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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

THANH PHAN, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ST. JUDE MEDICAL CENTER, a California
Corporation; ST. JUDE HOSPITAL, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

MARK MORANVILLE, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

ST. JUDE HOSPITAL, a California
Corporation; ST. JUDE HERITAGE
MEDICAL GROUP, A MEDICAL
CORPORATION, a California Corporation;
and DOES 1-100, inclusive,

Defendants.

Case No.: **30-2022-0124478-CU-OE-CXC**
FIRST AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;
2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802; and
8. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT (PAGA) OF 2004

DEMAND FOR A JURY TRIAL

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1 Plaintiff Thanh Phan (“PLAINTIFF PHAN”), an individual, and Plaintiff Mark Moranville
2 (“PLAINTIFF MORANVILLE”), and individual, (collectively referred to herein as
3 “PLAINTIFFS”) on behalf of themselves and all other similarly situated current and former
4 employees allege on information and belief, except for their own acts and knowledge which are
5 based on personal knowledge, the following:

6 **THE PARTIES**

7 1. Defendant St. Jude Medical Center is a California corporation that at all relevant
8 times mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

10 2. Defendant St. Jude Hospital is a California corporation that at all relevant times
11 mentioned herein conducted and continues to conduct substantial business in the state of California.

12 3. Defendant St. Jude Heritage Medical Group, A Medical Corporation is a California
13 corporation, that at all relevant times mentioned herein conducted and continues to conduct
14 substantial business in the state of California.

15 4. St. Jude Medical Center, St. Jude Hospital, and St. Jude Heritage Medical Group, A
16 Medical Corporation, are the joint employers of PLAINTIFFS as evidenced by paycheck and by the
17 company PLAINTIFFS perform work for respectively, and are therefore jointly responsible as
18 employers for the conduct alleged herein, and are therefore collectively referred to herein as
19 “DEFENDANT.”

20 5. DEFENDANT is a hospital that was established in 1957 and is located in Orange
21 County, California. DEFENDANT owns, operates, and/or otherwise manage St. Jude Medical
22 Center, an acute care hospital with over 320 beds, nearly 700 physicians, and over 2,400 employees.
23 See <https://www.providence.org/locations/st-jude-medical-center/about-us#tabcontent-1-pane-2>
24 (last visited February 17, 2021).

25 6. PLAINTIFF PHAN has been employed by DEFENDANT in California since 2010
26 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
27 basis, and entitled to the legally required meal and rest periods and payment of minimum and
28 overtime wages due for all time worked.

1 7. PLAINTIFF MORANVILLE was and is currently employed by DEFENDANT as a
2 non-exempt registered nurse at DEFENDANT's St. Jude Medical Center in the county of Orange.
3 PLAINTIFF MORANVILLE worked in DEFENDANT's emergency department as a registered
4 nurse for over 20 years until in or around mid 2021. PLAINTIFF MORANVILLE currently works
5 in DEFENDANT's endoscopic unit as a non-exempt registered nurse. While assigned to the
6 emergency department, PLAINTIFF MORANVILLE worked under an alternative workweek
7 schedule in which he worked twelve (12) hours per shift, three (3) shifts per week. Currently,
8 PLAINTIFF MORANVILLE works at least five (5) hours per shift, 3-5 shifts per week.

9 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
10 defined as all current and former non-exempt employees that worked directly or via a staffing
11 agency for St. Jude Medical Center and/or St. Jude Hospital and/or St. Jude Heritage Medical Group,
12 A Medical Corporation in California (the "CALIFORNIA CLASS") at any time during the period
13 beginning four (4) years prior to the filing of the initial Complaint and ending on the date as
14 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for
15 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
16 (\$5,000,000.00).

17 9. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
18 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
19 CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to
20 lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an
21 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
22 retain wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS.
23 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining
24 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
26 past and current unlawful conduct, and all other appropriate legal and equitable relief.

27 10. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

1 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to
2 Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the
3 true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS
4 are informed and believe, and based upon that information and belief allege, that the Defendants
5 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner
6 for one or more of the events and happenings that proximately caused the injuries and damages
7 hereinafter alleged.

8 11. The agents, servants and/or employees of the Defendants and each of them acting on
9 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
10 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
11 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of
12 each Defendant are legally attributable to the other Defendants and all Defendants are jointly and
13 severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss
14 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

15 **JOINT LIABILITY**

16 12. Under California law, the definition of the term "to employ" is broadly construed
17 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
18 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
19 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
20 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
21 was to reach situations in which multiple entities control different aspects of the employment
22 relationship. Supervision of the work, in the specific sense of exercising control over how services
23 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
24 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
25 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

26 13. During PLAINTIFFS' employment by DEFENDANT, PLAINTIFFS,
27 CALIFORNIA CLASS Members (defined below) and the Aggrieved Employees (defined below)
28 were jointly employed by DEFENDANT for purposes of the Wage Orders, under the alternative

1 definitions of “to employ” adopted by the California Supreme Court in *Martinez*, supra. As
2 discussed below, DEFENDANT (1) exercised control over wages, hours and working conditions of
3 PLAINTIFFS, CALIFORNIA CLASS Members and Aggrieved Employees; (2) suffered or
4 permitted PLAINTIFFS, CALIFORNIA CLASS Members and Aggrieved Employees to work for
5 them; and, (3) engaged PLAINTIFFS, CALIFORNIA CLASS Members and Aggrieved Employees
6 to work for them.

