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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF MADERA

BRIANA WESTFALL and GLORIA
GARCIA, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

VALLEY CHILDREN'S HOSPITAL, a
California nonprofit; and DOES 1 through 10,
inclusive,

Defendants.

**CASE NO:
CLASS ACTION COMPLAINT**

- 1. Failure to Pay All Wages and Overtime;**
- 2. Missed Meal Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 3. Missed Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 4. Failure to Reimburse for Business Expenses in Violation of Cal. Labor Code § 2802;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Cal. Labor Code §226;**
- 6. Failure to Pay all Wages Due at Termination of Employment in Violation of California Labor Code §§ 201-203; and**
- 7. Violations of California Business & Professions Code §§ 17200, et seq.;**

JURY TRIAL DEMANDED

1 Plaintiffs Briana Westfall and Gloria Garcia by and through their undersigned attorneys
2 hereby bring this Class Action Complaint against Defendants Valley Children’s Hospital and DOES
3 1 through 10 (“Defendants”) and allege as follows:

4 **I. NATURE OF THE CASE**

5 1. This is a class action arising out of Defendants’ failure to pay all non-exempt staff,
6 including nurses and healthcare workers (“Class Members”) wages they are owed, failure to
7 compensate them for double time and or overtime, failure to provide non-exempt employees with
8 meal and rest periods in compliance with the applicable Wage Order, failure to properly pay meal
9 and rest period premiums to all of their non-exempt employees, failure to reimburse business
10 expenses, failure to provide compliant wage statements, and failure to pay all wages in a timely
11 manner at time of termination.

12 2. Class Members are typically scheduled to work 12-and-a-half-hour shifts. However,
13 Defendants have routinely required and/or suffered and permitted non-exempt employees to work
14 well in excess of 12 hours per day without paying them at their statutorily mandated double-time
15 rate of compensation.

16 3. Defendants have failed to provide sufficient “break nurses” to tend to patients so that
17 Defendants’ nurses may take statutorily-mandated meal and rest periods. Specifically, Defendants’
18 policy has been to require Class Members to skip meal or rest breaks whenever a nurse’s assigned
19 patient needs treatment or monitoring, rather than to maintain a system whereby other nurses relieve
20 them at regular intervals throughout the day. In fact, shift nurses are required to miss their meal
21 breaks to relieve other nurses.

22 4. When Class Members are provided with breaks, they are often short due to long
23 walking times or work interruptions. As a result, Class Members routinely are not provided with
24 uninterrupted, thirty-minute meal periods during which they are completely relieved of duty, by the
25 end of the fifth hour of work and the end of the tenth hour of work, and are routinely not authorized
26 and permitted to take rest breaks of at least ten minutes by the end of every fourth hour of work or
27 major fraction thereof.
28

1 5. Accordingly, Defendants have denied Class Members the double time and premium
2 wages they are owed under California law and have further denied them the legally complaint, duty-
3 free meal and rest breaks and premium pay in lieu thereof.

4 6. Furthermore, Defendants rounded all hours worked by the Plaintiff and members of
5 the Plaintiff Class; failing to pay them for all wages worked.

6 7. Additionally, even when Defendants do provide meal and/or rest period premiums for
7 missed meal and/or rest period to the nurses and their other non-exempt employees, they are not paid
8 at the proper rate. Specifically, Defendants' policy and practice has been to pay meal and rest period
9 premiums at the base hourly rate rather than regular rate, which has resulted in systematic under
10 compensation of the nurses.

11 8. Plaintiffs bring Causes of Action One through Seven (the "class claims") as a class
12 action on behalf of themselves and other similarly situated individuals who have worked as nurses
13 for Defendants in California, at any time from four years prior to the filing of this action through and
14 including the date judgment is rendered in this matter.

15 9. Plaintiffs, on their own behalf and on behalf of all Class Members, bring the class
16 claims pursuant to California Labor Code §§ 201, 202, 203, 221-223, 226, 226.7, 510, 512, 1174,
17 1194, 1198 and 2802; and California Code of Regulations, Title 8 §11050 §§ 7 & 11-12 (Wage
18 Order No. 5), and under Business & Professions Code §§ 17200-17208, for unfair competition due
19 to Defendants' unlawful, unfair and fraudulent business acts and practices.

20 **II. JURISDICTION AND VENUE**

21 10. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
22 California Constitution and California Code of Civil Procedure § 410.10.

23 11. Additionally, this Court has jurisdiction over Plaintiffs' and the Class' claims for
24 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
25 under Business & Professions Code §§ 17203 and 17204.

26 12. The Court has jurisdiction over Defendants because they are corporations authorized
27 to do business in the State of California and are registered with the California Secretary of State.
28 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise

1 intentionally avail themselves of the California market through the advertising, marketing and sale
2 of goods and services, to render the exercise of jurisdiction over Defendants by the California court
3 consistent with traditional notions of fair play and substantial justice.

4 13. Venue is proper in Madera County pursuant to Code of Civil Procedure § 395.5.
5 Defendants employed Plaintiffs and the other nurses in this County, transact business in this County,
6 and the events complained of in this Complaint occurred in this County.

