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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**
16

17 **MARIO MORENO and SUSIE**
18 **DRENNAN**, individually and on behalf of all
other similarly situated individuals,

19 Plaintiffs,

20 v.

21 **KAISER FOUNDATION HOSPITALS**, a
22 California corporation

23 Defendant.
24
25
26
27
28

Case No.: 37-2021-00042468-CU-OE-CTL

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Mario Moreno and Susie Drennan, individually and on behalf of all others
2 similarly situated, by and through their attorneys, hereby brings this Class Action Complaint
3 against Defendant Kaiser Foundation Hospitals (“Defendant” or “Kaiser”), and states as follows:

4 **INTRODUCTION**

5 1. This is a class action brought by Plaintiffs, individually and on behalf of all
6 similarly situated persons employed by Defendant, arising, *inter alia*, from Defendant’s willful
7 violations of the California Labor Code (“Labor Code”), the California Industrial Welfare
8 Commission (“IWC”) Wage Order Nos. 4 or 5, and the California Business & Professions Code
9 section 17200, *et seq.* Plaintiff brings this action on behalf of other hourly registered nurses that
10 work at Kaisers medical facilities (the “Class”).

11 2. Kaiser owns and operates hospitals and outpatient facilities in California, Oregon,
12 and Hawaii, with the largest portion of its business in California. The organization provides or
13 coordinates medical services for of various members Kaiser affiliated health care plans. In doing
14 so, Kaiser employs a number of hourly registered nurses.

15 3. Depending on the location, Kaiser’s registered nurses regularly work twelve-hour
16 shifts, three to four days a week. Kaiser pays its registered nurses a set hourly rate for all scheduled
17 hours. Kaiser also compensates its nurses through various non-discretionary compensation,
18 including “shift differentials,” Performance Sharing Program pay, and other bonuses for working
19 additional or undesirable hours. Kaiser does not account for this non-discretionary compensation
20 when calculating the “regular rate” of pay for overtime or meal/rest period purposes. This results
21 in Kaiser’s registered nurses underpaid for the vast number of overtime hours and meal/rest period
22 premium wages they receive from Kaiser.

23 4. Kaiser also does not pay its registered nurses for all hours worked or provide all
24 required meal and rest periods, as required under California Law. Due to chronic understaffing,
25 registered nurses often have to complete work off-the-clock or during paid rest periods. As a
26 result, Kaiser underpays its registered nurses.

27 5. Furthermore, Kaiser fails to accurately pay its registered nurses on the applicable
28 and posted scheduled pay day. Defendant often fails to pay a portion of its registered nurses’ wage

1 for months (if at all) without explanation. When any arrears are paid, they are not accompanied
2 by civil penalties or interest to which Defendant's registered nurses are entitled.

3 6. Finally, Defendant often has payroll issues that results in registered nurses being
4 purportedly "overpaid." Kaiser unlawfully deducts these overages from its registered nurses'
5 paychecks. Additionally, Defendant fraudulently attempts to obtain consent for some deductions
6 by sending threatening letters or pressuring their nurses with blank "NEGATIVE TIMECARD
7 ADJUSTMENT AUTHORIZATIONS." This practice is unconscionable and illegal, and results
8 in Kaiser's registered nurses remitting thousands of dollars for Kaiser's alleged payroll errors.

9 7. Plaintiffs seek a declaration that their rights, and the rights of the putative Class,
10 were violated, an award of unpaid wages, injunctive relief, attendant penalties, and an award of
11 attorneys' fees and costs to make them whole for damages they suffered, and to ensure that they
12 and future workers will not be subjected by Defendant to such illegal conduct in the future.

13 **JURISDICTION AND VENUE**

14 8. This Court has subject matter jurisdiction over this class action. Plaintiffs are
15 California citizens and assert claims arising under California state law.

16 9. This Court has personal jurisdiction over Defendant because it conducts business
17 in California, employs individuals in California, have caused injuries in California, and generally
18 engage in substantial activities in California.

19 10. This Court is also a proper venue for this action because Defendant employs
20 registered nurses in San Diego County, Plaintiffs reside in San Diego County, and a substantial
21 portion of the events forming the basis of this suit (including implementation of the illegal pay
22 practices alleged in this litigation) occurred in San Diego County.

23 **PARTIES**

24 11. Plaintiff Mario Moreno is a resident of San Diego County, California, and is
25 employed by Defendant as a Registered Nurse at Kaiser's Zion Medical Center located in San
26 Diego County. Plaintiff Moreno generally works three, twelve-hour shifts at the Kaiser's Zion
27 Medical Center.

28 12. Defendant classified Plaintiff Moreno as an hourly employee. Plaintiff Moreno

1 regularly works over forty hours per workweek and/or twelve hours in a work day. This includes
2 significant off-the-clock work, including completing necessary work-related paperwork (such as
3 charting) after his shift has ended. Plaintiff Moreno is not provided with meal and rest periods as
4 required by the law. Additionally, Plaintiff Moreno is required to use his personal cellphone for
5 business purposes without reimbursement.

6 13. Defendant has deducted “overpayments” from Plaintiff Moreno’s paycheck
7 without authorization. Defendant further failed to pay Plaintiff Moreno wages on the correct pay
8 date.

9 14. Plaintiff Susie Drennan is a resident of San Diego County, California, and is
10 employed by Defendant as a Registered Nurse at Kaiser’s Zion Medical Center located in San
11 Diego County. Plaintiff Drennan generally works three, twelve-hour shifts at the Kaiser’s Zion
12 Medical Center.

13 15. Defendant classified Plaintiff Drennan as an hourly employee. Plaintiff Drennan
14 has worked over forty hours per workweek and/or twelve hours in a work day. Plaintiff Drennan
15 is not always provided with meal and rest periods as required by the law. Additionally, Plaintiff
16 Drennan is required to use her cellphone for business purposes without reimbursement.

