiffs and Class Members for work Plaintiffs and Class
24 Members performed in excess of eight hours in a workday and/or 40 hours in a workweek,
and/or on the seventh consecutive day in a workweek.

25 88. Pursuant to Labor Code § 204, as well as other applicable laws and regulations,
26 and public policy, an employer must timely pay its employees for all hours worked.

27 89. Labor Code § 1198 provides that "The maximum hours of work and the standard
28 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 90. Labor Code § 1194 provides that “any employee receiving less than the legal
4 minimum wage or the legal overtime compensation applicable to the employee is entitled to
5 recover in a civil action the unpaid balance of the full amount of this minimum wage or
6 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
7 suit.”

8 91. The Wage Order provides that “such employees shall not be employed more
9 than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the
10 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all
11 hours worked over 40 hours in the workweek and for the first eight (8) on the seventh (7th)
12 day of work and double the employee’s regular rate of pay for all hours worked over eight (8)
13 on the seventh (7th) day of work in the workweek.

14 92. At all times relevant herein, Defendants required Plaintiffs and Class Members
15 on a regular and repeated basis to work shifts exceeding eight hours in a workday, to work
16 more than 40 hours in a workweek, which hours were often not recorded, without paying
17 overtime premium wages at a rate of no less than one and one-half times the employee’s
18 regular rate of pay, including all nondiscretionary incentive wages.

19 93. At all times relevant herein, Defendants knew or had reason to know that
20 Plaintiffs and Class Members were regularly and consistently required to work more than eight
21 hours in a day and work more than 40 hours in a week, without being paid the appropriate
22 premium overtime wage required by Labor Code §§ 1194 and 1198, and the Wage Order.

23 94. At all times relevant herein, Defendants' conduct as alleged herein amounted to a
24 uniform pattern of unlawful wage and hour practices which resulted from the implementation
25 of uniform policies and practices by which Defendants failed to accurately record all hours
26 worked by Plaintiffs and Class Members thereby denying payment of overtime premium
27 wages to Plaintiffs and Class Members for overtime hours worked.

28 95. In committing the violations of the California Labor Code as alleged herein,

1 Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other
2 benefits in violation of the California Labor Code, the Industrial Welfare Commission
3 requirements and other applicable laws and regulations.

4 96. As a direct result of Defendants' unlawful wage practices as alleged herein,
5 Plaintiffs and Class Members have been denied full compensation for all hours worked by
6 Plaintiffs and Class Members, including, but not limited to, premium overtime wages for
7 overtime hours.

8 97. The Labor Code and the Wage order set forth various exemptions by which
9 certain categories of employees are exempt from the protections of the overtime laws
10 contained in the Labor Code. At no time during Plaintiffs' and Class Members' employment
11 did any of these exemptions apply to Plaintiffs and Class Members. Moreover, at no time
12 were Plaintiffs and Class Members subject to a valid collective bargaining agreement that
13 would preclude the causes of action set forth in this complaint. Rather, Plaintiffs and Class
14 Members bring this action because of Defendants' violations of non-waivable rights
15 guaranteed to Plaintiffs and Class Members by the State of California.

16 98. As a direct consequence of Defendants' unlawful failure to pay Plaintiffs and
17 Class Members the full and accurate amount of all earned wages at the appropriate rate for the
18 true number of hours worked, Plaintiffs and Class Members have suffered and will continue to
19 suffer economic injuries in an amount which is presently unknown to Plaintiffs and Class
20 Members, and which will be ascertained according to proof at trial.

21 99. In performing the acts and practices in violation of California labor laws as
22 herein alleged, Defendants have acted and continue to act intentionally, oppressively and
23 maliciously towards Plaintiffs and Class Members, with a conscious disregard for Plaintiffs'
24 and Class Members' legal rights and the consequences to Plaintiffs and Class Members, and
25 with the intent of depriving Plaintiffs and Class Members of their property and legal rights and
26 otherwise causing Plaintiffs and Class Members injury, in order to increase Defendants'
27 profits at the expense of Plaintiffs and Class Members.

