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Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Tavakoli Deputy

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7 ISABEL VARGAS DE JACKSON, on behalf of themselves and all
8 others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 DOLORES SALCIDO ZAMORANO and
12 ISABEL VARGAS DE JACKSON, as
13 individuals and on behalf of all others
14 similarly situated and on behalf of other
15 aggrieved employees under the California
16 Private Attorneys General Act,

17 Plaintiffs,

18 v.

19 PIH HEALTH DOWNEY HOSPITAL, a
20 California corporation; and DOES 1 through
21 100, inclusive,

22 Defendants.

CASE NO.: 21STCV35532

[Assigned for all purposes to the Hon. Yvette
M. Palazuelos in Dept. 9]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION;
11. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(2004) FOR VIOLATIONS OF LABOR
CODE SECTIONS 210, 226.3, 558, 1174.5,
1197.1, AND 2699, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 COME NOW plaintiffs DOLORES SALCIDO ZAMORANO and ISABEL VARGAS DE
2 JACKSON ("Plaintiffs"), as individuals and on behalf of all others similarly situated and aggrieved,
3 and allege as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against PIH
7 HEALTH DOWNEY HOSPITAL, and any of its respective subsidiaries or affiliated companies
8 within the State of California ("PIH Health" and, with DOES 1 through 100, as further defined
9 below, "Defendants") on behalf of Plaintiffs and all other current and former non-exempt California
10 employees employed by or formerly employed by Defendants ("Class Members").

11 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
12 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Defendants,
13 and any of their respective subsidiaries or affiliated companies within the State of California, as a
14 proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on
15 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
16 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
17 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
18 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*,
19 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty
20 Period (collectively, "Aggrieved Employees").

21 **PARTIES**

22 **A. Plaintiffs**

23 3. Plaintiff DOLORES SALCIDO ZAMORANO is a resident of the State of California.
24 At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that
25 Defendants employed Plaintiff DOLORES SALCIDO ZAMORANO as a non-exempt employee,
26 with duties that included, but were not limited to, taking patient vitals, assisting patients with feeding
27 and hygiene, and maintaining cleanliness of patient rooms. Plaintiffs are informed and believe, and
28 based thereon allege that Plaintiff DOLORES SALCIDO ZAMORANO worked for Defendants

1 from approximately January of 2021 through approximately May 18, 2021.

2 4. Plaintiff ISABEL VARGAS DE JACKSON is a resident of the State of California.
3 At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that
4 Defendants employed Plaintiff ISABEL VARGAS DE JACKSON as a non-exempt employee, with
5 duties that included, but were not limited to, nursing, taking patient vitals, assisting patients with
6 feeding and hygiene, and maintaining cleanliness of patient rooms. Plaintiffs are informed and
7 believe, and based thereon allege that Plaintiff ISABEL VARGAS DE JACKSON worked for
8 Defendants from approximately January of 2021 through approximately May 19, 2021.

9 **B. Defendants**

10 5. Plaintiffs are informed and believe and based thereon allege that defendant PIH
11 Health is, and at all times relevant hereto was, a limited liability company organized and existing
12 under and by virtue of the laws of the State of California and doing business in the County of Los
13 Angeles, State of California.

14 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
15 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
16 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
17 Plaintiffs are informed and believe and based thereon allege that each of the defendants designated
18 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
19 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
20 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
21 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
22 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
23 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
24 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
25 include PIH Health, and any of their parent, subsidiary, or affiliated companies within the State of
26 California, as well as DOES 1 through 100 identified herein.

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1 Defendants employ numerous Class Members in Los Angeles County.

2 12. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
5 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
6 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
7 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
8 employees of Defendants during the Civil Penalty Period.

9 13. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
10 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
11 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
12 PAGA allegations described herein is not required.

13 14. During the period beginning one (1) year preceding the provision of notice to the
14 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
15 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
16 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
17 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

18 15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
19 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
20 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
21 specified in Labor Code section 2699.3.

22 16. On or around September 22, 2021, Plaintiffs provided written notice pursuant to
23 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
24 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to
25 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
26 them.

27 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
28 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)

1 calendar days of the September 22, 2021 postmarked date of the herein-described notice sent by
2 Plaintiff to the LWDA and Defendants.

3 18. On April 6, 2020, the Judicial Council of California approved Appendix I –
4 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
5 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
6 action were tolled from April 6, 2020 until October 1, 2020.