7 14. PLAINTIFFS are informed and believes, and thereon alleges that at all relevant times
8 DEFENDANT operated as a single integrated enterprise with common ownership and centralized
9 human resources. As a result, DEFENDANT utilized the same unlawful policies and practices and
10 subjected all employees to these same policies and practices.

11 15. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant
12 to this Complaint, DEFENDANT were the joint employers of PLAINTIFFS, CALIFORNIA
13 CLASS Members and Aggrieved Employees upon whose behalf PLAINTIFFS bring these
14 allegations and causes of action, in that DEFENDANT, exercised sufficient control over their
15 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
16 considered their joint employers. Specifically, upon information and belief, PLAINTIFFS allege
17 that DEFENDANT created a uniform set of policies, practices and/or procedures concerning, inter
18 alia, hourly and overtime pay, time-keeping practices, meal and rest periods, and other working
19 conditions that were distributed to, and/or applied to PLAINTIFFS, CALIFORNIA CLASS
20 Members and Aggrieved Employees, and further that DEFENDANT uniformly compensated and
21 controlled their wages in a uniform manner. Based on information and belief, DEFENDANT
22 collectively represented to PLAINTIFFS, CALIFORNIA CLASS Members and Aggrieved
23 Employees that each was an "at-will" employee of DEFENDANT, and that DEFENDANT
24 collectively retained the right to terminate PLAINTIFF's, CALIFORNIA CLASS Members' and
25 Aggrieved Employees' employment with or without cause. Upon information and belief,
26 DEFENDANT further collectively represented to PLAINTIFFS, CALIFORNIA CLASS Members
27 and Aggrieved Employees in writing the details of their compensation, and the manner in which
28 they were to take meal and rest periods, the procedures required by DEFENDANT collectively for

1 recordation of hours worked and the policies applicable to PLAINTIFFS, CALIFORNIA CLASS
2 Members and Aggrieved Employees by which DEFENDANT collectively would evaluate their
3 wage rates.

4 16. Thus, DEFENDANT collectively exercised the right to control the wages, hours and
5 working conditions of PLAINTIFFS, CALIFORNIA CLASS Members and Aggrieved Employees.
6 As such, DEFENDANT collectively held the right to control virtually every aspect of
7 PLAINTIFFS', CALIFORNIA CLASS Members' and Aggrieved Employees' employment,
8 including the instrumentality that resulted in the illegal conduct for which PLAINTIFFS seek relief
9 in this Complaint.

10 17. PLAINTIFFS are informed and believe that DEFENDANT exercised the same
11 control over, applied the same policies and practices, and engaged in the same acts and omissions
12 with regard to the other CALIFORNIA Class Members and Aggrieved Employees.

13 **THE CONDUCT**

14 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including all
17 the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and
18 CALIFORNIA CLASS Members to work without paying them for all the time they are under
19 DEFENDANT's control. PLAINTIFFS and CALIFORNIA CLASS Members also worked off the
20 clock with respect to time spent undergoing mandatory drug testing or any other testing and/or
21 examination required as a condition of employment. Additionally, DEFENDANT, as a matter of
22 established company policy and procedure, administers a uniform practice of rounding the actual
23 time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the
24 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and
25 CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid
26 for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
27 practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the
28 clock in that DEFENDANT, as a condition of employment, required these employees to submit to

1 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
2 clocking into DEFENDANT's timekeeping system for the workday. For example, prior to clocking
3 in, PLAINTIFFS were required to form a line and undergo pre-shift temperature checks.
4 PLAINTIFFS and other CALIFORNIA CLASS Members were also required to answer COVID-
5 related screening questions prior to clocking in to work. Upon satisfactory completion of the
6 temperature check and screening questionnaire, PLAINTIFFS and CALIFORNIA CLASS
7 Members received a band to place around their wrist indicating satisfactory completion of
8 DEFENDANT's pre-shift COVID screening process. This process took at least a few minutes to
9 complete. DEFENDANT also requires PLAINTIFFS and other CALIFORNIA CLASS Members
10 to don and doff scrubs and protective equipment prior to clocking in to work. For example, upon
11 arriving to the hospital (and after completing the COVID temperature check and screening),
12 PLAINTIFF MORANVILLE was required to go to the locker room, change out of his personal
13 scrubs and change into company-provided scrubs, put on a face mask, a face shield, and hair cap.
14 Donning and doffing of scrubs/uniforms and protective equipment took approximately ten minutes
15 to complete. This work time was off-the-clock and uncompensated. Moreover, based on information
16 and belief, PLAINTIFFS and CALIFORNIA CLASS Members are required to perform work during
17 unpaid meal periods. Based on further information and belief, DEFENDANT required/requires
18 PLAINTIFFS and CALIFORNIA CLASS Members to undergo Covid testing outside of their
19 scheduled shift times without compensating them for the travel time to/from the testing sites, time
20 spent waiting for the tests to be performed, and time spent undergoing testing, resulting in significant
21 off-the-clock work. Finally, DEFENDANT also requires PLAINTIFFS and other CALIFORNIA
22 CLASS Members to complete mandatory unpaid trainings and continued education courses,
23 including but not limited to trainings related to computer systems being used at the hospital and also
24 complete mandatory "Health Streams" which deal with hospital compliance issues. As a result,
25 PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage
26 compensation, and off-duty meal breaks by working without their time being correctly recorded and
27 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
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1 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by
2 DEFENDANT's business records.