17 16. Defendant attempted to recover thousands of dollars from Plaintiff Drennan for an
18 alleged overpayment of benefits. Defendant has not provided Plaintiff Drennan with any
19 accounting of her purported debt or an explanation of why Defendant contends she was overpaid.
20 To recover the amount purported owed, Defendant requested that Plaintiff Drennan sign a blank
21 “NEGATIVE TIMECARD ADJUSTMENT AUTHORIZATIONS” form, which would allow
22 Defendant to deducted undisclosed amounts from her paycheck. Plaintiff Drennan refused to sign
23 the blank form. Defendant further failed to pay Plaintiff Drennan wages on the correct pay date.

24 17. Defendant, Kaiser Foundation Hospitals, is a California corporation headquartered
25 in Oakland, California. Defendant owns and operates a number of medical facilities through the
26 State of California. Defendant is licensed to do business in the State of California, has its principal
27 place of business at One Kaiser Plaza, Oakland, California 94612, and its registered agent for
28 service of process in California is Corporation Service Company d/b/a CSC – Lawyers

1 Incorporating Service.

2 **GENERAL ALLEGATIONS**

3 18. Kaiser Permanente is an American integrated managed care consortium, based in
4 Oakland, California. Kaiser Permanente is made up of three distinct but interdependent groups of
5 entities: the Kaiser Foundation Health Plan, Inc.; the regional Permanente Medical Groups; and
6 Kaiser Foundation Hospitals. The Kaiser Foundation Hospitals owns and operates the hospitals
7 and outpatient medical facilities that provide services for members of the Kaiser Foundation Health
8 Plan entities. In this capacity, Kaiser Foundation Hospitals employs a number of registered nurses
9 to provide direct patient care.

10 19. During their employment with Kaiser, Defendant provided Plaintiffs and other
11 Class members with instruction on how to perform their work and Defendant supervised Plaintiffs
12 and Class Members in all aspects of their work. Defendant made all employment-related decisions
13 directly affecting Plaintiffs and Class Members, including staffing decisions and payroll policies.
14 Additionally, Defendant set Plaintiffs' and Class Members' work schedules and used a time clock
15 system to log their hours.

16 20. Kaiser's registered nurses mainly work on an alternative work schedule.
17 Accordingly, Plaintiffs and other Class members work primarily twelve-hour shifts, three days a
18 week. Plaintiffs and other Class members are paid on an hourly basis and are not exempted from
19 California overtime laws. However, under their alternative work schedule, Kaiser's registered
20 nurses only accrue overtime for those hours worked in excess of their scheduled twelve-hour shifts.
21 Yet, Kaiser's alternative work schedule does not absolve Defendant from having to pay their
22 hourly employees for all hours worked, paying the overtime at a multiple of the required "regular
23 rate" of pay, from providing off-duty meal and rest periods (or compensation at the "regular rate"),
24 or making unlawful deductions from their employees' paychecks.

25 **A. Defendant fails to pay its nurses for all hours worked**

26 21. By policy and law, Kaiser requires a specific ratio of medical staff per patient or
27 certain staffing levels at many of its medical facilities. Due to the ongoing COVID-19 pandemic,
28 chronic nursing shortages, and mismanagement by Defendant, Kaiser is continuously understaffed

1 in crucial positions. Consequently, Kaiser often requires its registered nurses to cover more
2 patients or take on additional work, to make up the difference. This results in Kaiser overworking
3 its nursing staff. Plaintiffs and Class Members would often require additional time, outside their
4 scheduled shifts, to complete other ancillary (but necessary) work task, such as medical charting
5 and other paperwork.

6 22. Kaiser is aware that it was assigning its employees more work than could be
7 completed during the workday, but would actively discourage Plaintiffs and Class Members from
8 accruing any overtime hours to complete it. Yet, Defendant also would write up any employees
9 who did not complete the excess work assigned. Given that the work often involved patient care,
10 Plaintiffs and Class Members were pressured to work off-the-clock.

11 23. For example, Plaintiffs and Class Members would often have to complete medical
12 charting, or other paperwork, before or after their shifts. Additionally, Plaintiffs and Class
13 Members would frequently work during their off-duty meal and rest periods, to make up the gaps
14 in staffing coverage. This off-the-clock work should have been compensated, often at the overtime
15 premium rate of pay.

16 24. Kaiser knew that Plaintiffs and Class Members were working off-the-clock,
17 including to finish their medical charting. Indeed, Defendant often told employees that they had
18 to complete their paperwork, but Defendant would often not assign Plaintiffs and Class Members
19 additional time to do so. Additionally, Defendant's medical charting and other paper work was
20 done *via* various computer programs (or electronic health record systems). Kaiser was able to
21 track employees who login to these computer programs and knew, or should have been aware, that
22 employees were regularly working outside their scheduled shifts and off-the-clock. Indeed,
23 Health Insurance Portability and Accountability Act's Security Rule encourages Defendant to
24 monitor the login information for its staff, to ensure that Defendant's computer systems are not
25 used improperly used (including monitoring location and time of staff logins).

26 25. But Kaiser also fails to pay Plaintiffs and Class Members for each hour that Kaiser
27 records in its time keeping system, as well as other nondiscretionary compensation, on the correct
28 payday. Plaintiffs and Class Members report that their paychecks did not include pay for all hours

1 worked/compensation earned during the corresponding pay periods. Defendant seemingly admits this
2 is the case, as wage statement can include entities for “Regular Retro,” “Missed Break Retro,”
3 “Daily OT2.0 at 1.0 Retro,” “Daily OT2.0 Prm at 1.0 Retro,” “Eve Diff Wrk Retro,” and “Missed
4 Break Retro” payments. Each of these entities seem to represent payments for wages not paid
5 during the correct pay period.