28 100. Plaintiffs and Class Members requests recovery of all unpaid wages, including

1 overtime premium wages, in an amount according to proof, interest on such amounts, statutory
2 costs, and the assessment of any and all statutory penalties against Defendants, all in the sums
3 as provided by the California Labor Code and/or other applicable statutes. In addition, to the
4 extent that overtime compensation is owed Plaintiffs and Class Members whose employment
5 has been terminated, Defendants' conduct violates Labor Code §§ 201 and/or 202, entitling
6 Plaintiffs and Class Members to waiting time penalties under Labor Code § 203, which
7 penalties are sought herein on behalf of Plaintiffs and Class Members.

8 101. WHEREFORE, Plaintiffs and Class Members request relief as herein prayed for.

9 **NINTH CAUSE OF ACTION**
10 **Failure to Comply with Itemized Employee Wage Statement Requirements**
11 **(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)**
12 **(Plaintiffs and the Wage Statement Subclass against Defendants)**

13 102. Plaintiffs allege and incorporate by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth herein.

15 103. Labor Code § 226(a) and the Wage Order provide that every employer shall,
16 semimonthly or at the time of each payment of wages, furnish each of its employees an
17 accurate itemized statement in writing showing gross wages earned, total hours worked by the
18 employee, the applicable rate, all deductions, net wages earned, the inclusive dates of the
19 period for which the employee is paid, the name of the employee and the last four digits of the
20 employee's social security number (or an employee identification number), the name and
21 address of the legal entity that is the employer and all applicable hourly rates in effect during
22 the pay period and the corresponding numbers of hours worked at each hourly rate by the
23 employee.

24 104. At all times relevant herein, Defendants had a policy and practice of failing to
25 include the total number of hours worked, the failure to report overtime pay rates, the failure to
26 report rest and meal period premiums owed, failure to identify the gross and net wages earned,
27 and the failure to list all applicable hourly rates.

28 105. As a further result of Defendants' failure to provide Plaintiffs and Class
Members with accurate wage statements in accordance with Labor Code § 226 and to keep

1 accurate time records as required by the Wage Order, Plaintiffs and Class Members have
2 suffered injuries and is entitled to penalties under Labor Code § 226 and Labor Code § 226.3
3 which states “that any employer who violates § 226 shall be subject to a civil penalty in the
4 amount of \$250.00 per employee per violation in an initial citation.” The civil penalty
5 provided for in this section is in addition to any other penalty provided by law, in an amount to
6 be proven at trial. The injuries suffered by Plaintiffs and Class Members include, but are not
7 limited to, having been, and continuing to be, forced to conduct investigations and perform
8 mathematical computations in an attempt to reconstruct Plaintiffs’ and Class Members’ time
9 records; the inability to reconstruct Plaintiffs’ and Class Members’ time records; the inability
10 to discern the amount of wages Plaintiffs and Class Members were paid and/or the applicable
11 wage rate; the inability to determine the number of hours, including but not limited to,
12 overtime hours worked; the inability to determine the number of rest periods and meal periods
13 forced to forego; the inability to determine whether Plaintiffs and Class Members were
14 compensated for all meal and rest periods of which Plaintiffs and Class Members had been
15 deprived; the inability to determine whether Plaintiffs and Class Members were paid all wages
16 due for work performed; the inability to determine the amount of wages owing and unpaid;
17 having been, and continuing to be, forced to hire attorneys and initiate a lawsuit in order to
18 ascertain the aforementioned information.
19

20 106. Plaintiffs and Class Members are also entitled to injunctive relief to ensure
21 compliance with this section, pursuant to Labor Code § 226(g).

22 107. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a
23 knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
24 entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in
25 which a violation occurs and \$100.00 per employee for each violation in a subsequent pay
26 period, not exceeding an aggregate penalty of \$4,000.00, and is entitled to an award of costs
27 and reasonable attorneys’ fees.