7 **FACTUAL BACKGROUND**

8 19. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members,
10 or some of them, in violation of California state wage and hour laws as a result of, without limitation,
11 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
12 seven consecutive work days in a work week without being properly compensated for hours worked
13 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
14 worked on the seventh consecutive work day in a work week by, among other things, failing to
15 accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
16 employees to work off the clock, including, without limitation, by requiring employees: to come
17 early to work and leave late work without being able to clock in for all that time, to suffer under
18 Defendants' control due to waiting in lines to clock in, to complete pre-shift tasks before clocking
19 in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don
20 and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock,
21 to make phone calls for the benefit of Defendants off the clock, and/or go through security
22 screenings and/or temperature checks off the clock; failing to include all forms of remuneration,
23 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
24 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
25 additional compensation was earned for the purposes of calculating the overtime rate of pay; editing
26 and/or manipulation of time entries to show less hours than actually worked; requiring that
27 employees be "on call" without being properly compensated for all that time; and for paying straight
28 pay instead of overtime pay; to the detriment of Plaintiffs and Class Members.

1 20. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
3 or some of them, in violation of California state wage and hour laws as a result of, among other
4 things, at times, failing to accurately track and/or pay for all hours actually worked; engaging,
5 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
6 employees: to come early to work and leave late work without being able to clock in for all that
7 time, to suffer under Defendants' control by waiting in lines to clock in, to complete pre-shift tasks
8 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
9 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
10 clock, to attend company meetings off the clock, to make phone calls for the benefits of Defendants
11 off the clock; editing and/or manipulating of time entries to show less hours than actually worked;
12 requiring that employees be "on call" without being properly compensated for all that time; and
13 failing to pay split shift premiums. In addition, Plaintiffs and other employees were required to
14 report to work, and did report, but were not put to work and/or were furnished less than half their
15 usual or scheduled day's work without being paid for half the usual or scheduled work at their
16 regular rate of pay, to the detriment of Plaintiffs and Class Members.

17 21. For at least four (4) years prior to the filing of this Action and continuing to the
18 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
19 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
20 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
21 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
22 for such unprovided meal periods as required by California wage and hour laws.

23 22. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or
25 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
26 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
27 California wage and hour laws.

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1 23. For at least three (3) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
3 full amount of their wages owed to them upon termination and/or resignation as required by Labor
4 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
5 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

6 24. For at least one (1) year prior to the filing of this Action and continuing to the present,
7 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
8 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
9 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
10 hours worked at each hourly rate; and other such information as required by Labor Code section
11 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
12 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

13 25. For at least one (1) year prior to the filing of this action and continuing to the present,
14 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
15 amount of their wages for labor performed in a timely fashion as required under Labor Code section
16 204.

17 26. For at least three (3) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
19 costs incurred in laundering mandatory work uniforms.

20 27. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
22 situated employees or former employees within the State of California with compensation at their
23 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

24 28. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action
25 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
26 227.3, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section
27 11050, seeking overtime wages, minimum wages, payment of premium wages for missed meal and
28 rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure

1 to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of pay,
2 other such provisions of California law, and reasonable attorneys' fees and costs.

3 29. Plaintiffs, on their own behalf and on behalf of Class Members, pursuant to Business
4 and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting
5 Defendants from further violating the Labor Code and requiring the establishment of appropriate
6 and effective means to prevent further violations, as well as all monies owed but withheld and
7 retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of
8 amounts owed.

9 30. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
11 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
12 Employees with the rates of pay and overtime rates of pay applicable to their employment;
13 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
14 name, address, and telephone number of the workers' compensation insurance carrier; information
15 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
16 under Labor Code section 2810.5.

17 31. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
18 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
19 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
20 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
21 all other Aggrieved Employees.

22 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
24 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
25 any calendar month shall be paid for between the 16th and 26th day of the month during which the
26 labor was performed, and labor performed between the 16th and the last day, inclusive of any
27 calendar month, shall be paid for between the 1st and 10th day of the following month."

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1 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

10 34. Defendants had and have a policy or practice of preventing Plaintiff and/or other
11 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
12 to their managers or outside to private attorneys or government officials, among others, in violation
13 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
14 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
15 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
16 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
17 of Labor Code section 232 and 232.5.

18 35. Defendants had and have a policy or practice of preventing Plaintiff and/or other
19 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
20 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
21 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
22 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
23 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
24 economic liberty.