6 26. Under California law, the remedy when an employer purportedly fails to pay wages
7 in a timely manner, as required by Labor Code section 204, is found under section 210 which
8 provides that "every person who fails to pay the wages of each employee as provided in Section
9 204 . . . shall be subject to a civil penalty" of \$100 for the first violation and \$200 for each
10 subsequent violation, or any willful or intentional violation. CAL. LABOR CODE § 210. In its
11 relevant part, section 204 states:

12 All wages... earned by any person in any employment are due and payable twice
13 during each calendar month, on days designated in advance by the employer as
the regular paydays.

14 CAL. LABOR CODE § 204.

15 27. Due to Kaiser’s unlawful compensation policy, Plaintiffs and other Members of the
16 Class, were not paid for all hours worked and were not paid overtime premium wages in a timely
17 manner (if at all). Accordingly, Plaintiffs and other Members of the Class are entitled to unpaid
18 wages and statutory penalties.

19 **B. Regular Rate Violations**

20 28. As non-exempt employees, Plaintiffs and other Members were entitled to full
21 compensation for all overtime hours worked at the appropriate multiple of their “regular rate” of
22 pay. CAL. LABOR CODE § 510(a). This “regular rate” takes into account all nondiscretionary
23 compensation paid to an employee.

24 29. As noted above, Kaiser compensates its registered nurses through various non-
25 discretionary compensation, including “shift differentials,” Performance Sharing Program pay,
26 and other bonus for work additional or undesirable hours. This has been particularly true during
27 the pandemic, when Defendant has offered additional pay to incentivize nurses to work additional
28 shifts.

30. Kaiser did not factor in nondiscretionary compensation when determining an employee's regular rate of pay. Instead, Defendant only used Plaintiffs' and Class Members' base hourly rate of pay. Because Defendant's compensation scheme failed to incorporate the formula set forth by California law, Defendant failed to properly compensate Plaintiffs and its other Class Members the correct wages under the California Labor Code.

C. Meal Break Violations

31. Kaiser's registered nurses, such as Plaintiffs, regularly work shifts in excess of five hours per day. In California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than twelve hours the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Furthermore, employers must provide 10-minute paid rest period for every four hours worked or major fraction thereof. An employee must be relieved from all work task during these periods. If an employer fails to provide a required meal or rest periods, that employee is entitled to one additional hour of pay for that workday.

32. Kaiser's company-wide employment policy of understaffing their medical facilities meant that Plaintiffs and Class Members were often not provided meal and rest periods, or were provided late or shortened meal periods. Alternatively, Plaintiffs and Class Members required to work during the meal or rests periods. Plaintiffs and Class Members did not waive their meal periods.

33. Kaiser is aware that Plaintiffs and Class Members did not receive meal and rest periods as required by the law. Additionally, Kaiser did not provide an extra additional hour of pay for each missed meal or rest periods. Kaiser management was responsible for setting staffing levels, and was often aware that registered nurses could not take their breaks due to lack of staffing or increase workloads. Kaiser actively discouraged registered nurses from reporting missed meal

1 or rests periods. Because of Kaiser’s unlawful conduct in not providing Plaintiff and Class
2 Members with appropriate meal periods and work-free ten-minute rest breaks, Plaintiffs and Class
3 Members are owed one hour’s wages for each workday that the required meal or rest period was
4 not provided.

5 34. And even when Kaiser did pay premium wages for missed meal and rest period, it
6 did not do so at the employee’s regular rate of pay as required by California law. *Ferra v. Loews*
7 *Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021).

8 **D. Uncompensated Business Expenses**

9 35. Plaintiffs and Class Members also used their personal cellular phones to conduct
10 business on behalf of Kaiser.

11 36. Plaintiffs and Class Members incurred necessary expenditures in the performance
12 of their job duties for Defendant, namely, the use of their personal cellular phones for business-
13 related purposes. From four years prior to the filing of this lawsuit and continuing to the present,
14 Defendant consistently failed to reimburse Class Members for these necessarily incurred business
15 expenses.

16 **E. Unlawful Deductions**

17 37. Kaiser also unlawfully deducted pay from Plaintiffs’ and Class Members’
18 paychecks. California Labor Code §221 states that it is unlawful for an employer to collect or
19 receive any part of wages already paid to an employee unless an employee to voluntarily agree to
20 repayment. Here, Kaiser deducted “overpayments” from employees’ paychecks without
21 authorization. For example, on his February 10, 2021 paycheck, Plaintiff Moreno had
22 “overpayments” of meal and/or rest period premium pay deducted from his paycheck without
23 authorization. This resulted in Kaiser unlawfully deducting \$69.38 from Plaintiff Moreno’s pay.

24 38. Kaiser has also attempted other unconscionable and unlawful methods to claw back
25 its so called overpayments. Kaiser attempted to recover thousands of dollars from Plaintiff
26 Drennan for an alleged overpayment of benefits and wages. To do so, Kaiser provided Plaintiff
27 Drennan with a “NEGATIVE TIMECARD ADJUSTMENT AUTHORIZATIONS” form during
28 her shift at work and instructed her to sign the document. This form did not included any

1 information regarding the amount of money that would be deduced from Plaintiff Drennan's
2 paycheck or the reason for the deduction. Instead, the material and relevant information was left
3 blank:

4

5 **NEGATIVE TIMECARD ADJUSTMENT AUTHORIZATION**

6

7 I, _____, acknowledge that Kaiser Permanente has
8 overpaid me for the following amount/hours _____
9 for the pay period ending _____.