3 19. DEFENDANT also failed to pay all owed overtime wages due to in part to its failure
4 to implement a lawful alternative workweek schedule and comply with California's overtime wage
5 laws. For example, for most of PLAINTIFF MORANVILLE's employment by DEFENDANT,
6 PLAINTIFF MORANVILLE worked subject to an alternative work week schedule in which he
7 worked 12 hours per shift, three shifts per week. According to the California Department of
8 Industrial Relations Alternative Workweek Elections Database, DEFENDANT conducted an
9 election to adopt an alternative workweek schedule ("AWS") in 2018. The AWS was approved in
10 2018. Pursuant to the alternative workweek schedule, DEFENDANT was required to pay
11 PLAINTIFF MORANVILLE his regular rate of pay for the first 12 hours in a shift and double the
12 regular rate of pay for all time worked after 12 hours in a shift (and 1.5 times his regular rate of pay
13 for all hours worked over 40 hours in a week). However, on at least 4 shifts per month, PLAINTIFF
14 MORANVILLE was sent home at least 2-4 hours before completing his 12-hour shift because
15 DEFENDANT no longer needed him for the remainder of the shift. On such shortened shifts,
16 PLAINTIFF MORANVILLE was entitled to overtime pay at 1.5 times his regular rate of pay after
17 the first eight hours of work. Instead, DEFENDANT paid PLAINTIFF MORANVILLE his base
18 rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule,
19 and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code
20 section 1198.

21 20. State and federal law provides that employees must be paid overtime at one-and-one-
22 half times their "regular rate of pay." Meal and rest break premiums must also be paid at the "regular
23 rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an
24 hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

25 21. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
26 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
28 performance for DEFENDANT. The non-discretionary incentive program provided all employees

1 paid on an hourly basis with incentive compensation when the employees met the various
2 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
3 order to pay overtime and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA
4 CLASS Members, DEFENDANT failed to include the incentive compensation as part of the
5 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break
6 premium pay. Management and supervisors described the incentive program to potential and new
7 employees as part of the compensation package. As a matter of law, the incentive compensation
8 received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the
9 "regular rate of pay." The failure to do so has resulted in an underpayment of overtime compensation
10 and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by
11 DEFENDANT. Moreover, based on information and belief, DEFENDANT failed to incorporate all
12 other forms of non-discretionary compensation, including but not limited to, shift differential pay
13 and/or other non-discretionary bonus pay and/or other forms of non-discretionary pay, into the
14 regular rate of pay for purposes of calculating the owed overtime rate (including the owed double
15 time rate) as well as the owed meal and/or rest period premium. For example, PLAINTIFF
16 MORANVILLE regularly earned shift differential pay for working the night shift and/or earned
17 non-discretionary bonuses. Based on information and belief, DEFENDANT failed to factor this non-
18 discretionary compensation into the regular rate of pay for purposes of calculating the owed meal
19 and rest period premium pay and overtime wages owed. As such, DEFENDANT failed to pay all
20 owed overtime wages at the regular rate of pay. Moreover, DEFENDANT failed to pay a meal/rest
21 period premium at all for each workday a lawful meal or rest period was not provided, and even if
22 and when a meal or rest premium was paid, DEFENDANT failed to pay the proper meal period
23 premium for failure to incorporate all non-discretionary remuneration into the regular rate of pay.

24 22. Based on information and belief, DEFENDANT had actual and/or constructive
25 knowledge that its auto-deduction policies, failure to provide full 30-minute off-duty meal periods,
26 off-the-clock work policies and practices, and violations of the AWS described herein resulted in
27 violations of California's minimum, overtime, and double time wage laws and other violations
28 described below.

1 23. During the relevant period, PLAINTIFFS and CALIFORNIA CLASS Members
2 regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at least one
3 thirty-minute uninterrupted meal period. However, DEFENDANT failed to provide PLAINTIFFS,
4 and CALIFORNIA CLASS Members with timely thirty-minute, uninterrupted meal periods and/or
5 required them to work through purported meal periods, remain on DEFENDANT's premises during
6 purported meal periods and/or remain tethered to DEFENDANT's communication devices. Based
7 on information and belief, PLAINTIFFS, and CALIFORNIA Class Members were not adequately
8 informed, authorized, instructed about, nor permitted an opportunity to take lawful meal periods per
9 California law. DEFENDANT did not have a lawful written meal break policy, nor did
10 DEFENDANT have a compliant policy in practice.

11 24. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
12 CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and
13 are not fully relieved of duty for their meal periods. For example, PLAINTIFF MORANVILLE took
14 a late meal period, was interrupted during his meal period and/or was not provided with a meal
15 period at least once per month. On some occasions, PLAINTIFF MORANVILLE took a late meal
16 period and/or was interrupted during his meal period several times per month due to the nature and
17 constraints of his job duties. PLAINTIFFS and other CALIFORNIA CLASS Members are required
18 from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during
19 some shifts without receiving a meal break. Moreover, as explained above, DEFENDANT required
20 PLAINTIFFS and CALIFORNIA CLASS Members to perform pre-shift off-the-clock work. Based
21 on information and belief, DEFENDANT failed to consider the pre-shift off-the-clock work for
22 purposes of scheduling meal periods. Based on information and belief, meal periods were late, in
23 part due to the unaccounted pre-shift off-the-clock work.