25 36. Plaintiffs are informed and believe, and based thereon alleges that Defendants had
26 and have a policy or practice of failing to provide all working employees with suitable seats when
27 the nature of the work reasonably permits the use of seats. Plaintiffs are further informed and
28 believe, and based thereon alleges that Defendants has failed to place an adequate number of seats

1 in reasonable proximity to the work area and/or permitted employees to use such seats when it does
2 not interfere with the performance of their duties when employees are not engaged in the active
3 duties of their employment and the nature of their work requires standing.

4 37. Plaintiffs, in Plaintiffs' representative capacities, seek civil penalties under Labor
5 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
6 the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
7 Employees pursuant to PAGA.

8 **CLASS ACTION ALLEGATIONS**

9 38. Plaintiffs bring this action on behalf of themselves and Class Members as a class
10 action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all
11 current and former non-exempt employees of Defendants within the State of California at any time
12 commencing four (4) years preceding the filing of Plaintiffs' Complaint in this Action up until the
13 time that notice of the class action is provided to the class (collectively referred to as "Class
14 Members").

15 39. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b)
16 to amend or modify the class description with greater specificity, further divide the defined class
17 into subclasses, and to further specify or limit the issues for which certification is sought.

18 40. This action has been brought and may properly be maintained as a class action under
19 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
20 of interest in the litigation and the proposed Class is easily ascertainable.

21 **A. Numerosity**

22 41. The potential Class Members as defined are so numerous that joinder of all the
23 members of the Class is impracticable. While the precise number of Class Members has not been
24 determined yet, Plaintiffs are informed and believe that there are over seventy-five (75) Class
25 Members employed by Defendants within the State of California.

26 42. Accounting for employee turnover during the relevant periods necessarily increases
27 this number. Plaintiffs allege Defendants' employment records would provide information as to the
28 number and location of all Class Members. Joinder of all members of the proposed Class is not

1 practicable.

2 **B. Commonality**

3 43. There are questions of law and fact common to Class Members. These common
4 questions include, but are not limited to:

- 5 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
6 worked at a proper overtime rate of pay?
- 7 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
8 for all other time worked at the employee's regular rate of pay and a rate of pay that
9 is greater than the applicable minimum wage?
- 10 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
11 Class Members to take compliant meal periods?
- 12 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed or interrupted meal periods?
- 14 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
15 Class Members to take compliant rest periods?
- 16 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages for missed rest periods?
- 18 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
19 Members upon termination or resignation all wages earned?
- 20 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
21 section 203?
- 22 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
23 Class Members with accurate wage statements?
- 24 J. Did Defendants fail to pay Class Members in a timely fashion as required under
25 Labor Code section 204?
- 26 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
27 losses incurred in direct consequence of the discharge of their duties or by obedience
28 to the directions of Defendants as required under Labor Code section 2802?

1 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
2 with compensation at their final rate of pay for vested paid vacation time.

3 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
4 section 17200, *et seq.*, by their unlawful practices as alleged herein?

5 N. Are Class Members entitled to restitution of wages under Business and Professions
6 Code section 17203?

7 O. Are Class Members entitled to costs and attorneys' fees?

8 P. Are Class Members entitled to interest?

9 **C. Typicality**

10 44. The claims of Plaintiffs herein alleged are typical of those claims which could be
11 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
12 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
13 damages arising out of and caused by Defendants' common course of conduct in violation of laws
14 and regulations that have the force and effect of law and statutes as alleged herein.

15 **D. Adequacy of Representation**

16 45. Plaintiffs will fairly and adequately represent and protect the interest of Class
17 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
18 hour class actions.

19 **E. Superiority of Class Action**

20 46. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
22 questions of law and fact common to Class Members predominate over any questions affecting only
23 individual Class Members. Class Members, as further described therein, have been damaged and
24 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
25 violation of the Labor Code at times, as set out herein.

26 47. Class action treatment will allow Class Members to litigate their claims in a manner
27 that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware
28 of any difficulties that are likely to be encountered in the management of this action that would

1 preclude its maintenance as a class action.

2 **FIRST CAUSE OF ACTION**

3 **(Failure to Pay Overtime Wages – Against All Defendants)**

4 48. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 49. At all relevant times, Plaintiffs and Class Members were employees or former
7 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
8 Wage Orders.

9 50. At all times relevant to this Complaint, Labor Code section 510 was in effect and
10 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
11 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
12 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

13 51. At all times relevant to this Complaint, Labor Code section 510 further provided that
14 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
15 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
16 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
17 pay.”