28 108. Moreover, an employee is entitled under the Labor Code § 226(h) to injunctive

1 relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and
2 reasonable attorneys' fees.

3 109. WHEREFORE, Plaintiffs and Class Members request relief as herein prayed for.

4 **TENTH CAUSE OF ACTION**
5 **Failure to Pay All Wages Upon Termination**
6 **(California Labor Code §§ 201, 202 and 203; and The Wage Order)**
7 **(Plaintiffs and the Sick Pay Regular Rate Subclass, the Vacation Pay Regular Rate**
8 **Subclass, the Overtime Regular Rate Subclass, and the Weekly Wages Subclass against**
9 **Defendants)**

10 110. Plaintiffs allege and incorporate by reference all of the allegations contained in
11 the preceding paragraphs as though fully set forth herein.

12 111. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
13 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
14 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
15 for more than thirty (30) days.

16 112. Labor Code § 201 provides if an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately.

18 113. Labor Code § 202 provides that an employee is entitled to receive all unpaid
19 wages no later than 72 hours after an employee quits his or her employment, unless the
20 employee has given 72 hours previous notice of his or her intention to quit, in which case the
21 employee is entitled to his or her wages at the time of quitting.

22 114. Defendants operated, at all relevant times, as a "Temporary services employer"
23 as defined by Labor Code § 201.3(a)(1).

24 115. Labor Code § 201.3(b) states in relevant part, "if an employee of a temporary
25 services employer is assigned to work for a client, that employee's wages are due and payable
26 no less frequently than weekly, regardless of when the assignment ends, and wages for work
27 performed during any calendar week shall be due and payable not later than the regular payday
28 of the following calendar week."

116. Although Plaintiff Hebdon was hired for the position of Executive Director, she
was regularly required to spend more than half of her time performing non-exempt tasks

1 directly for Defendants' clients. Defendants willfully failed to Plaintiffs and the Class
2 Members who were assigned to work for Defendants' clients on a weekly basis, as required by
3 Labor Code § 201.3(b).

4 117. Labor Code § 227.3 provides as follows: "whenever a contract of employment or
5 employer policy provides for paid vacations, and an employee is terminated without having
6 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final
7 rate in accordance with such contract of employment or employer policy respecting eligibility
8 or time served; provided, however, that an employment contract or employer policy shall not
9 provide for forfeiture of vested vacation time upon termination." Here, Defendants failed to
10 pay all accrued vacation to Plaintiffs and Class Members whose employment ended as
11 required by Labor Code §§ 201-203 and 227.3.

12 118. Defendants willfully failed to pay Plaintiffs and Class Members all wages due,
13 as alleged hereinabove and hereinafter, at the end of their employment within the times
14 prescribed by Labor Code §§201 and 202 and are therefore subject to a waiting time penalty.
15 Plaintiffs and Class Members are entitled to recover from Defendants the statutory penalty for
16 each day not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant
17 to California Labor Code § 203.

18 119. WHEREFORE, Plaintiffs and Class Members request relief as herein prayed for.

19 **ELEVENTH CAUSE OF ACTION**
20 **California Labor Code Private Attorneys General Act of 2004**
21 **(California Labor Code § 2698)**
22 **(Plaintiff Hebdon, the State of California, and the Aggrieved Employees against**
23 **Defendants)**

24 120. Plaintiff Hebdon alleges and incorporates by reference all of the allegations
25 contained in the preceding paragraphs as though fully set forth herein.

26 121. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff Hebdon to
27 recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor
28 Code Section 2699.5.

122. Plaintiff Hebdon is an "aggrieved employee" pursuant to Labor Code § 2699, as
Plaintiff has suffered violations including, but not limited to, Labor Code §§ 201, 201.3, 202,

203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699(f) and (g), 2800, and the Wage Order.

123. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff Hebdon, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff Hebdon and the employees, and the State of California against Defendants on behalf of herself and the employees.