7 **III. PARTIES**

8 14. Plaintiffs and all of the proposed Class Members as set forth below are current or
9 former employees of Defendants in California.

10 15. Plaintiff Briana Westfall is a resident of Clovis, California in Fresno County. Plaintiff
11 worked for Defendants as an intensive care technician from April to December of 2003. Plaintiff
12 Westfall later transferred to a pediatric nurse extern position and worked as an RN 1 from 2004
13 through 2012. She then became a staff nurse in September 2012 and was a charge nurse through
14 April 7, 2021.

15 16. Plaintiff Gloria Garcia is a resident of Clovis, California in Fresno County. Plaintiff
16 worked for Defendants as registered nurse from 1978 through June 1, 2021.

17 17. Defendant Valley Children's Hospital is a California nonprofit and at all relevant
18 times has been engaged in the business of health care and hospital services in the State of California
19 and operates a hospital and medical center in Madera, California.

20 18. Plaintiffs do not know the true names and capacities of Defendants sued herein as
21 DOES 1-10, and therefore sue these Defendants by fictitious names. Plaintiffs will amend this
22 Complaint to state the true names and capacities when ascertained. Plaintiffs are informed and
23 believe and thereon allege that each of the fictitiously named Defendants is responsible in some
24 manner for the occurrences and damages alleged herein, and that Plaintiffs' damages as hereinafter
25 set forth were proximately caused by said Defendants.

26 19. Throughout this Complaint, any reference to "Defendants" is intended to refer to all
27 Defendants, including DOES 1-10, jointly.
28

1 IV. FACTUAL ALLEGATIONS

2 20. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

3 21. Defendants have engaged in, and continue to engage in, unfair business practices in
4 California by practicing, employing and utilizing the employment practices and policies outlined
5 above.

6 22. Defendants' utilization of such unfair business practices deprives Plaintiffs and other
7 Class Members of the general minimum working standards and entitlements due to them under
8 California law and the Industrial Welfare Commission wage orders as described herein.

9 **Failure to Pay All Wages**

10 ***Off the Clock***

11 23. The applicable IWC Wage Order defines "hours worked" to mean "the time during
12 which an employee is subject to the control of an employer and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so."

14 24. Defendants suffered or permitted Plaintiffs and members of the Plaintiff Class to work
15 portions of the day for which Defendants failed to compensate them. The non-exempt employees
16 were subject to Defendants' control during this time.

17 25. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4
18 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than
19 nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall
20 not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all
21 industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1,
22 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

23 26. California *Labor Code* § 1194(a) provides in relevant part: "Notwithstanding any
24 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage [] is
25 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [],
26 including interest thereon, reasonable attorney's fees, and costs of suit."

27 27. California *Labor Code* § 1194.2(a) provides in relevant part: "In any action under
28 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the

1 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

3 28. California *Labor Code* § 1197 provides: “The minimum wage for employees fixed by
4 the commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.”

6 29. Plaintiffs are informed and believe, and therefore allege, that Defendants’
7 compensation schemes do not fairly compensate Plaintiffs and other Class Members for all hours
8 spent performing their job duties.

9 30. For example, Defendants required Plaintiffs and Class Members to consistently work
10 off the clock, including during their meal breaks. This includes time spent walking from the parking
11 lot to the facilities and mandatory COVID-screenings, all of which was done off the clock.

12 31. Further, Defendants consistently rounded Plaintiffs and Class Members’ hours. For
13 example, Plaintiff Gloria Garcia alleges that if she clocked in at 8:53, her clock card would say she
14 clocked in at 9. Thus, Defendants have been consistently shaving off time worked.

15 32. The failure to pay at least minimum wages to Plaintiffs and members of the Plaintiff
16 Class for each and every hour worked violates California *Labor Code* §§ 1182.11-1182.12, 1194,
17 1194.2, and 1197; the applicable IWC Wage Order, section 4; and California *Business &*
18 *Professions Code*.

19 33. The failure to pay designated wages to Plaintiffs and members of the Plaintiff Class
20 for each and every hour worked violates California *Labor Code* §§ 221 and 223; IWC Wage Order;
21 and California *Business & Professions Code*.

22 ***Overtime***

23 34. Defendants have a policy and/or practice of not paying its employees, including
24 Plaintiffs, overtime pay, as well as double time pay when they work more than 12 hours a day, as
25 required under California overtime laws.

26 35. Plaintiff Briana Westfall alleges that she would work 13.75 hours twice a week and
27 was only paid time and a half as opposed to double after the twelfth hour worked.
28

1 ***Rounding***

2 36. Plaintiffs allege that time punches were consistently rounded, e.g., if you clocked in at
3 7:53, it would count 8 pm as start time. Conversely, if you logged in late, at 8:07, it would say 8 pm.
4 However, Plaintiffs would clock in earlier and allege the practice unfairly benefitted employer.