24 25. At all relevant times, PLAINTIFF MORANVILLE was required to remain on
25 DEFENDANT's premises during purported meal periods. Moreover, PLAINTIFF MORANVILLE
26 was required to carry a company-provided radio and earpiece during his purported meal periods in
27 order to be available in the event DEFENDANT asked him to return to his job duties. As such
28 DEFENDANT, required PLAINTIFF MORANVILLE and CALIFORNIA CLASS Members to

1 remain on premises and tethered to company-provided communication devices during purported
2 meal periods, and thus remained subjected to DEFENDANT's control during meal periods. Further,
3 DEFENDANT from time to time fails to provide PLAINTIFFS and CALIFORNIA CLASS
4 Members with a second timely off-duty meal period for some workdays in which these employees
5 are required by DEFENDANT to work ten (10) hours of work. Moreover, even on shifts that lasted
6 longer than twelve (12) hours, DEFENDANT failed to provide a second meal break to PLAINTIFFS
7 and other CALIFORNIA CLASS Members before the end of the tenth hour of work.

8 26. DEFENDANT also engages in the practice of rounding the meal period times to
9 avoid paying penalties to PLAINTIFFS and other CALIFORNIA CLASS Members, further
10 resulting in unpaid wages and late or shortened meal periods. PLAINTIFF and other members of
11 the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
12 accordance with DEFENDANT's corporate policy and practice.

13 27. Based on information and belief, DEFENDANT implemented a policy and/or
14 practice of automatically deducting at least thirty minutes per shift for short, interrupted and/or
15 otherwise unlawful meal periods, despite having actual and/or constructive knowledge that
16 PLAINTIFFS and other CALIFORNIA CLASS Members did not receive compliant meal periods,
17 thereby depriving PLAINTIFFS and CALIFORNIA CLASS Members of lawful meal periods and
18 further depriving them of all owed wages.

19 28. DEFENDANT did not have a lawful policy, instruction, or practice as to the taking,
20 timing, or duty-free nature of rest periods. DEFENDANT did not properly authorize and provide
21 PLAINTIFFS and CALIFORNIA CLASS Members with lawful rest periods at a rate of every four
22 (4) hours worked or major fraction thereof. PLAINTIFFS and CALIFORNIA CLASS Members
23 were not adequately informed, authorized, instructed about, nor permitted an opportunity to take
24 proper rest periods per California law.

25 29. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
26 CALIFORNIA CLASS Members are required from time to time to work in excess of four (4) hours
27 without being provided ten (10) minute rest periods. Further, these employees are denied their first
28 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours

1 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
2 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of
3 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. Rest
4 periods were consistently interrupted, cut short, on duty, restricted to premises and/or late due to
5 understaffing, the nature and constraints of assigned job duties and/or due to commentary from
6 supervisors pressuring employees to take non-compliant rest periods. For example, due to the nature
7 and constraints of his job duties, PLAINTIFF MORANVILLE was rarely afforded the opportunity
8 to take a rest period. Moreover, any purported rest periods were interrupted or cut short and/or
9 CALIFORNIA CLASS Members were required to remain on premises or remain tethered to
10 DEFENDANT's communication devices during purported rest periods. Based on information and
11 belief, PLAINTIFFS and other CALIFORNIA CLASS Members were pressured to complete their
12 work duties according to a designated schedule such that rest breaks were only taken once jobs were
13 completed/if time permitted.

14 30. PLAINTIFFS and other CALIFORNIA CLASS Members are also not provided with
15 one hour wages in lieu thereof. DEFENDANT failed to pay a rest period premium at all for each
16 workday a lawful rest period was not provided, and even if and when a rest premium was paid,
17 DEFENDANT failed to pay the proper premium for failure to incorporate all non-discretionary
18 remuneration, including but not limited to, non-discretionary bonus pay, shift differential pay,
19 and/or other non-discretionary compensation into the regular rate for purposes of calculating the
20 owed rest period premium at the regular rate of compensation. Additionally, the applicable
21 California Wage Order requires employers to provide employees with off-duty rest periods, which
22 the California Supreme Court defined as time during which an employee is relieved from all work
23 related duties and free from employer control. In so doing, the Court held that the requirement under
24 California law that employers authorize and permit all employees to take rest period means that
25 employers must relieve employees of all duties and relinquish control over how employees spend
26 their time which includes control over the locations where employees may take their rest period.
27 Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes
28 out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFFS and other

1 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
2 DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot
3 leave the work premises during their rest period.