18 52. Four (4) years prior to the filing of the Complaint in this Action through the present,
19 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
20 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
21 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
22 result of, including but not limited to, Defendants failing to accurately track and/or pay for all
23 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
24 including, without limitation, by requiring employees: to come early to work and leave late work
25 without being able to clock in for all that time, to suffer under Defendants' control due to waiting in
26 lines to clock in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking
27 out, to clock out for meal periods and continue working, to don and doff uniforms and/or safety
28 equipment off the clock, to attend company meetings off the clock, to make phone calls for the

1 benefit of Defendants off the clock, and/or go through security screenings and/or temperature checks
2 off the clock; failing to include all forms of remuneration, including non-discretionary bonuses,
3 incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the
4 pay periods where overtime was worked and the additional compensation was earned for the purpose
5 of calculating the overtime rate of pay; editing and/or manipulation of time entries to show less
6 hours than actually worked; requiring that employees be "on call" without being properly
7 compensated for all that time; and for paying straight pay instead of overtime pay; to the detriment
8 of Plaintiffs and Class Members.

9 53. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater
10 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
11 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
12 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
13 applicable IWC Wage Orders, and California law.

14 54. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
15 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
16 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
17 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

18 **SECOND CAUSE OF ACTION**

19 **(Failure to Pay Minimum Wages – Against All Defendants)**

20 55. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
21 preceding paragraphs as though fully set forth hereat.

22 56. At all relevant times, Plaintiffs and Class Members were employees or former
23 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

24 57. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and
25 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
26 Defendants' control.

27 58. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Defendants failed, at times, failing to accurately track and/or pay for all minutes actually

1 worked; engaging, suffering, or permitting employees to work off the clock, including, without
2 limitation, by requiring employees: to come early to work and leave late work without being able to
3 clock in for all that time, to suffer under Defendants' control by waiting in lines to clock in, to
4 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
5 meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or
6 safety equipment off the clock, to attend company meetings off the clock, to make phone calls for
7 the benefit of Defendants off the clock; editing and/or manipulation of time entries to show less
8 hours than actually worked; requiring that employees be "on call" without being properly
9 compensated for all that time; and failing to pay split shift premiums. In addition, Plaintiffs and
10 other employees were required to report to work, and did report, but were not put to work and/or
11 were furnished less than half their usual or scheduled day's work without being paid for half the
12 usual or scheduled work at their regular rate of pay to the detriment of Plaintiffs and Class Members.

13 59. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
14 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
15 for all hours worked or otherwise due.

16 60. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
17 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled
18 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
19 damages, reasonable attorneys' fees and costs of suit.

20 THIRD CAUSE OF ACTION

21 **(Failure to Provide Meal Periods – Against All Defendants)**

22 61. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
23 preceding paragraphs as though fully set forth hereat.

24 62. At all relevant times, Plaintiffs and Class Members were employees or former
25 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

26 63. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
27 employ an employee for a work period of more than five (5) hours without a timely meal break of
28 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

1 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
2 per day without providing the employee with a second timely meal period of not less than thirty (30)
3 minutes in which the employee is relieved of all of his or her duties.

4 64. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
5 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
6 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
7 of compensation for each workday that the meal period is not provided.

8 65. For four (4) years prior to the filing of the Complaint in this Action through the
9 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,
10 duty-free uninterrupted meal periods every five hours of work without waiving the right to take
11 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
12 at the Class Member's regular rate of compensation on the occasions that Class Members were not
13 provided compliant meal periods.

14 66. By their failure to provide Plaintiffs and Class Members compliant meal periods as
15 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
16 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
17 violated the provisions of Labor Code section 512 and applicable Wage Orders.

18 67. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
19 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
20 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

21 68. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
22 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
23 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
24 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

25 **FOURTH CAUSE OF ACTION**

26 **(Failure to Provide Rest Periods – Against All Defendants)**

27 69. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
28 preceding paragraphs as though fully set forth hereat.

1 70. At all relevant times, Plaintiffs and Class Members were employees or former
2 employees of Defendants covered by applicable Wage Orders.

3 71. California law and applicable Wage Orders require that employers “authorize and
4 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
5 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
6 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
7 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
8 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
9 thirty (30) minutes of paid rest period.

10 72. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
11 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
12 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
13 regular rate of compensation for each work day that the rest period is not provided.