5 37. Defendants rounded Plaintiffs' and members of the Plaintiff Class's time to their
6 detriment. Defendants use a timekeeping software to record its employee work hours. Employees are
7 required to "punch" into the system at the beginning and end of their shifts, as well as for meal
8 breaks. A punch shows the actual time (to the minute) when the employee punched into the system,
9 Defendants calculated an employee's pay based on his or her punch times subject to a rounding
10 policy where in and out punches are rounded up or down to the nearest tenth of an hour.

11 38. Defendants' routine policy of rounding all hours deprived Plaintiffs and other Class
12 Members of the compensation they should have received for all actual hours worked.

13 39. Plaintiffs allege that they had uneven and non-rounded punches, but end results are the
14 time being rounded by Defendants. As a result, Defendants have failed and refused to compensate
15 Plaintiffs and members of the Plaintiff Class all wages due to them for actual hours worked, and are
16 in violation of California *Labor Code* §§ 1194 and 510. Defendants owe each of their hourly
17 employees for the unpaid time each day.

18 **Failure to Provide Meal Periods**

19 40. At all times relevant hereto, California *Labor Code* §§ 226.7 and 512 and IWC Wage
20 Order, section 11 required employers to provide employees with a first meal period of not less than
21 thirty (30) minutes during which they are relieved of all duty before working more than five (5)
22 hours and a second meal period of not less than thirty (30) minutes during which they are relieved of
23 all duty before working more than ten (10) hours per day.

24 41. At all times relevant hereto, California *Labor Code* §226.7(b) and IWC Wage Order
25 section 11 required employers to pay one hour of additional pay at the regular rate of compensation
26 for each employee and each workday that a proper meal period is not provided.

27 42. Defendants regularly failed to provide a timely thirty (30) minute off-duty meal period
28 to Plaintiffs and Class Members when working more than five (5) hours in a day.

1 43. Defendants further regularly failed to provide a second timely thirty (30) minute meal
2 period to Class Members who worked more than ten (10) hours in a day.

3 44. Plaintiff Gloria Garcia alleges that meal breaks were short and often interrupted, as
4 she would be consistently asked to translate Spanish to English for various patients. Further, the
5 cafeteria was a ten (10) minute walk from her work station.

6 45. Further, Plaintiff Briana Westfall alleges that her meal breaks were short, late and
7 missed.

8 46. Plaintiffs allege that long lines to the elevator, overcrowded break rooms and
9 refrigerators forced many Class Members to race for the cafeteria and they typically would not have
10 enough time to have a thirty-minute break.

11 47. Due to the location of the hospital, it was impossible to go off campus for a thirty-
12 minute meal break so employees had limited ways in which to eat a meal in a timely manner.
13 Access to hot food, refrigerators and microwaves, and a place to sit without encountering wait time
14 were limited.

15 48. Defendants failed to pay one hour of additional pay at the regular rate of compensation
16 for each employee and each workday that a proper meal period is not provided.

17 **Failure to Provide Rest Periods**

18 49. At all times relevant hereto, California *Labor Code* § 226.7 and the applicable IWC
19 Wage Order, section 12 required employers to authorize, permit, and provide a ten (10) minute paid
20 rest for each four (4) hours of work, during which employees are relieved of all duty.

21 50. At all times relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order
22 section 12 required employers to pay one hour of additional pay at the regular rate of compensation
23 for each employee and each workday that a proper rest period is not provided.

24 51. Defendants regularly failed to provide a ten (10) minute paid rest period for each four
25 (4) hours of work, during which Plaintiffs and members of the Plaintiff Class were relieved of all
26 duties.

27 52. Throughout the statutory period, Plaintiffs and members of the Plaintiff Class
28 frequently experienced late and missed rest breaks due to the amount of work.

1 **Failure to Reimburse for All Work-Related Expenses**

2 53. At all times relevant hereto, California *Labor Code* § 2802 and IWC Wage Order
3 require an employer to indemnify employees for all necessary expenditures or losses incurred by the
4 employees in direct consequence of the discharge of the employees' duties, or the employees'
5 obedience to the directions of the employer. Further, an employer shall not collect or receive from an
6 employee any part of wages theretofore paid by employer to employee.

7 54. Defendants have a continuous policy and/or practice of failing to reimburse and/or
8 indemnify Plaintiffs and the members of the Classes defined below for, including, but not limited to
9 cell phone expenses and certification/course costs. Specifically, Plaintiff Briana Westfall was
10 required to use her personal cell phone and home computer for work related duties multiple times
11 per week including checking and responding to emails, and Plaintiff Gloria Garcia was not
12 reimbursed for her certifications and courses she completed that were required for her job.

13 **Failure to Provide Accurate Itemized Wage Statements**

14 55. At all times relevant hereto, California *Labor Code* § 226 and IWC Wage Order
15 section 7 required employers to maintain adequate employment records and provide employees with
16 accurate itemized wage statements showing gross wages, total hours worked/pieces, all applicable
17 hourly/piece rates worked during each pay period, the corresponding number of hours worked at
18 each hourly/piece rate, and meal breaks taken.