4 31. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately
5 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of
6 time these employees work. Due to DEFENDANT's automatic meal break deductions, failure to
7 relieve employees of all duties and employer control during meal periods, time rounding, and other
8 off-the-clock work policies and practices described above, DEFENDANT failed, and continues to
9 fail, to keep accurate and complete records as required by law, including but not limited to the
10 following records: total daily hours worked, applicable rates of pay, time records showing when
11 PLAINTIFFS and CALIFORNIA CLASS Members began and ended each work period, time
12 records of meal periods, shift start times and end times, and accurate itemized wage statements.
13 Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay
14 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, meaning the time
15 during which an employee was subject to the control of an employer, including all the time the
16 employee was permitted or suffered to permit this work. DEFENDANT requires these employees
17 to work off the clock without paying them for all the time they are under DEFENDANT's control.
18 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other members of
19 the CALIFORNIA CLASS are under compensated for all time worked. As a result, PLAINTIFFS
20 and other CALIFORNIA CLASS Members forfeit time worked by working without their time being
21 accurately recorded and without compensation at the applicable minimum wage and overtime wage
22 rates. To the extent that the time worked off the clock does not qualify for overtime premium
23 payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation
24 of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

25 32. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the other
26 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
27 to show, among other things, the correct gross and net wages earned (including but not limited to
28 meal and rest period premiums). Cal. Lab. Code § 226 provides that every employer shall furnish

1 each of his or her employees with an accurate itemized wage statement in writing showing, among
2 other things, gross wages earned and all applicable hourly rates in effect during the pay period and
3 the corresponding amount of time worked at each hourly rate, and the total hours worked (by virtue
4 of the automatic deduction for meal periods and other off-the-clock work described herein). As
5 DEFENDANT failed to pay all owed overtime wages and failed to incorporate all forms of non-
6 discretionary compensation earned during the pay period into the regular rate of pay for purposes of
7 calculating the owed overtime rate, DEFENDANT issued wage statements that failed to display the
8 correct overtime rate for each hour of overtime. Additionally, DEFENDANT violates Cal. Lab.
9 Code 226(a)(8) by failing to list the correct name and address of the legal entity that employs
10 PLAINTIFFS and other CALIFORNIA CLASS Members. Aside, from the violations listed above
11 in this paragraph, DEFENDANT fails to issue to PLAINTIFFS an itemized wage statement that lists
12 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
13 to time provides PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage
14 statements which violated Cal. Lab. Code § 226.

15 33. As a result, PLAINTIFFS and CALIFORNIA CLASS Members have suffered injury
16 as they could not easily determine whether they received all wages owed to them and whether they
17 were paid for all hours worked. Moreover, as a result of DEFENDANT's failure to list the correct
18 legal entity that is the employer, PLAINTIFFS and CALIFORNIA CLASS Members have suffered
19 injury as there was confusion as to which entity to contact regarding any question(s) they had about
20 wages paid and unpaid.

21 34. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
22 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
23 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code §
24 210 provides:

25 [I]n addition to, and entirely independent and apart from, any other
26 penalty provided in this article, every person who fails to pay the
27 wages of each employee as provided in Sections. . . .204. . . shall be
28 subject to a civil penalty as follows: (1) For any initial violation, one
hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two

hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

35. DEFENDANT from time to time fails to pay PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d).

36. DEFENDANT violated California's paid sick leave laws including Labor Code section 245-248.5 and 233-234. DEFENDANT either failed to provide sick leave pay or failed to properly accrue paid sick leave due to DEFENDANT's failure to account for actual hours worked (by virtue of DEFENDANT's meal period auto-deduction, and time rounding practices, and other off-the-clock work described herein). Moreover, DEFENDANT underpays sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary remuneration, including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

37. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

38. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-discretionary incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

39. Based on information and belief, DEFENDANT fails to timely pay final wages upon termination or resignation. Based on information and belief, DEFENDANT untimely provides final wages without regard to the timing requirements of Labor Code section 201-202. Moreover, final paychecks, once provided to CALIFORNIA CLASS Members that are no longer employed, do not

1 include all wages owed as they are devoid of, including but not limited to, all owed minimum wages,
2 overtime wages, double time wages, premium wages, vacation pay, and all owed sick leave and/or
3 paid time off wages at the properly accrued rates. As a pattern and practice, DEFENDANT regularly
4 failed to pay PLAINTIFFS and other members of the CALIFORNIA CLASS their correct wages
5 and accordingly owe waiting time penalties pursuant to Cal. Lab. Code Section 203. Further,
6 PLAINTIFFS are informed and believes and based thereon alleges that such failure to pay sick pay
7 at regular rate was willful, such that members of the CALIFORNIA CLASS whose employment has
8 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

9 40. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to
10 collect or receive from an employee any part of wages theretofore paid by said employer to said
11 employee.” DEFENDANT fails to pay all compensation due to PLAINTIFFS and other
12 CALIFORNIA LABOR SUB-CLASS Members, makes unlawful deductions from compensation
13 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, fails to disclose all
14 aspects of the deductions from compensation payable to PLAINTIFFS and CALIFORNIA LABOR
15 SUB-CLASS Members, and thereby fails to pay these employees all wages due at each applicable
16 pay period and upon termination. PLAINTIFFS allege on information and belief, that
17 DEFENDANT made unlawful deductions from paychecks issued to PLAINTIFFS and members of
18 the CALIFORNIA LABOR SUB-CLASS, including but not limited to deductions titled as
19 ‘Cafeteria’ and ‘Hyatt Legal’ on wage statements issued by DEFENDANT. Based on information
20 and belief, these deductions are unlawful and in violation of including but not limited to, Labor
21 Code Section 221-222. PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS
22 seek recovery of all illegal deductions from wages according to proof, related penalties, interest,
23 attorney fees and costs.