TWELFTH CAUSE OF ACTION

Unfair Business Practices

(California Business and Professions Code §§ 17200 et seq. and Common Law) (Plaintiffs and all Subclasses against Defendants)

124. Plaintiffs allege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

125. Plaintiffs and Class Members suffered direct injury as a result of the Defendants' conduct, as alleged in the preceding paragraphs, and bring this action under Code of Civil Procedure § 382. The deprivation by Defendants of Plaintiffs and Class Members of wages due and lawful meal and rest periods, and Defendants' provision of inaccurate wage statements, are unlawful business practices within the meaning of Business and Professions Code § 17200, et seq. including, but not limited to, a violation of the Wage Order, regulations, and statutes, and further, whether or not in violation of the aforementioned Wage Order, regulation and statutes, amount to practices which are otherwise unfair.

126. Under Business and Professions Code § 17200, et seq., including, but not limited to §§ 17201, 17203, and 17208, Plaintiffs and Class Members assert standing on behalf of themselves as alleged herein. Plaintiffs and Class Members seek, among others, restitution of compensation due during all times relevant herein.

127. At all times relevant herein, Defendants have committed violations of law, as described herein, including, but not limited to, violation of Labor Code §§ 201, 202, 203, 216, 218, 221, 226(a), 226.7, 227.3, 510, 512(a), 1194, 1197, 1197.1, and 1198.

128. These unlawful and unfair business practices defeat the public interest purposes

1 of the State's labor laws, as set forth in the sections of the California Labor Code, the
2 California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all
3 of which promote compliance with labor laws and employment regulations by participants in
4 Defendants' industry.

5 129. Defendants' unfair and unlawful business practices thus have violated the
6 sections of the Labor Code, California Code of Regulation and the Wage Order referenced in
7 this complaint and have imposed harm on their employees and their competitors and will
8 continue to do so until abated. As a result of these unfair and unlawful business practices,
9 Defendants have retained monies belonging to Plaintiffs and Class Members, and they have
10 been unjustly enriched at Plaintiffs' and Class Members' expense. Plaintiffs and Class
11 Members are entitled to restitution of the wages and monies withheld and retained by
12 Defendants during the relevant period and a preliminary and permanent injunction requiring
13 Defendants to pay all wages and sums due to Plaintiffs and Class Members, to provide
14 mandatory rest and meal breaks, and to provide accurate and complete wage statements.

15 130. As a direct and proximate result of Defendants' conduct, Plaintiffs and Class
16 Members have suffered injury and loss of money.

17 131. This action will result in the enforcement of an important right affecting the
18 public interest. The conduct of Defendants as alleged herein has been and continues to be
19 unfair, unlawful and harmful to Plaintiffs and Class Members and the general public.
20 Accordingly, under Code of Civil Procedure § 1021.5, Plaintiffs and Class Members are
21 entitled to an award of reasonable attorneys' fees according to proof.

22 132. WHEREFORE, Plaintiffs and Class Members request relief as hereinafter
23 prayed for.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs prays as follows:

26 1. As to the First, Second, Third, Fourth, and Fifth Cause of Action, for special and
27 general damages, back pay, front pay, exemplary and punitive damages, and attorneys' fees
28 pursuant to Labor Code 1197.5(g) and (h), and Government Code § 12965(b), and double

1 damages pursuant to Labor Code § 972;

2 2. As to the Sixth and Seventh Cause of Action, for unpaid premium wages and
3 penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;

4 3. As to the Eighth Cause of Action, for unpaid wages pursuant to Labor Code §§
5 510, 1194, 1197, and 1198, and the Wage Order;

6 4. As to the Ninth Cause of Action, for penalties and attorneys' fees pursuant to
7 Labor Code § 226 and 226.3;

8 5. As to the Tenth Cause of Action, for unpaid wages pursuant to Labor Code §§
9 201, 202, and 203;

10 6. As to the Eleventh Cause of Action, for civil penalties and attorneys' fees
11 pursuant to Labor Code § 2698 et seq., and Labor Code § 226.3;

12 7. As to the Twelfth Cause of Action, for restitution of unpaid wages and penalties
13 to Plaintiff, pursuant to Business and Professions Code § 17200 et seq.;

14 8. As to All Causes of Action, for prejudgment interest from the day such amounts
15 were due and payable;

16 9. As to All Causes of Action, for attorneys' fees and costs provided by Labor
17 Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and

18 10. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **DEMAND FOR JURY TRIAL**

21 1. Plaintiff Hebdon hereby demands trial of her individual claims by jury to the
22 extent authorized by law.