19 56. Wage statements provided to Plaintiffs and other Class Members by Defendants do
20 not show all wages earned, all hours worked, and all applicable rates, in violation of the California
21 *Labor Code* § 226, applicable IWC Wage Order, section 7, and the California *Business &*
22 *Professions Code*. Further, Defendants fail to include the appropriate address of the employer.

23 **Failure to Pay all Accrued Wages and Wages Due Upon Termination**

24 57. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
25 discharges an employee to pay compensation due and owing to said employee immediately upon
26 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
27 compensation due and owing to said employee within seventy-two (72) hours of an employee's
28 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay

1 compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then
2 the employer is liable for waiting time penalties in the form of continued compensation for up to
3 thirty (30) work days.

4 58. Defendants willfully and knowingly failed to pay Plaintiffs and other members of the
5 Plaintiff Class, upon termination of employment, all accrued compensation.

6 59. Specifically, Plaintiffs and members of the Plaintiff Class were entitled to meal and
7 rest break premiums, and were entitled to all wages that should have been paid as a result of off-the
8 clock work and overtime. Additionally, Plaintiff Gloria Garcia alleges that she received her final pay
9 check a week after she was discharged.

10 **Unfair Business Practices**

11 60. Defendants have engaged in, and continue to engage in, unfair business practices in
12 California by practicing, employing and utilizing the employment practices and policies outlined
13 above.

14 61. Defendants' utilization of such unfair business practices constitutes unfair competition
15 and provides an unfair advantage over Defendants' competitors.

16 62. Defendants' utilization of such unfair business practices deprive Plaintiffs and Class
17 Members of the general minimum working standards and entitlements due to them under California
18 law and the Industrial Welfare Commission wage orders as described herein.

19 63. As a direct result of the wage and hour violations herein alleged, Plaintiffs and
20 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
21 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
22 seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiffs'
23 respective damage in amounts according to proof at the time of trial.

24 **Facts Regarding Willfulness**

25 64. Plaintiffs are informed and believe, and based thereon allege, that Defendants are and
26 were advised by skilled lawyers, other professionals, employees with human resources background
27 and advisors with knowledge of the requirements of California wage and hour laws.
28

1 65. Plaintiffs are informed and believe, and based thereon allege, that at all relevant times,
2 Defendants had a consistent policy or practice of failing to compensate Plaintiffs and the members
3 of the Putative Class, including Plaintiffs.

4 66. Plaintiffs are informed and believe, and based thereon allege, that at all relevant times,
5 Defendants knew or should have known that the members of the Putative Class, including Plaintiffs
6 and all other aggrieved employees were entitled to receive duty-free meal periods within the first
7 five (5) hours of any shift of six (6) or more hours worked, and that any failure to do so requires
8 Defendants to pay Plaintiffs and all other aggrieved employees and the members of the Putative
9 Class one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

10 **Plaintiff's Exhaustion of Administrative Remedies**

11 67. Plaintiffs are currently complying with the procedures for bringing suit specified in
12 California *Labor Code* § 2699.3.

13 68. By letter dated September 14, 2021, required notice to the Labor and Workforce
14 Development Agency ("LWDA") and Defendants of the specific provisions of the California *Labor*
15 *Code* alleged to have been violated, including the facts and theories to support the alleged violations.

16 69. Assuming that the LWDA declines to investigate or fails to respond to such notice,
17 this Complaint will be amended when more than sixty-five (65) days have passed since the date the
18 notice was mailed to Defendants and the LWDA fails to respond to Plaintiffs' notice letter.

19 **V. CLASS ACTION ALLEGATIONS**

20 70. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

21 71. Pursuant to California *Code of Civil Procedure* §382, this action is brought and may
22 be properly maintained as a class action. This action satisfies the ascertainability, numerosity,
23 commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

24 72. Plaintiffs bring this suit as a class action on behalf of two classes of individuals
25 defined as follows (collectively the "Classes"):

26 **Plaintiff Class**

27 All persons who have been, or currently are, employed by Defendants and who held,
28 or hold, job positions which Defendants has classified as "non-exempt" employees in

1 the State of California.

2 **Terminated Sub Class**

3 All members of the Plaintiff Class whose employment ended during the Class Period.

4 73. Plaintiffs are informed and believe, and on that basis allege, that during the class
5 period, thousands of Class Members have been employed by Defendants as non-exempt employees
6 in the State of California. Because so many persons have been employed by Defendants in this
7 capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
8 impossible and/or impracticable.