24 41. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
25 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
26 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,
28 employers are required to indemnify employees for all expenses incurred in the course and scope of

1 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
2 her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
4 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
5 them to be unlawful."

6 42. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
7 Members as a business expense, are required by DEFENDANT to use their own personal cellular
8 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are
9 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
10 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and other
11 CALIFORNIA CLASS Members are required by DEFENDANT to use their personal cellular
12 phones, data plan usage and charges as well as use of personal computer devices. For example,
13 PLAINTIFF MORANVILLE received messages to his personal phone for work related purposes,
14 including but not limited to, messages related to scheduling and assigning shifts. Based on
15 information and belief, CALIFORNIA CLASS Members also used personal devices to complete
16 off-the-clock trainings/continued education courses as mandated by DEFENDANT, and further,
17 were required to pay for the cost of some continued education training/certification courses.
18 Moreover, based on information and belief, CALIFORNIA CLASS Members were not reimbursed
19 for the cost of undergoing mandatory covid testing, including but not limited to purchasing the test,
20 and/or the cost of traveling and/or using a personal vehicle to travel to and from a testing site. As a
21 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other members of
22 the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
23 limited to, costs related to the use of their personal cellular phones, personal computer devices, costs
24 associated with continued education courses/trainings and costs associated with COVID testing, all
25 on behalf of and for the benefit of DEFENDANT.

26 43. Specifically as to PLAINTIFFS, DEFENDANT fails to provide all the legally
27 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order
28 and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due to

1 PLAINTIFFS. DEFENDANT does not have a policy or practice which provided timely off-duty
2 meal and rest breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for missed meal
3 and rest breaks. The nature of the work performed by the PLAINTIFFS does not prevent
4 PLAINTIFFS from being relieved of all duties for the legally required off-duty meal periods. As a
5 result, DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
6 evidenced by DEFENDANT's business records. The amount in controversy for PLAINTIFFS
7 individually does not exceed the sum or value of \$75,000.

8 **JURISDICTION AND VENUE**

9 44. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action
11 is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of
12 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382. PLAINTIFFS also bring this as a
13 representative action on behalf of themselves and Aggrieved Employees (defined below) and the
14 State of California against DEFENDANT pursuant to California's Private Attorney General Act,
15 Labor Code section 2698 *et. seq.* ("PAGA") to recover civil penalties (75% payable to the Labor
16 and Workforce Development Agency and 25% payable to Aggrieved Employees) for
17 DEFENDANT's violations of the California Labor Code.

18 45. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
20 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
21 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
22 conduct herein alleged in this County against members of the CALIFORNIA CLASS. *See also*
23 *Crestwood Behavioral Health, Inc. v Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA
24 action is proper in any county where the defendants committed Labor Code violations against some
25 of its employees).

26 **THE CALIFORNIA CLASS**

27 46. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
2 current and former non-exempt employees that worked directly or via a staffing agency for St. Jude
3 Medical Center and/or St. Jude Hospital and/or St. Jude Medical Group, A Medical Corporation, in
4 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
5 during the period beginning four (4) years prior to the filing of the initial Complaint and ending on
6 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
7 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
8 (\$5,000,000.00).

9 47. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
10 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

11 48. DEFENDANT, as a matter of company policy, practice and procedure, and in
12 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and
14 willfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
15 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT
16 enjoyed the benefit of this work, required employees to perform this work and permits or suffers to
17 permit this work.

18 49. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
19 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
20 laws. DEFENDANT, however, as a matter of policy and procedure failed to have in place during
21 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
22 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
23 business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated
24 on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
25 §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

26 50. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

1 51. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
2 law by:

- 3 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
4 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
5 deceptively having in place company policies, practices and procedures that
6 failed to record and pay PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS for all time worked, including minimum wages owed
8 and overtime wages owed for work performed by these employees; and,
9 (b) Committing an act of unfair competition in violation of the UCL, by failing
10 to provide the PLAINTIFFS and the other members of the CALIFORNIA
11 CLASS with the legally required meal and rest periods, failure to furnish
12 complete and accurate itemized wage statements and DEFENDANT's failure
13 to reimburse business expenses among other violations described above.

14 52. This Class Action meets the statutory prerequisites for the maintenance of a Class
15 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
17 the joinder of all such persons is impracticable and the disposition of their
18 claims as a class will benefit the parties and the Court;
19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
20 are raised in this Complaint are common to the CALIFORNIA CLASS will
21 apply to every member of the CALIFORNIA CLASS;
22 (c) The claims of the representative PLAINTIFFS are typical of the claims of
23 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other
24 members of the CALIFORNIA CLASS, was classified as non-exempt
25 employees paid on an hourly basis who was subjected to the DEFENDANT's
26 deceptive practice and policy which failed to provide the legally required
27 meal and rest periods to the CALIFORNIA CLASS and thereby underpaid
28 compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS

1 sustained economic injury as a result of DEFENDANT's employment
2 practices. PLAINTIFFS and the members of the CALIFORNIA CLASS
3 were and are similarly or identically harmed by the same unlawful, deceptive
4 and unfair misconduct engaged in by DEFENDANT; and,

- 5 (d) The representative PLAINTIFFS will fairly and adequately represent and
6 protect the interest of the CALIFORNIA CLASS, and have retained counsel
7 who are competent and experienced in Class Action litigation. There are no
8 material conflicts between the claims of the representative PLAINTIFFS and
9 the members of the CALIFORNIA CLASS that would make class
10 certification inappropriate. Counsel for the CALIFORNIA CLASS will
11 vigorously assert the claims of all CALIFORNIA CLASS Members.