10 I authorize and agree to allow Kaiser Permanente to adjust my timecard for this
11 overpayment and to deduct the overpaid amount from my next processed
12 paycheck as a one-time deduction.

13

14 Employee Signature: _____

15 Employee ID #: _____

16 Date: _____

17 To recover the amount purportedly in arrears, Defendant requested that Plaintiff Drennan sign
18 blank “NEGATIVE TIMECARD ADJUSTMENT AUTHORIZATIONS” form, which would
19 allow Defendant to deducted undisclosed amounts from her paycheck. Plaintiff Drennan refused
20 to sign the blank form, but understands that others have signed the form.

21 39. This method of recovering payments from employees is unconscionable under
22 California Civil Code, section 1670.5, and the California Unfair Competition Law (“UCL”),
23 California Business & Professions Code, section 17200, *et seq.*

24 **F. Inaccurate Wage Statements**

25 40. From at least four years prior to the filing of this lawsuit, and continuing to the
26 present, Kaiser has consistently failed to furnish Plaintiffs and Class Members with accurate
27 itemized wage statements in writing showing, among other things, hours worked and all applicable
28 hourly rates in effect during the pay period and the corresponding amount of time worked at each

1 hourly rate. As a result, Defendant systematically violated Labor Code § 226.

2 41. Defendant knew that Plaintiffs and the Class Members were working off-the-clock
3 and were being pay for all hours recorded in the time system, but did not report that time on their
4 wage statements. Similarly, Defendant knew that Plaintiffs and Class Members were entitled
5 overtime wages, but adopted policies that prevented Plaintiffs and Class Members from receiving
6 an overtime rate on all overtime hours worked. Finally, Defendant failed to pay and report all
7 hours and compensation due on its wage statements.

8 42. In this action, Plaintiffs and the Class Members seek to recover all the
9 compensation that Kaiser is required by law to provide, but failed to provide, to Plaintiffs and the
10 Class Members, as well as penalties and all other relief available to them under the California law.
11 Finally, Plaintiffs seek declaratory relief finding that Defendant's employment practices and
12 policies violated California law and injunctive relief to enjoin Kaiser from continuing to engage
13 in such unlawful employment practices.

14 43. Kaiser's wrongful conduct and violations of law as herein alleged deprived
15 Plaintiffs and the Class Members of the compensation to which they were entitled. Defendant
16 failed to enact and follow lawful employment policies, refusing to compensate for all hours
17 worked, refusal to pay overtime wages, refusing to provide work-free meal and rest periods or one
18 hour's wages in lieu thereof, and pay all business related expenses. Defendant's wrongful conduct
19 as herein alleged caused the money belonging to Plaintiffs and the Class Members to be unlawfully
20 retained by Defendant and thereby converted by Defendant for its own use.

21 44. Kaiser failed to comply with the applicable requirements imposed by the Labor
22 Code and the applicable IWC Wage Order. Defendant's practices violated and continue to violate
23 state law, which requires the payment of overtime, as well as regular wages for all hours worked
24 as required under California law. As a result of Defendant's unlawful policies and practices as
25 articulated herein, Kaiser failed to pay regular and overtime wages in accordance with applicable
26 law.

27 45. Accordingly, Kaiser also committed corresponding acts of unfair competition in
28 violation of the UCL, by engaging in company-wide policies that violated the Labor Code and

1 regulations promulgated thereunder as herein alleged

2 **CLASS ACTION ALLEGATIONS**

3 46. Plaintiffs bring this action as a class action pursuant to Code of Civil Procedure
4 section 382 for the following Class of persons:

5 All current and former hourly registered nurses who worked for Defendant in
6 California at any time during relevant statute of limitations preceding the filing of
this Complaint.

7 Excluded from the Class are all legal entities, Defendant and any person, firm, trust, corporation,
8 or other entity related to or affiliated with Defendant, as well as any judge, justice or judicial officer
9 presiding over this matter and members of their immediate families and judicial staff. Plaintiffs
10 reserve the right to amend the foregoing Class definition.

11 47. While the exact number of Class members is unknown to Plaintiffs at this time, and
12 will be ascertained through appropriate discovery, Plaintiffs are informed and believes that there
13 are hundreds (if not thousands) of similarly situated Class members in California. The number of
14 individuals who comprise the Class is so numerous that joinder of all such persons is impracticable
15 and the disposition of their claims in a class action, rather than in individual actions, will benefit
16 both the parties and the courts.

17 48. Plaintiffs' claims are typical of the claims of the other members of the Class. All
18 members of the Class have been and/or continue to be similarly affected by Defendant's wrongful
19 conduct as complained of herein, in violation of California law. Plaintiffs are unaware of any
20 interests that conflict with or are antagonistic to the interests of the Class.

21 49. Plaintiffs will fairly and adequately protect the Class members' interests and have
22 retained counsel competent and experienced in class action lawsuits and complex litigation.
23 Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously
24 litigate this class action, and Plaintiffs are aware of their duties and responsibilities to the Class.

25 50. Plaintiffs share the same interests as the other Class members and will be entitled
26 under the Labor Code to unpaid compensation, recover of expenses, deductions, statutory
27 penalties, attorneys' fees, costs and lost interest owed to their under nearly identical factual and
28 legal standards as the remainder of the putative class.