9 74. Common questions of law, in fact, exist as to all members of the Plaintiff Class and
10 predominate over any questions affecting solely individual members of the Plaintiff Class. Among
11 the questions of law and fact, that are relevant to the adjudication of class members claims are as
12 follows:

- 13 (a) Whether Plaintiffs and Class Members are subject to and entitled to the benefits of
14 California wage and hour statutes;
- 15 (b) Whether Defendants maintained accurate records of the hours worked by employees;
- 16 (c) Whether Defendants failed to pay Plaintiffs and Class Members for all hours worked
17 and for all overtime;
- 18 (d) Whether Defendants had a standard policy of not providing compliant meal breaks and
19 premiums to Plaintiffs and members of the Plaintiff Class;
- 20 (e) Whether Defendants had a standard policy of not providing compliant rest breaks and
21 premiums to Plaintiffs and members of the Plaintiff Class;
- 22 (f) Whether Defendants failed to reimburse Plaintiffs and the Plaintiff Class for all
23 business-related expenses;
- 24 (g) Whether Defendants unlawfully and/or willfully failed to provide Plaintiffs and
25 members of the Plaintiff Class with true and proper wage statements upon payment of
26 wages, in violation of California *Labor Code* § 226;
- 27 (h) Whether Defendants unlawfully/or willingly failed to timely pay Plaintiffs and the
28 Terminated Sub Class upon termination;

1 (i) Whether Plaintiffs and members of the Plaintiff Class sustained damages, and if so,
2 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
3 fees, and equitable relief;

4 (j) Whether Defendants' conduct as alleged herein violates the Unfair Business Practices
5 Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

6 75. The claims of the named Plaintiffs are typical of the claims of the members of the
7 Plaintiff Class. Plaintiffs and the members of the Plaintiff Class sustained losses, injuries and
8 damages arising from Defendants' common policies, practices, procedures, protocols, routines, and
9 rules which were applied to other class members as well as Plaintiffs. Plaintiffs seek recovery for
10 the same type of losses, injuries, and damages as were suffered by other members of the proposed
11 class.

12 76. Plaintiffs are adequate representatives of the proposed classes because they are
13 members of the class, and their interests do not conflict with the interests of the members they seek
14 to represent. Plaintiffs have retained competent counsel, experienced in the prosecution of complex
15 class actions, and together Plaintiffs and their counsel intend to prosecute this action vigorously for
16 the benefit of the classes. The interests of the Class Members will fairly and adequately be protected
17 by Plaintiffs and their attorneys.

18 77. A class action is superior to other available methods for the fair and efficient
19 adjudication of this litigation since individual litigation of the claims of all Class Members is
20 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
21 individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits.
22 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and
23 the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those
24 with equally meritorious claims. By contrast, the class action device presents far fewer management
25 difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive
26 supervision by a single court.

27 78. The various claims asserted in this action are additionally or alternatively certifiable
28 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 1 a. The prosecution of separate actions by hundreds of individual class members would
2 create a risk of varying adjudications with respect to individual class members, thus
3 establishing incompatible standards of conduct for Defendants, and
4 b. The prosecution of separate actions by individual class members would also create the
5 risk of adjudications with respect to them that, as a practical matter, would be
6 dispositive of the interest of the other class members who are not a party to such
7 adjudications and would substantially impair or impede the ability of such non-party
8 class members to protect their interests

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay Overtime Compensation**

11 **California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq.*, and IWC Wage Order No. 5.**

12 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

13 79. Plaintiffs hereby reallege and incorporates by reference the paragraphs above as
14 though fully set forth herein.

15 80. California Labor Code §§ 510 and 1198, and IWC Wage Order No. 5, §3, provides
16 that employees in California shall not be employed more than eight (8) hours in any workday or
17 forty (40) hours in any workweek unless they receive additional compensation beyond their regular
18 wages in amounts specified by law.

19 81. Defendants have failed to pay Plaintiffs and the members of the Plaintiff Class
20 overtime compensation for the hours they worked in excess of the maximum hours permissible by
21 law under California Labor Code §§ 510 and 1198, and IWC Wage Order No. 5, §3. Defendants
22 require and/or suffer and permit Plaintiffs and the members of the Plaintiff Class to work hours in
23 excess of 8 in a day and 12 in a day.

24 82. Defendants rounded Plaintiffs' and members of the Plaintiff Class's time to their
25 detriment. Defendants used timekeeping software to record its employee work hours. Employees are
26 required to "punch" into the system at the beginning and end of their shifts, as well as for meal
27 breaks. A punch shows the actual time (to the minute) when the employee punched into the system,
28 Defendant calculated an employee's pay based on his or her punch times subject to a rounding

1 policy where in and out punches are rounded up or down to the nearest tenth of an hour. This can be
2 seen on all of Plaintiffs' timecards.

3 83. Defendants did not compensate their hourly non-exempt employees for all the minutes
4 that they worked as described above, including but not limited to the time that the employees were
5 subject to the control and direction of Defendant; and/or the time that the employees were suffered
6 or permitted to work.

7 84. Defendants' failure to pay additional, premium rate compensation to Plaintiff Briana
8 Westfall and the members of the Plaintiff Class for their double time hours worked has caused
9 Plaintiffs and the members of the Plaintiff Class to suffer damages in amounts which are presently
10 unknown to them but which will be ascertained according to proof at trial.

11 85. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiffs and the members of
12 the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid every
13 pay period.