12 53. In addition to meeting the statutory prerequisites to a Class Action, this action is
13 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA CLASS will
17 create the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to protect
26 their interests.

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act
28 on grounds generally applicable to the CALIFORNIA CLASS, making

1 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
2 whole in that DEFENDANT failed to pay all wages due to members of the
3 CALIFORNIA CLASS as required by law;

4 1) With respect to the First Cause of Action, the final relief on behalf of
5 the CALIFORNIA CLASS sought does not relate exclusively to
6 restitution because through this claim PLAINTIFFS seeks declaratory
7 relief holding that the DEFENDANT's policy and practices constitute
8 unfair competition, along with declaratory relief, injunctive relief,
9 and incidental equitable relief as may be necessary to prevent and
10 remedy the conduct declared to constitute unfair competition;

11 (c) Common questions of law and fact exist as to the members of the
12 CALIFORNIA CLASS, with respect to the practices and violations of
13 California law as listed above, and predominate over any question affecting
14 only individual CALIFORNIA CLASS Members, and a Class Action is
15 superior to other available methods for the fair and efficient adjudication of
16 the controversy, including consideration of:

17 1) The interests of the members of the CALIFORNIA CLASS in
18 individually controlling the prosecution or defense of separate actions
19 in that the substantial expense of individual actions will be avoided to
20 recover the relatively small amount of economic losses sustained by
21 the individual CALIFORNIA CLASS Members when compared to
22 the substantial expense and burden of individual prosecution of this
23 litigation;

24 2) Class certification will obviate the need for unduly duplicative
25 litigation that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA CLASS, which
28

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of
4 the CALIFORNIA CLASS would as a practical matter be
5 dispositive of the interests of the other members not parties to
6 the adjudication or substantially impair or impede their ability
7 to protect their interests;

8 3) In the context of wage litigation because a substantial number of
9 individual CALIFORNIA CLASS Members will avoid asserting
10 their legal rights out of fear of retaliation by DEFENDANT, which
11 may adversely affect an individual's job with DEFENDANT or with
12 a subsequent employer, the Class Action is the only means to assert
13 their claims through a representative; and,

14 4) A class action is superior to other available methods for the fair and
15 efficient adjudication of this litigation because class treatment will
16 obviate the need for unduly and unnecessary duplicative litigation that
17 is likely to result in the absence of certification of this action pursuant
18 to Cal. Code of Civ. Proc. § 382.

19 54. This Court should permit this action to be maintained as a Class Action pursuant to
20 Cal. Code of Civ. Proc. § 382 because:

21 (a) The questions of law and fact common to the CALIFORNIA CLASS
22 predominate over any question affecting only individual CALIFORNIA
23 CLASS Members because the DEFENDANT's employment practices are
24 applied with respect to the CALIFORNIA CLASS;

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 CLASS because in the context of employment litigation a substantial number
28 of individual CALIFORNIA CLASS Members will avoid asserting their

1 rights individually out of fear of retaliation or adverse impact on their
2 employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before the
5 Court;

6 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
7 able to obtain effective and economic legal redress unless the action is
8 maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other
11 improprieties, and in obtaining adequate compensation for the damages and
12 injuries which DEFENDANT's actions have inflicted upon the
13 CALIFORNIA CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of the
16 CALIFORNIA CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
18 the CALIFORNIA CLASS, thereby making final class-wide relief
19 appropriate with respect to the CALIFORNIA CLASS as a whole;

20 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
21 the business records of DEFENDANT; and,

22 (i) Class treatment provides manageable judicial treatment calculated to bring a
23 efficient and rapid conclusion to all litigation of all wage and hour related
24 claims arising out of the conduct of DEFENDANT as to the members of the
25 CALIFORNIA CLASS.

26 55. DEFENDANT maintains records from which the Court can ascertain and identify by
27 job title each of DEFENDANT's employees who have been intentionally subject to
28 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will

1 seek leave to amend the Complaint to include any additional job titles of similarly situated
2 employees when they have been identified.

3 **THE CALIFORNIA LABOR SUB-CLASS**

4 56. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth and Seventh
5 causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
6 CLASS who currently work or previously worked either directly or via as staffing agency for St.
7 Jude Medical Center and/or St. Jude Hospital and/or St. Jude Medical Group, a Medical Corporation
8 in California as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time
9 during the period three (3) years prior to the filing of the initial complaint and ending on the date as
10 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal.
11 Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA
12 LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

13 57. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
14 Commission ("IWC") Wage Order requirements, and the applicable provisions of California law,
15 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to
16 correctly calculate compensation for the time worked by PLAINTIFFS and the other members of
17 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even
18 though DEFENDANT enjoyed the benefit of this work, required employees to perform this work
19 and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA
20 LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly
21 cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims
22 by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
23 SUB-CLASS PERIOD should be adjusted accordingly.