1 51. Defendant has acted with respect to the Class in a manner generally applicable to
2 each Class member. Common questions of law and fact exist as to all Class members and
3 predominate over any questions wholly affecting individual Class members. There is a well-
4 defined community of interest in the questions of law and fact involved in the action, which affect
5 all Class members. Among the questions of law and fact common to the Class are:

- 6 a. Whether Defendant engaged in a policy or practice of failing to pay each
7 Class member the correct overtime compensation for all overtime hours
8 worked;
- 9 b. Whether Defendant engaged in a policy or practice of failing to pay each
10 Class member regular wages for all compensable time;
- 11 c. Whether Defendant violated Labor Code sections 204 and 210 by willfully
12 failing to pay all wages and compensation due each Class member on the
13 correct pay date;
- 14 d. Whether Defendant violated Labor Code sections 201, 202, and 203 by
15 willfully failing to pay all wages and compensation due each Class member
16 who resigned or who was discharged;
- 17 e. Whether Defendant violated Labor Code section 226 by willfully failing to
18 provide accurate itemized wage statements showing the number of hours
19 worked by each Class member and the corresponding hourly rate;
- 20 f. Whether Defendant violated Labor Code section 1174 by failing to maintain
21 accurate records of hours worked and wages paid to Class members;
- 22 g. Whether Defendant failed and/or refused to provide each Class member
23 meal periods, or one hour's wages in lieu thereof, to which they were
24 entitled pursuant to the Labor Code and IWC Wage Order No. 4 and 5;
- 25 h. Whether Defendant failed and/or refused to provide each Class member rest
26 periods, or one hour's wages in lieu thereof, to which they were entitled
27 pursuant to the Labor Code and IWC Wage Order No. 4 and 5;
- 28 i. Whether Defendant were unlawfully deducted wages from Class members
without appropriate authorization;
- j. Whether Defendant engaged in unfair business practices in violation of
Business and Professions Code section 17200 *et seq.*;
- k. Whether Defendant should be required to pay compensatory damages,
attorneys' fees, penalties, costs, and interest for violating California state
law; and
- l. Whether Defendant should be enjoined from continuing their wrongful
conduct.

52. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all Class members is impracticable. Furthermore,
2 as the damages suffered by individual Class members may be relatively small, the expense and
3 burden of individual litigation make it virtually impossible for Class members to individually
4 redress the wrongs done to them. There will be no difficulty in managing this action as a class
5 action.

6 53. Defendant has acted on grounds generally applicable to the entire Class with respect
7 to the matters complained of herein, thereby making appropriate the relief sought herein with
8 respect to the Class as a whole.

9 **COUNT I**
10 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198 AND IWC WAGE**
ORDER 4 & 5 - FAILURE TO PAY OVERTIME

11 54. Plaintiffs re-allege and incorporate all previous paragraphs herein.

12 55. At all relevant times, Defendant regularly and consistently maintained corporate
13 policies and procedures designed to reduce labor costs by reducing or minimizing the amount of
14 compensation paid to their employees, including overtime compensation.

15 56. At all relevant times, Plaintiffs and the Class regularly performed non-exempt work
16 and were thus subject to the overtime requirements of California law.

17 57. Labor Code §§ 510, 1198 and IWC Wage Order No. 4 and 5 provide that: (a)
18 employees are entitled to compensation at the rate of one and one-half times their regular rate of
19 pay for all hours worked in excess of eight hours in a workday up to 12 hours in a workday, in
20 excess of 40 hours in a workweek, and for the first eight hours of work on the seventh consecutive
21 day of a workweek; and (b) employees are entitled to compensation at the rate of twice their regular
22 rate of pay for all hours worked in excess of 12 hours in a workday, and in excess of eight hours
23 on the seventh consecutive day of work in a workweek. For those working alternative workweeks,
24 overtime may only accrue after the first 12 hours in a workday.

25 58. At all relevant times, Plaintiffs and the Class regularly worked in excess of eight to
26 twelve hours in a workday, and forty hours in a workweek.

27 59. At all relevant times, Defendant failed and refused to pay overtime premiums to
28 Plaintiffs and the Class members for their overtime hours worked. Instead, Defendant pressured

Class members not to record all of their work hours, so as to give off the appearance that Class members did not work overtime.

60. Defendant further failed to pay Plaintiffs and the Class members for their overtime hours worked at the legally required regular rate of pay.

61. Defendant intentionally, maliciously, fraudulently and with the intent to deprive Plaintiffs and the Class of their ability to earn a living so as to reduce their labor costs, knowingly and willfully implemented a scheme or artifice to avoid paying Plaintiffs and other Class members' overtime wages for all overtime hours worked.

62. Plaintiffs and the Class were entitled to receive overtime compensation at their lawful premium rates of pay for each overtime hour that they worked. Defendant's failure to pay lawful premium overtime wages, as alleged above, was a willful violation of Labor Code §§ 510, 1198, and IWC Wage Order No. 4 & 5.

63. Wherefore, Plaintiffs demand payment of the unpaid balance of the full amount of wages due for unpaid time worked, as well as overtime premiums owing, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194 and 1194.2 as a result of Defendant's failure to pay overtime premiums for all overtime hours worked, as is required under California law.

COUNT II
VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 1182.12, 1194, 1194.2, 1197, 1198
AND IWC WAGE ORDER 4 & 5 - FAILURE TO PAY MINIMUM WAGES

64. Plaintiffs re-allege and incorporate all previous paragraphs herein.

65. At all relevant times, Plaintiffs and the Class earned "wages" for labor or services rendered to Defendant within the meaning of Labor Code § 200(a) and/or for "hours worked" within the meaning of the applicable IWC Wage Order.

66. Employers are required to pay their employees for all hours worked. During all relevant times, Defendant failed to properly pay Plaintiffs and Class members for all the hours they worked and/or were subject to Defendant's control, and failed to properly record all hours worked by Class members. For example, Defendant allowed, encouraged, or required Plaintiffs and Class members to work beyond their scheduled work hours while under the complete control

1 of Defendant and without recording the excess time, yet Defendant failed to compensate Plaintiffs
2 and the Class members for their excess work.