14 86. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
15 Plaintiff Briana Westfall and the members of the Plaintiff Class have been deprived double time
16 compensation in an amount to be determined at trial. Plaintiffs and the members of the Plaintiff
17 Class request recovery of overtime and double time compensation according to proof, interest,
18 attorney's fees and costs of suit pursuant to California Labor Code §§1194(a), 554, 1194.3 and
19 1197.1, as well as the assessment of any statutory penalties against Defendants, in a sum as provided
20 by the California Labor Code and/or other statutes.

21 87. Further, for at least the four (4) years preceding the filing of this action, Defendants
22 failed to compensate employees for all hours worked. Defendants implemented policies that actively
23 prevented employees from being compensated for all time worked.

24 88. Under the above-mentioned wage order and state regulations, Plaintiffs and the
25 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four
26 (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit
27 in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
28 §203 and 206.

1 89. The applicable IWC Wage Order defines “hours worked” to mean “the time during
2 which an employee is subject to the control of an employer and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 90. Defendants suffered or permitted Plaintiffs and members of the Plaintiff Class to work
5 portions of the day for which Defendants failed to compensate them. The non-exempt employees
6 were subject to Defendants’ control during this time.

7 91. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4
8 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than
9 nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall
10 not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all
11 industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1,
12 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

13 92. California *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any
14 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage [] is
15 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [],
16 including interest thereon, reasonable attorney’s fees, and costs of suit.”

17 93. California *Labor Code* § 1194.2(a) provides in relevant part: “In any action under
18 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
19 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

21 94. California *Labor Code* § 1197 provides: “The minimum wage for employees fixed by
22 the commission is the minimum wage to be paid to employees, and the payment of a less wage than
23 the minimum so fixed is unlawful.”

24 95. Plaintiffs are informed and believe, and therefore allege, that Defendants’
25 compensation schemes do not fairly compensate Plaintiffs and other Class Members for all hours
26 spent performing their job duties.

27 96. For example, Defendants required Plaintiffs and Class Members to consistently work
28 off the clock, including during their meal breaks. Further, Defendants subjected Plaintiffs’ and Class

Members time cards to a rounding policy. The failure to pay at least minimum wages to Plaintiffs and members of the Plaintiff Class for each and every hour worked violates California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC Wage Order, section 4; and California *Business & Professions Code*.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods, or Compensation in Lieu Thereof

California Labor Code §§ 226.7 and 512; and Cal. Code Regs., Title 8 §11050 ¶¶ 7 & 11

(By Plaintiffs and Members of the Putative Class Against Defendants)

97. Plaintiffs hereby reallege and incorporate by reference the paragraphs above as though fully set forth herein.

98. California Labor Code §§ 226.7 and 512, and Title 8 of the California Code of Regulations § 11050, ¶ 11 require Defendants to provide meal periods to Plaintiffs and members of the proposed Class. California Labor Code §§ 226.7 and 512, and Title 8 of the California Code of Regulations § 11050, § 11 prohibit employers from employing an employee for more than five hours without a meal period no less than thirty (30) minutes and for more than ten (10) hours without a second meal period. Unless the employee is relieved of all duty during the thirty (30) minute meal period, the employee is considered “on-duty” and the meal or rest period is counted as time worked.

99. Defendants do not provide the nurses with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

100. Rather, Class Members regularly work twelve (12) hours in a day, and often far more, without the opportunity to take a meal period during which they are relieved of all duty.

101. Defendants’ policy has been to require the Class Members to skip statutorily-mandated meal periods whenever a nurse’s assigned patient needs treatment or monitoring, rather than to maintain a system whereby other nurses relieve them at regular intervals throughout the day. Even when the Class Members are provided with meal periods, they are subject to interruption to respond to patient treatment needs.

102. Moreover, as a matter of policy and practice, when Defendants do provide meal period premiums for missed meal periods to the nurses and other non-exempt employees, such premiums are paid at the base hourly rate.

103. Defendants have failed to perform their obligations to provide Plaintiffs and the members of the Plaintiff Class off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Defendants also have failed to pay Plaintiffs and the members of the Plaintiff Class one (1) hour of pay for each off-duty meal period that they have been denied.

104. Defendants' conduct described herein violates California Labor Code §§226.7 and 512 and Title 8 of the California Code of Regulations §11090. Therefore, Plaintiffs and members of the classes are entitled to compensation for Defendants' failure to provide meal periods, plus interest, expenses, and costs of suit pursuant to California Labor Code §§226.7(b) and Title 8 of the California Code of Regulations §11090.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods, or Compensation in Lieu Thereof

California Labor Code §§ 226.7 and Cal. Code Regs., Title 8 § 11050 ¶ 12

(By Plaintiffs and Members of the Putative Class Against Defendants)

105. Plaintiffs hereby reallege and incorporate by reference the paragraphs above as though fully set forth herein.

106. California Labor Code §226.7 and Title 8 of the California Code of Regulations § 11050, ¶ 12 requires Defendants to authorize and permit rest periods to Plaintiffs and members of the proposed Class at the rate of ten-minutes net rest time per four hours or major fraction thereof.