23 Dated: November 1, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.
SWARTZ & KENNEDY

25 By: /s/ B. James Fitzpatrick

26 B. James Fitzpatrick
27 Larry W. Lee
28 Andrew H. Swartz
Attorneys for Plaintiffs

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 24, 2022

Melissa Hebdon

c/o B. James Fitzpatrick, Fitzpatrick & Swanston, 555 S Main Street
Salinas, CA 93901

RE: **Notice of Case Closure and Right to Sue**

DFEH Matter Number: 202201-15931724

Right to Sue: Hebdon / HEALTHY LIVING AT HOME - MONTEREY, LLC et al.

Dear Melissa Hebdon:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 24, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Melissa Hebdon

DFEH No. 202201-15931724

Complainant,

vs.

HEALTHY LIVING AT HOME - MONTEREY, LLC
2150 Garden Road
Monterey, CA 93940

MISSION HEALTHCARE SERVICES, LLC
2385 Northside Drive, Suite 200
San Diego, CA 92108

HEALTHY LIVING NETWORK RESOURCES, LLC

,

Respondents

1. Respondent **HEALTHY LIVING AT HOME - MONTEREY, LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **MISSION HEALTHCARE SERVICES, LLC** business as Co-Respondent(s).

Complainant is naming **HEALTHY LIVING NETWORK RESOURCES, LLC** business as Co-Respondent(s).

3. Complainant **Melissa Hebdon**, resides in the City of **Salinas**, State of **CA**.

4. Complainant alleges that on or about **July 30, 2021**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's sex/gender and as a result of the discrimination was denied equal pay.

Additional Complaint Details: Melissa Hebdon ("Complainant") was employed by Respondents from approximately October 12, 2020, through approximately July 30, 2021. The employment offer letter dated September 21, 2020, stated that Complainant would be hired for the position of "Executive Director (RN) – Home Health" and would be working at the office of Defendant HEALTHY LIVING AT HOME - MONTEREY, LLC, located at 2150 Garden Road, Suite B-2 in Monterey, California. The offer required Complainant to begin her employment with Respondents on October 12, 2020, giving Complainant and her family less than three weeks to relocate from Juneau, Alaska to Monterey, California.

Complainant was told upon hire that \$130,000.00 per year was the highest starting salary that the company could extend to her. Following Complainant's exemplary 6-month performance evaluation, wherein her manager noted that Complainant had "exceeded expectations in all performance categories" and that "her teamwork and initiative has been exceptional," Complainant was ultimately able to negotiate a raise in her base salary to \$149,700.00. During this negotiation process, Complainant's manager represented \$149,700.00 to be the maximum salary that the company would pay to any director at that time. However, Complainant subsequently learned that at least one male Executive Director in her region was, at that time, earning a base salary of at least \$185,000.00 per year to work in the same geographic vicinity as Complainant. Complainant is informed and believes that this male Executive Director had comparable work experience and credentials to Complainant when hired by Respondents less than a year prior to Complainant's date of hire, yet he received a starting base salary that was \$55,000.00 per year higher than the starting salary offered to Complainant. Complainant believes that this discrepancy between the starting salary offered by Respondents to Complainant versus that offered to her aforementioned male counterpart was due to Complainant's sex/gender (female), as was her employer's continued practice of paying Complainant less than her male counterpart for substantially similar work.

1 VERIFICATION

2 I, **B. James Fitzpatrick**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On January 24, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Salinas, CA**
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1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on November 8, 2023, at Los Angeles, California.

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5 _____
6 Erika Mejia
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