14 73. For four (4) years prior to the filing of the Complaint in this Action through the
15 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
16 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
17 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
18 Member’s regular rate of compensation on the occasions that Class Members were not authorized
19 or permitted to take compliant rest periods.

20 74. By their failure, at times, to authorize and permit Plaintiffs and Class Members to
21 take rest periods contemplated by California law, and one (1) additional hour of pay at the
22 employee’s regular rate of compensation for such unprovided rest periods, as alleged above,
23 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
24 Orders.

25 75. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have
26 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
27 owed for rest periods that they were not authorized or permitted to take.

28 / / /

76. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

77. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

78. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

79. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

80. Plaintiffs are informed and believe, and based thereon allege, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

81. Plaintiffs are informed and believe that Defendants' failure, at times, to pay Plaintiffs and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of

1 Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to
2 termination or resignation.

3 82. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to
4 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
5 resignation, until paid, up to a maximum of thirty (30) days.

6 83. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
7 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
8 prior to termination or resignation.

9 84. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
10 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
11 waiting time penalties, interest, and their costs of suit, as well.

12 **SIXTH CAUSE OF ACTION**

13 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

14 85. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
15 preceding paragraphs as though fully set forth hereat.

16 86. At all relevant times, Plaintiffs and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

18 87. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
19 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
20 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
21 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate; the name and address of the legal entity that is the
23 employer; among other things.

24 88. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
25 before the filing of the Complaint in this Action through the present, Defendants failed to comply
26 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
27 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
28 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; the name and address of the legal entity that is the employer; among
3 other things.

4 89. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
5 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
6 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
7 provided wage statements that Defendants knew were not accurate.

8 90. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
9 suffered injury. The absence of accurate information on Class Members' wage statements at times
10 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
11 mathematical computations to determine the amount of wages owed; causes difficulty and expense
12 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
13 about wages and amounts deducted from wages to state and federal governmental agencies, among
14 other things.

15 91. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members
16 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
17 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
18 pay period, not to exceed an aggregate \$4,000.00 per employee.

19 92. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
20 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
21 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
22 attorneys' fees, and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

24 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

25 93. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
26 incorporate each by reference as though fully set forth hereat.

27 94. At all relevant times, Plaintiffs and Class Members were employees or former
28 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

1 95. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
2 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
3 during which the labor was performed, and labor performed between the 16th and the last day,
4 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month.”

6 96. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
7 independent and apart from, any other penalty provided in this article, every person who fails to pay
8 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
10 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
11 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
12 percent of the amount unlawfully withheld.”

13 97. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year
14 before the filing of the Complaint in this Action through the present, Defendants employed policies
15 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
16 Labor Code section 204.

17 98. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to
18 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
19 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
20 for each subsequent violation in connection with each payment that was made in violation of Labor
21 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

22 99. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
23 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
24 penalties, interest, and their costs of suit, as well.

25 **EIGHTH CAUSE OF ACTION**

26 **(Violation of Labor Code § 2802 – Against All Defendants)**

27 100. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
28 preceding paragraphs as though fully set forth hereat.

1 101. At all relevant times, Plaintiffs and Class Members were employees or former
2 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

3 102. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
4 his or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties . . ."

6 103. For three (3) years prior to the filing of the Complaint in this Action through the
7 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
8 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
9 obedience to the directions of Defendants that included, without limitation laundering mandatory
10 work uniforms.

11 104. During that time period, Plaintiffs are informed and believe, and based thereon allege
12 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand
13 Class Members for those losses and/or expenditures.

14 105. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
15 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
16 herein-described losses and/or expenditures.

17 106. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
19 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
20 costs of suit.

21 **NINTH CAUSE OF ACTION**

22 **(Violation of Labor Code § 227.3 – Against All Defendants**

23 107. Plaintiffs re-allege and incorporate by reference all of the allegations contained in
24 the preceding paragraphs of this Complaint as though fully set forth hereon.

25 108. According to Labor Code section 227.3, whenever a contract of employment or
26 employer policy provides for paid vacations, and an employee is terminated without having taken
27 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
28 accordance with such contract of employment or employer policy respecting eligibility or time

1 served.

2 109. Plaintiffs are informed and believe, and based thereon alleges that, at all times
3 relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid
4 vacations and/or paid time off, and that Plaintiffs' employment contract with Defendants included
5 paid vacations.