3 67. Defendant improperly withheld, deducted, and/or refused to pay wages for hours
4 that Plaintiffs and Class members worked.

5 68. Defendant's conduct deprived Plaintiffs and the Class members of full and timely
6 payment for all hours worked in violation of the Labor Code.

7 69. Defendant did not properly pay Plaintiffs and the Class members by, *inter alia*,
8 failing to pay them for all hours worked, in violation of Labor Code §§ 1182.12, 1194, 1197, and/or
9 1198.

10 70. Due to Defendant's willful and unlawful failure to pay Plaintiffs and the Class
11 members their earned wages, Plaintiffs and the Class members are entitled to recover their unpaid
12 wages, liquidated damages, costs and reasonable attorneys' fees, and the relief requested below in
13 the Prayer for Relief.

14 **COUNT III**
15 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 210 - FAILURE TO TIMELY**
16 **PAY WAGE**

17 71. Plaintiffs re-allege and incorporate all previous paragraphs herein.

18 72. At all relevant times, Plaintiffs and the Class earned "wages" for labor or services
19 rendered to Defendant within the meaning of Labor Code § 200(a) and/or for "hours worked"
20 within the meaning of the applicable IWC Wage Order.

21 73. In its relevant part, section 204 states that all wages "earned by any person in any
22 employment are due and payable twice during each calendar month, on days designated in advance
23 by the employer as the regular paydays." Straight time wages must be pay by the pay date of the
24 corresponding pay period in which they are earned. Overtime wages must be paid not later than
25 the pay date for the next pay period. And any non-discretionary, bonus compensation must pay as
26 due and payable when they are reasonably calculable.

27 74. Section 210 creates the cause of action based on a violation of section 204,
28 employers who violate section 204 are liable for statutory penalties of one hundred dollars (\$100)
for each initial violation for each failure to pay each employee and two hundred dollars (\$200) for

each subsequent violation, or any willful or intentional violation.

75. On multiple occasions, Defendant failed to pay Plaintiffs and the Class members wages when due or paid such wages late.

76. Defendant's conduct deprived Plaintiffs and the Class members of full and timely payment for all hours worked in violation of the Labor Code.

77. Due to Defendant's willful and unlawful failure to pay Plaintiffs and the Class members their earned wages, Plaintiffs and the Class members are entitled to recover their unpaid wages, statutory penalties, interest, costs and reasonable attorneys' fees.

COUNT IV
VIOLATION OF CALIFORNIA LABOR CODE §§ 221 AND 223
UNLAWFUL DEDUCTIONS

78. Plaintiffs re-allege and incorporate all previous paragraphs herein.

79. At all relevant times, Defendant regularly and consistently maintained corporate policies and procedures designed to reduce labor costs by reducing or minimizing the amount of compensation paid to their employees, including regular, overtime, and meal/rest period compensation.

80. Defendant made deductions from Plaintiffs' and the Class members' paychecks in the amount of the "overpaid" regular, overtime, and meal/rest period compensation previous given, without authorization. Alternatively, Defendant unlawfully obtained authorization from Plaintiffs and the Class to deducted overpayments.

81. Labor Code § 221 provides it is unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by employer to employee, without proper written authorization.

82. Labor Code § 223 provides that where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. Labor Code § 225 further provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

83. Due to their conduct alleged above, Defendant has unlawfully collected or received from Plaintiffs and the Class part of the wages paid to their employees.

84. Wherefore, Plaintiffs demand, on behalf of themselves and the Class members, the return of all wages unlawfully deducted from their paychecks, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

COUNT V
VIOLATION OF CALIFORNIA LABOR CODE §§ 226 AND 1174
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

85. Plaintiffs re-allege and incorporate all previous paragraphs herein.

86. Labor Code §§ 226 and 1174 provide that every employer shall, semi-monthly or at the time of payment of wages, furnish each employee, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing the total hours worked, and the applicable hourly rates and corresponding total number of hours worked.

87. At all relevant times, Defendant failed to maintain proper records and furnish Plaintiffs and the Class members, either semi-monthly or at the time of each payment of wages, an accurate, itemized statement conforming to the requirements of Labor Code §§ 226 and 1174.

88. At all relevant times, Defendant failed to furnish Plaintiffs and Class members with accurate wage statements in writing, showing: (1) gross wages earned; (2) total hours worked by each respective employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and only the last four digits of his or her social security number or an employee identification number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

89. Plaintiffs are informed and believes that Defendant knew or should have known that Plaintiffs and the Class members were entitled to receive wage statements compliant with Labor Code §§ 226 and 1174, and that Defendant willfully and intentionally failed to provide Plaintiffs and the Class members with such accurate, itemized statements showing, for example, accurate hours and overtime calculations.

90. Wherefore, Plaintiffs demand that Defendant pays each Class member \$50.00 for the initial pay period in which the violation occurred and \$100 for each subsequent violation, up to a maximum of \$4,000.00 pursuant to Labor Code § 226, as well as reasonable attorneys' fees

1 and costs.

2 **COUNT VI**
3 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, AND 203**
4 **FAILURE TO TIMELY PAY WAGES UPON DISCHARGE**

5 91. Plaintiffs re-allege and incorporate all previous paragraphs herein.

6 92. Labor Code §§ 201 and 202 require employers to pay their employees all wages
7 due within the time specified by law. Labor Code § 203 provides that if an employer willfully fails
8 to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees'
9 wages until the back wages are paid in full or an action is commenced, up to a maximum of 30
10 days of wages.

11 93. The Class members who ceased employment with Defendant are entitled to unpaid
12 compensation, but to date have not received such compensation.

13 94. More than 30 days have passed since certain Class members left Defendant's
14 employ.