107. Defendants do nothing to authorize or permit such rest periods, even if there were an opportunity to take them.

108. To the contrary, the nurses regularly work twelve (12) hours in a day, and often far more, without any realistic opportunity to rest for even ten minutes during a four-hour period or major fraction thereof.

109. Defendants' policy has been to require Class Members to skip statutorily-mandated rest breaks, rather than to maintain a system whereby other employees relieve them at regular intervals throughout the day. As a result, the Class Members routinely are not authorized and permitted to take rest breaks of at least ten minutes by the end of every fourth hour of work or major fraction thereof.

110. Under both California Labor Code § 226.7 and Title 8 of the California Code of Regulations §1150, ¶ 12, an employer must pay an employee who was denied a required rest period one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided.

111. At all relevant times herein, Defendants have failed to perform their obligations to authorize and permit Plaintiffs and Class Members to take rest periods as set forth above. Defendants also failed to pay Plaintiffs and Class Members one (1) hour of pay for each rest period they have been denied. Further, where Defendant did provide rest period premiums for missed rest periods to their nurses and other non-exempt employees, such premiums were at the employee's base hourly rate, rather than the regular rate.

112. Defendants' conduct described herein violates California Labor Code §§ 226.7 and Title 8 of the California Code of Regulations §11050. Therefore, Plaintiffs and members of the classes are entitled to compensation for Defendants' failure to authorize and permit rest periods, plus interest, and costs of suit pursuant to California Labor Code §§ 226.7(b), and Title 8 of the California Code of Regulations § 11050.

FOURTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

California Labor Code § 2802 and Cal. Code Regs., Title 8 §11090(8)

(By Plaintiffs and Members of the Putative Class Against Defendants)

113. Plaintiffs hereby incorporate by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

114. An employer shall indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of the employees' duties, or the

1 employees' obedience to the directions of the employer. Further, an employer shall not collect or
2 receive from an employee any part of wages theretofore paid by employer to employee.

3 115. Defendants have had a continuous policy and/or practice of failing to reimburse
4 and/or indemnify Plaintiffs and Class Members for expenses.

5 116. Specifically, Plaintiff Briana Westfall was required to use her personal cell phone for
6 work related duties multiple times per week, and Plaintiff Gloria Garcia was not reimbursed for her
7 certifications and courses she completed.

8 117. Said continuous policy and/or practice of failing to reimburse Plaintiffs and Class
9 Members and deducting wages from employees is illegal under California *Labor Code* Section 2802
10 and *Cal. Code Regs.* Title 8, § 11090(8).

11 118. As a direct result of Defendants' policy of failing to reimburse Plaintiffs and Class
12 Members, Plaintiffs and the Putative Class have been damaged in an amount to be proven at trial.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Provide Accurate Itemized Wage Statements**

15 **California Labor Code § 226**

16 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

17 119. Plaintiffs hereby incorporate by reference each and every one of the allegations
18 contained in the preceding paragraphs as if the same were fully set forth herein.

19 120. California *Labor Code* § 226(a) and IWC Wage Order, section 7(B) require employers
20 to furnish each employee with a statement itemizing, among other things, the total hours worked by
21 the employee, on a semi-monthly basis or at the time of each payment of wages.

22 121. Defendants knowingly and intentionally failed to furnish Plaintiffs and the members of
23 the Classes with timely, itemized statements in compliance with California *Labor Code* § 226(a) and
24 IWC Wage Order section 7(B).

25 122. Plaintiffs are informed and believe, and thereon allege, that Defendants knowingly and
26 intentionally failed to furnish Plaintiffs and the Class Members with timely, itemized statements
27 showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all applicable hourly
28 rates in effect during each respective pay period and the corresponding number of hours worked at

1 each hourly rate by each respective individual.

2 123. Plaintiffs are informed and believe, and thereon allege, that Defendants did not
3 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiffs
4 and the members of the Classes as required under California *Labor Code* § 1174.5. This is a result of
5 missing pay, and missed meal and rest-break premiums. Further, Defendants failed to include the
6 employer address on the wage statements in violation of California *Labor Code* § 226.

7 124. As a result of not having kept accurate records, Plaintiffs and the Class Members
8 suffered injuries in the form of confusion over whether they received all wages owed to them, and
9 difficulty and expense in reconstructing pay records in addition to other injuries which may come to
10 light during the discovery process.

11 125. Plaintiffs and the members of the Classes herein seek damages and penalties pursuant
12 to California *Labor Code* § 226(e) for Defendants' violations of California *Labor Code* § 226(a).

13 126. Plaintiffs and Class Members also seek preliminary and permanent injunctive relief
14 and an award of reasonable attorneys' fees and costs pursuant to California *Labor Code* § 226(h).

15 127. Plaintiffs and the members of members of the Classes also request relief as described
16 below.

17 **SIXTH CAUSE OF ACTION**

18 **Waiting Time Penalties**

19 **California Labor Code §§ 201-203**

20 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

21 128. Plaintiffs hereby reallege and incorporate by reference the paragraphs above as though
22 fully set forth herein.