6 110. For at least four (4) years prior to the filing of this action and continuing to the
7 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
8 situated employees or former employees within the State of California with compensation at their
9 final rate of pay for unused vested paid vacation days and/or paid time off pursuant to Labor Code
10 section 227.3.

11 111. As a proximate result of Defendants' failure to pay vested vacation at the final rate
12 of Plaintiffs and Class Members upon their resignation or termination, Defendants violated Labor
13 Code section 227.3, entitling Plaintiffs and Class Members to all vested and unused vacation pay at
14 their final rate of pay, as set out in Defendants' policy or the contract of employment between
15 Plaintiffs and Class Members, on the one hand, and Defendants, on the other hand.

16 112. As a further proximate result of Defendants' above-described acts and/or omissions,
17 Plaintiffs and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
18 prejudgment interest.

19 **TENTH CAUSE OF ACTION**

20 **(Unfair Competition – Against All Defendants)**

21 113. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
22 preceding paragraphs as though fully set forth hereat.

23 114. Plaintiffs are informed and believe, and based thereon allege that the unlawful
24 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
25 and Professions Code section 17200. Due to their unlawful business practices in violation of the
26 Labor Code, Defendants have gained a competitive advantage over other comparable companies
27 doing business in the State of California that comply with their obligations to compensate employees
28 in accordance with the Labor Code.

115. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class Members have suffered injury in fact and lost money or property.

116. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

117. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

ELEVENTH CAUSE OF ACTION

(Civil Penalties under the Private Attorneys General Act – Against All Defendants)

118. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

Civil Penalties Under Labor Code § 210

119. At all relevant times herein, Labor Code section 204, requires and required that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

120. Labor Code section 210, subdivision (a) states that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee" and "(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld.”

2 121. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
4 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
5 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
6 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
7 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
8 for each subsequent violation in connection with each payment that was made in violation of Labor
9 Code section 204.

10 Civil Penalties Under Labor Code § 226.3

11 122. Defendants had and have a policy or practice of failing to comply with Labor Code
12 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
13 with itemized wage statements that accurately reflect: gross wages earned; total hours worked; net
14 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate; and other such information as required by Labor Code
16 section 226, subdivision (a).

17 123. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
20 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

22 124. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
23 this section are in addition to any other penalty provided by law.”

24 125. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
25 allege, that Defendants, and each of them, had and have a policy or practice of failing to comply
26 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and
27 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
28 total hours worked; net wages earned; the name and address of each employer with whom they have

1 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate; the legal name and address of the employer; and other
3 such information as required by Labor Code section 226, subdivision (a).

4 126. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
5 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
6 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
7 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
8 period for each subsequent violation.

9 Violation of Labor Code § 558

10 127. Labor Code section 558, subdivision (a) states: "Any employer or other person acting
11 on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours
12 and days of work in any of the Industrial Welfare Commission" shall be subject to a civil penalty as
13 follows:

- 14 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
15 pay period for which the employee was underpaid in addition to an amount sufficient
16 to recover underpaid wages;
- 17 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to
19 an amount sufficient to recover underpaid wages;
- 20 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

21 128. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
22 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
23 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
24 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
25 regular payday designated by Employer, the name of the employer, including any "doing business
26 as" names used, the name, address and telephone number of the workers' compensation insurance
27 carrier, information regarding paid sick leave, and other pertinent information.

28 / / /

129. As a direct and proximate result of the herein-described Labor Code violations, and pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

130. Labor Code section 1174, subdivision (b) states that every person employing labor in California is required to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

131. Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

132. Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

133. Labor Code section 1174.5 states that, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

1 134. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
2 willfully failed keep adequate or accurate time records including wage statements and similar
3 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
4 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
5 under Labor Code section 1174.

6 135. As a direct and proximate result of the herein-described Labor Code violations, and
7 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
8 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
9 hundred dollars (\$500) per violation per Aggrieved Employee.

10 Violation of Labor Code § 1197.1

11 136. Labor Code section 1197.1, subdivision (a) provides: "Any employer or other person
12 acting either individually or as an officer, agent, or employee of another person, who pays or causes
13 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
14 or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
15 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as
16 follows:

- 17 (1) For any initial violation that is intentionally committed, one hundred dollars
18 (\$100) for each underpaid employee for each pay period for which the
19 employee is underpaid. This amount shall be in addition to an amount
20 sufficient to recover underpaid wages, liquidated damages pursuant to Section
21 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 22 (2) For each subsequent violation for the same specific offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation is
25 intentionally committed. This amount shall be in addition to an amount
26 sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 28 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to

1 Section 203, recovered pursuant to this section shall be paid to the affected
2 employee.”

3 137. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
4 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
5 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
6 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
7 and liquidated damages.