15 95. As a consequence of Defendant's willful conduct in not paying regular, minimum
16 and/or overtime compensation for all hours worked, the Class members whose employment ended
17 during the class period are entitled to 30 days' wages under Labor Code § 203, together with
18 interest thereon and attorneys' fees and costs.

19 **COUNT VII**
20 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7, 512 AND IWC WAGE ORDER**
21 **4 & 5 - FAILURE TO PROVIDE MEAL PERIODS**

22 96. Plaintiffs re-allege and incorporate all previous paragraphs herein.

23 97. No employer shall employ any person for a work period of more than five (5) hours
24 without a meal period of not less than 30 minutes, except that when a work period of not more
25 than six (6) hours will complete the day's work the meal period may be waived by mutual consent
26 of the employer and employee. Labor Code § 512(a). An employer may not employ an employee
27 for a work period of more than ten (10) hours per day without providing the employee with a
28 second meal period of not less than 30 minutes, except that if the total hours worked is no more
than 12 hours, the second meal period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived. Labor Code § 512(a). If an employer fails

1 to provide an employee a meal period in accordance with the applicable provisions of this order,
2 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
3 compensation for each workday that the meal period is not provided. Labor Code § 226.7(c).

4 98. During the relevant period, Plaintiffs and the Class members worked in excess of
5 five and ten hours during numerous separate workdays, yet Defendant failed and refused to provide
6 them with work-free 30-minute meal periods, or one hour's wages in lieu thereof, for shifts in
7 excess of five hours worked; nor did Defendant provide Class members with a second work-free
8 30-minute meal period, or one hour's wages in lieu thereof, for shifts in excess of ten hours worked.

9 99. Even when Defendant provided Class members with one hour's wages in lieu of a
10 meal period, it was not compensated at the regular rate of pay.

11 100. Plaintiffs are informed, believe, and thereon alleges that Defendant's failure to
12 provide all required meal periods, or one hour's wages in lieu thereof, was willful, purposeful, and
13 unlawful and done in accordance with the policies and practices of Defendant's operations.
14 Because of Defendant's knowing and intentional policies and procedures, Plaintiffs and Class
15 members were not provided with all required meal periods, or one hour's wages in lieu thereof.

16 101. Plaintiffs are informed, believe, and thereon alleges that Defendant did not properly
17 maintain records pertaining to when Plaintiffs and Class members began and ended each meal
18 period, in violation of Labor Code § 1174 and Wage Order No. 4 & 5.

19 102. Due to Defendant's knowing, willful, and intentional failure to provide all required
20 meal periods, Plaintiffs and Class members are entitled to recover one additional hour of pay at
21 their regular rates of pay for each workday that a required meal period was not provided, pursuant
22 to Wage Order No. 4, subd. 11(D) and Labor Code § 226.7(c); and penalties, reasonable attorneys'
23 fees, and costs pursuant to Labor Code § 218.5.

24 **COUNT VII**
25 **VIOLATION OF CALIFORNIA LABOR CODE § 226.7 AND IWC WAGE ORDER 4 &**
5 - FAILURE TO PROVIDE REST PERIODS

26 103. Plaintiffs re-allege and incorporate all previous paragraphs herein.

27 104. IWC Wage Order No. 4 & 5 establishes the following requirements for rest periods:
28 "Every employer shall authorize and permit all employees to take rest periods, which insofar as

1 practicable shall be in the middle of each work period. The authorized rest period time shall be
2 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
3 or major fraction thereof. ... Authorized rest period time shall be counted as hours worked for
4 which there shall be no deduction from wages. ... If an employer fails to provide an employee a
5 rest period in accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
7 that the rest period is not provided."

8 105. Labor Code § 226.7(b-c) provides that: "An employer shall not require an employee
9 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission.... If an employer
11 fails to provide an employee a meal or rest or recovery period in accordance with a state law,
12 including, but not limited to, an applicable statute or applicable regulation, standard, or order of
13 the Industrial Welfare Commission ..., the employer shall pay the employee one additional hour
14 of pay at the employee's regular rate of compensation for each workday that the meal or rest or
15 recovery period is not provided."

16 106. At all relevant times, Plaintiffs and the Class members consistently worked in
17 excess of four hours in a day.

18 107. Plaintiffs and other Class members were regularly not allowed to take proper rest
19 periods, nor were they properly compensated for the same at their regular rate of pay.

20 108. Due to Defendant's knowing, willful, and intentional failure to provide rest breaks,
21 Plaintiffs and the Class members are entitled to recover one additional hour of pay at the
22 employee's regular rate of pay for each work day that a rest period was not provided, pursuant to
23 Labor Code § 226.7 and IWC Wage Order No. 4 & 5, and penalties, reasonable attorneys' fees,
24 and costs pursuant to Labor Code § 218.5.

25 109. Defendant's wrongful and illegal conduct in failing to provide Plaintiffs and the
26 Class members with rest breaks or to provide premium compensation, unless and until enjoined
27 by order of this Court, will continue to cause great and irreparable injury to Plaintiffs and the Class
28 members in that Defendant will continue to violate these laws unless specifically ordered to

1 comply with the same. The expectation of future violations will require current and future
2 employees to repeatedly and continuously seek legal redress in order to gain compensation to
3 which they are already entitled. Plaintiffs and the Class members have no other adequate remedy
4 at law to ensure future compliance with the laws alleged herein to have been violated.

5 110. Wherefore, Plaintiffs demand, pursuant to Labor Code Section 226.7(c), that
6 Defendant pays each Class member one additional hour of pay at the Class member's regular rate
7 of compensation for each workday that a rest period was not provided as required.

8 **COUNT VIII**
9 **VIOLATION OF LABOR CODE § 2802 – FAILURE TO REIMBURSE BUSINESS**
10 **EXPENSES**

11 111. Plaintiffs re-allege and incorporate all previous paragraphs herein.