23 129. California Labor Code §201 requires an employer who discharges an employee to pay
24 all compensation due and owing to said employee immediately upon discharge. California Labor
25 Code §202 requires an employer to promptly pay compensation due and owing to said employee
26 within seventy-two (72) hours of that employee's termination of employment by resignation.
27 California Labor Code §203 provides that if an employer willfully fails to pay compensation
28 promptly upon discharge or resignation, as required under California Labor Code §§201-202, then

1 the employer is liable for waiting time penalties in the form of continued compensation for up to
2 thirty (30) work days.

3 130. Plaintiffs and members of the classes have left their employment with Defendants
4 during the statutory period. Defendants willfully failed and refused, and continue to willfully fail
5 and refuse, to timely pay all wages owed to Plaintiffs and members of the classes whose
6 employment with Defendants has ended or been terminated at any point during the statutory period.
7 As a result, Defendants are liable to Plaintiffs and other formerly employed members of the classes
8 for waiting time penalties, together with interest thereon, attorneys' fees, and costs of suit, under
9 California Labor Code §203.

10 131. Further, Plaintiff Gloria Garcia alleges that she received her final pay one week after
11 resigning.

12 132. Plaintiffs, on behalf of themselves and the other members of the classes have left their
13 employment with Defendants during the statutory period, requests waiting time penalties pursuant to
14 California Labor Code §203, plus attorneys' fees and costs, as described below.

15 **SEVENTH CAUSE OF ACTION**

16 **Unfair Competition and Unlawful Business Practices**

17 **California Business and Professions Code §§ 17200, *et seq.***

18 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

19 133. Plaintiffs hereby reallege and incorporate by reference the paragraphs above as though
20 fully set forth herein.

21 134. California Business and Professions Code §17200 defines unfair competition to
22 include, "unlawful, unfair or fraudulent business practices."

23 135. Plaintiffs and all members of the proposed classes are "persons" within the meaning of
24 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
25 property as a result of Defendants' unfair competition.

26 136. Defendants have been committing, and continues to commit, acts of unfair
27 competition by engaging in the unlawful, unfair and fraudulent business practices and acts described
28 in this Complaint, including, but not limited to:

- (a) violations of California Code Regulations, Title 8 § 11050, ¶ 7;
- (b) violations of California Labor Code §§ 226.7 and 512;
- (c) violations of California Labor Code §§ 221-223
- (d) violations of California Labor Code §§ 226;
- (e) violations of California Labor Code § 510;
- (f) violations of California Labor Code §§ 1174;
- (g) violations of California Labor Code §§ 201-203;
- (h) violations of California Code Regulations, Title 8 § 11050 ¶¶ 7, 11, and 12
- (i) violations of California Labor Code § 1194;
- (j) violations of California Labor Code § 1198; and
- (k) violations of California Labor Code §2802.

137. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the members of the proposed classes. Defendants' unlawful, unfair, and/or fraudulent conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

138. Business and Professions Code §17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

139. Plaintiffs seek a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

140. Pursuant to Civil Code §3287(a), Plaintiffs and other members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid.

141. Plaintiffs further seek an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to themselves and members of the proposed Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

1 142. Plaintiffs seek restitution to themselves and all others similarly situated of these
2 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Cal. Code
3 Civ. Proc. §1021.5.

4 **VI. PRAYER**

5 WHEREFORE, Plaintiffs pray for judgment for herself and for all others on whose behalf this
6 suit is brought against Defendants, jointly and severally, as follows:

- 7 (a) For an order certifying the proposed Class;
8 (b) For an order appointing Plaintiffs as representatives of the classes;
9 (c) For an order appointing Counsel for Plaintiffs as Counsel for the classes;
10 (d) For an order entering judgement for Plaintiffs against Defendants;
11 (e) For compensatory, consequential, general and special damages according to proof;
12 (f) For restitution to Plaintiffs and members of the classes of all money and/or property
13 unlawfully acquired by Defendants by means of any acts or practices declared by this
14 Court to be in violation of Business and Professions Code § 17200 *et seq.*, and an
15 injunction requiring Defendants to conform their practices to the laws of California;
16 (g) Declaratory Relief;
17 (h) Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
18 2802(b) and Civil Code §§ 3287 and 3289;
19 (i) Penalties pursuant to California Labor Code §§ 226, 510, 1194.2, 1194.5, 512.
20 (j) For attorneys' fees and costs as provided by, inter alia, Labor Code § 1194, 1197, and
21 Code of Civil Procedure § 1021.5; and
22 (k) For such other and further relief as the Court may deem just and proper.

23 DATED: September 14, 2021

BRADLEY/GROMBACHER LLP

24
25 By: 

26 Marcus J. Bradley, Esq.
27 Kiley L. Grombacher, Esq.
28 Lirit A. King, Esq.
Attorneys for Plaintiffs

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

DATED: September 14, 2021

BRADLEY/GROMBACHER LLP

By: _____



Marcus J. Bradley, Esq.

Kiley L. Grombacher, Esq.

Lirit A. King, Esq.

Attorneys for Plaintiffs