8 138. As a direct and proximate result of the herein-described Labor Code violations, and
9 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
10 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
11 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
12 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
13 subsequent violation.

14 Civil Penalties Under Labor Code § 2699

15 139. Labor Code section 2699, subdivision (a), provides that, notwithstanding any other
16 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
17 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
18 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
19 action brought by an aggrieved employee on behalf of himself or herself and other current or former
20 employees pursuant to the procedures specified in Labor Code section 2699.3.

21 140. Labor Code section 2699, subdivision (f), provides that for all provisions of the Labor
22 Code except those for which a civil penalty is specifically provided, the established civil penalty for
23 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.

27 141. Plaintiffs are informed and believe, and based thereon allege that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
2 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
3 name of the employer, including any "doing business as" names used, the name, address and
4 telephone number of the workers' compensation insurance carrier, information regarding paid sick
5 leave, and other pertinent information required to be disclosed by Employer under Labor Code
6 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
7 sick leave required to be provided pursuant to California and local laws.

8 142. As a direct and proximate result of the herein-described Labor Code violations, and
9 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiffs and
10 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of
11 the herein and therein described Labor Code violations during the Civil Penalty Period in the amount
12 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
13 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
14 violation.

15 143. Moreover, Plaintiffs and Aggrieved Employees are also entitled to an award of
16 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
17 penalties.

18 **DEMAND FOR JURY TRIAL**

19 144. Plaintiffs demand a trial by jury on all causes of action contained herein.

20 **PRAYER**

21 WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs pray for judgment
22 against Defendants as follows:

- 23 A. An order certifying this case as a Class Action;
24 B. An Order appointing Plaintiffs as Class Representatives and appointing Plaintiffs'
25 counsel as class counsel;
26 C. An Order appointing counsel for Plaintiffs as Class-PAGA Counsel;
27 D. Damages for all wages earned and owed, including minimum. overtime wages and
28 unpaid wages for vested vacation time, under Labor Code sections 510, 1194, 1197

1 and 1199 and 227.3;

2 E. Liquidated damages pursuant to Labor Code section 1194.2;

3 F. Damages for unpaid premium wages from missed meal and rest periods under,
4 among other Labor Code sections, 512 and 226.7;

5 G. Penalties for inaccurate wage statements under Labor Code section 226,
6 subdivision (e);

7 H. Waiting time penalties under Labor Code section 203;

8 I. Penalties to timely pay wages under Labor Code section 210;

9 J. Damages under Labor Code sections 2802;

10 K. Preliminary and permanent injunctions prohibiting Defendants from further
11 violating the California Labor Code and requiring the establishment of appropriate
12 and effective means to prevent future violations;

13 L. Restitution of wages and benefits due which were acquired by means of any unfair
14 business practice, according to proof;

15 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
16 1174.5, 1197.1, and 2699

17 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;

18 O. For attorneys' fees in prosecuting this action;

19 P. For costs of suit incurred herein; and

20 Q. For such other and further relief as the Court deems just and proper.

21 Dated: December 16, 2021

BIBIYAN LAW GROUP, P.C.

22
23 BY: /s/ Diego Aviles

24 DIEGO AVILES

25 Attorneys for Plaintiffs DOLORES SALCIDO
26 ZAMORANO and ISABEL VARGAS DE JACKSON,
27 as individuals and on behalf of all others similarly
28 situated

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite
500, Beverly Hills, California 90211.

5 On December 16, 2021, I caused a true and correct copy of the foregoing document(s)
6 described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**
7 to be served by electronic transmission via Case Anywhere to the below referenced parties as
8 follows:

9 Karen Luh
10 Leonora Schloss
11 Lyubov Lerner
12 Jackson Lewis P.C.
13 725 South Figueroa Street Suite 2500
14 Los Angeles, California 90017
15 *Karen.Luh@jacksonlewis.com*
16 *Leonora.Schloss@jacksonlewis.com*
17 *Lyubov.Lerner@jacksonlewis.com*

18 **Counsel for Defendants PIH Health Downey Hospital**

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct

21 Executed on December 16, 2021 at Beverly Hills, California.

22 
23 _____
24 Emanuel Munguia