12 112. Under Labor Code § 2802(a) an employer must indemnify its employees for all
13 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
14 of his or her duties, or of his or her obedience to the directions of the employer.

15 113. Plaintiffs and Class Members incurred necessary expenditures in the performance
16 of their job duties for Defendant, namely, the use of their personal cellular phones for business-
17 related purposes.

18 114. As a result of the unlawful acts of Defendant, Plaintiffs and Class Members have
19 been deprived of reimbursement in amounts to be determined at trial and are entitled to recovery
20 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

21 **COUNT IX**
22 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq.**
23 **UNFAIR, UNLAWFUL AND/OR FRAUDULENT BUSINESS PRACTICES**

24 115. Plaintiffs re-allege and incorporate all previous paragraphs herein.

25 116. Defendant engaged and continue to engage in unfair and unlawful business
26 practices in California by practicing, employing and utilizing the unfair and unlawful practices
27 described above, including but not limited to: (a) making deductions to employees' paychecks;
28 (b) requiring employees to work without lawful compensation; and (c) failing to provide accurate,
itemized wage statements. Additionally, Defendant use unconscionable contracts/agreements to
justify deductions to employees' paychecks.

1 117. The conduct alleged in each of the previously stated causes of action constitutes an
2 unlawful and unfair business practice within the meaning of Business & Professions Code § 17200,
3 *et seq.*

4 118. Because of Defendant's conduct, Plaintiffs and the Class have been harmed as
5 described in the allegations set forth above. This harm was not offset by any benefit to competition
6 or the market, as failing to pay employees is not a lawful business practice. Additionally,
7 Defendant is required to accurately record its employees' hours worked and pay all relevant
8 compensation promised by law or contract. As Defendant is responsible for its payroll and
9 timekeeping systems, there is no way for Plaintiffs and the Class to avoid the injuries alleged
10 herein.

11 119. The actions described above constitute unfair and unlawful business practices within
12 the meaning of California Business & Professions Code § 17200, *et seq.* By and through such unfair
13 and unlawful business practices, Defendant obtained valuable property, money and services from
14 Plaintiffs and the Class, and have deprived Plaintiffs and the Class of fundamental rights and
15 privileges guaranteed to all employees under California law.

16 120. Defendant was unjustly enriched by the policies and practices described herein, and
17 those policies and practices conferred an unfair business advantage on Defendant over other businesses
18 providing similar services that routinely comply with the requirements of California law.

19 121. Plaintiffs seek, on their own behalf, and on behalf of the putative Class members,
20 full restitution of all monies withheld, acquired and/or converted by Defendant by means of the
21 unfair practices complained of herein, as necessary and according to proof.

22 122. Plaintiffs seek, on their own behalf, and on behalf of the Class members, an injunction
23 to prohibit Defendant from continuing to engage in the unfair business practices complained of herein.
24 Defendant's unlawful conduct, as described above, unless and until enjoined and restrained by order
25 of this Court, will cause great and irreparable injury to Plaintiffs and all Class members in that
26 Defendant will continue to violate these California laws unless specifically ordered to comply with the
27 same. This expectation of future violations will require current and future employees to repeatedly and
28 continuously seek legal redress in order to gain compensation to which they are entitled under

California law. Plaintiffs have no other adequate remedy at law to insure future compliance with the California labor laws and wage orders alleged to have been violated herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the putative Collective and Class members, requests judgment as follows:

- A. Certifying the proposed Class;
- B. Designating Plaintiffs as Class Representatives of the proposed Class;
- C. Ordering service awards for the Class Representatives in recognition of the time, effort, and risk they incurred in bringing this action and as compensation for the value they have provided to the Class members;
- D. Appointing undersigned counsel as Class Counsel;
- E. Issuing a declaratory judgment that the practices complained of herein are unlawful under the California Labor Code and UCL;
- F. Granting judgment in favor of Plaintiffs and against Defendant and awarding unpaid regular and overtime wages calculated at Plaintiffs' regular or overtime premium rate of pay;
- G. For restitution to Plaintiffs and other similarly affected Class members of all funds unlawfully acquired by Defendant by means of any acts or practices declared by this Court to violate the mandate established by California Business and Professions Code § 17200 *et seq.*;
- H. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violations of California Business and Professions Code § 17200, *et seq.*;
- I. For an injunction prohibiting Defendant from engaging in the unfair business practices complained of herein;
- J. For an injunction requiring Defendant to give notice to persons to whom restitution is owing of the means by which to file for restitution;
- K. For actual damages or statutory penalties according to proof as set forth in Labor Code §§ 210, 226, 1174, and IWC Wage Order No. 4 and 5 related to wage statements and record keeping;

1 L. For pre and post judgment interest as allowed by Labor Code §§ 218.6 and 1194,
2 California Civil Code § 3287 and other statutes;

3 M. For reasonable attorneys' fees, expenses, and costs as provided by the California
4 Labor Code §§ 218.5, 226(e) and (h), 1194; and California Code of Civil Procedure § 1021.5; and

5 N. For such other and further relief the Court may deem just and proper.

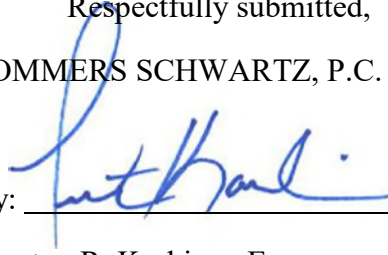
6 **JURY DEMAND**

7 Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

8
9 DATED: October 5, 2021

Respectfully submitted,

10 SOMMERS SCHWARTZ, P.C.

11 By: 
12 _____

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