24 58. DEFENDANT maintains records from which the Court can ascertain and identify by
25 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
26 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will
27 seek leave to amend the complaint to include any additional job titles of similarly situated employees
28 when they have been identified.

1 59. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

3 60. Common questions of law and fact exist as to members of the CALIFORNIA
4 LABOR SUB-CLASS, including, but not limited, to the following:

- 5 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
6 compensation due to members of the CALIFORNIA LABOR SUB-CLASS
7 for missed meal and rest breaks in violation of the California Labor Code and
8 California regulations and the applicable California Wage Order;
- 9 (b) Whether DEFENDANT failed to provide PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS with accurate
11 itemized wage statements;
- 12 (c) Whether DEFENDANT understated hours worked and failed to pay all
13 amounts due to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS for
14 wages earned, including minimum wages, overtime wages, and double time
15 wages, under California law as a result of DEFENDANT's automatic
16 deduction policy, mandated off-the-clock work, payment of wages based on
17 scheduled hours instead of actual hours worked, violations of the alternative
18 workweek schedule and unlawful meal period policies and practices;
- 19 (d) Whether DEFENDANT provided all owed meal periods and rest periods;
- 20 (e) Whether DEFENDANT failed to reimburse PLAINTIFFS and members of
21 the CALIFORNIA LABOR SUB-CLASS for all business expenses;
- 22 (f) Whether DEFENDANT has engaged in unfair competition by the above-
23 listed conduct in violation of California Business and Professions Code
24 section 17200 *et. seq.*;
- 25 (g) The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and,
- 27 (h) Whether DEFENDANT's conduct was willful.

1 61. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
2 California law by:

- 3 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay PLAINTIFFS and
4 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
5 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab.
6 Code § 1194;
- 7 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to
8 accurately pay PLAINTIFFS and the members of the CALIFORNIA
9 LABOR SUB-CLASS the correct minimum wage pay for which
10 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 11 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
13 itemized statement in writing showing the corresponding correct amount of
14 wages earned by the employee;
- 15 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
17 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
18 meal breaks and the legally required off-duty rest breaks, or compensation in
19 lieu thereof at the regular rate of pay;
- 20 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
21 an employee is discharged or quits from employment, the employer must pay
22 the employee all wages due without abatement, by failing to tender full
23 payment and/or restitution of wages owed or in the manner required by
24 California law to the members of the CALIFORNIA LABOR SUB-CLASS
25 who have terminated their employment; and,
- 26 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
27 the CALIFORNIA LABOR SUB-CLASS members with necessary expenses
28 incurred in the discharge of their job duties.

1 62. This Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

3 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
5 Members is impracticable and the disposition of their claims as a class will
6 benefit the parties and the Court;

7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
8 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-
9 CLASS and will apply to every member of the CALIFORNIA LABOR SUB-
10 CLASS;

11 (c) The claims of the representative PLAINTIFFS are typical of the claims of
12 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS,
13 like all the other members of the CALIFORNIA LABOR SUB-CLASS, were
14 a non-exempt employee paid on an hourly basis who was subjected to the
15 DEFENDANT's practice and policy which failed to pay the correct amount
16 of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS
17 sustained economic injury as a result of DEFENDANT's employment
18 practices. PLAINTIFFS and the members of the CALIFORNIA LABOR
19 SUB-CLASS were and are similarly or identically harmed by the same
20 unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
21 and,

22 (d) The representative PLAINTIFFS will fairly and adequately represent and
23 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have
24 retained counsel who are competent and experienced in Class Action
25 litigation. There are no material conflicts between the claims of the
26 representative PLAINTIFFS and the members of the CALIFORNIA LABOR
27 SUB-CLASS that would make class certification inappropriate. Counsel for
28

1 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
2 of all CALIFORNIA LABOR SUB-CLASS Members.

3 63. In addition to meeting the statutory prerequisites to a Class Action, this action is
4 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

5 (a) Without class certification and determination of declaratory, injunctive,
6 statutory and other legal questions within the class format, prosecution of
7 separate actions by individual members of the CALIFORNIA LABOR SUB-
8 CLASS will create the risk of:

9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUB-CLASS which would
11 establish incompatible standards of conduct for the parties opposing
12 the CALIFORNIA LABOR SUB-CLASS; or,

13 2) Adjudication with respect to individual members of the
14 CALIFORNIA LABOR SUB-CLASS which would as a practical
15 matter be dispositive of interests of the other members not party to the
16 adjudication or substantially impair or impede their ability to protect
17 their interests.

18 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
19 or refused to act on grounds generally applicable to the CALIFORNIA
20 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
21 the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
22 fails to pay all wages due. Including the correct wages for all time worked by
23 the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

24 (c) Common questions of law and fact predominate as to the members of the
25 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
26 violations of California Law as listed above, and predominate over any
27 question affecting only individual CALIFORNIA LABOR SUB-CLASS
28

Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will

1 obviate the need for unduly and unnecessary duplicative litigation that
2 is likely to result in the absence of certification of this action pursuant
3 to Cal. Code of Civ. Proc. § 382.

4 64. This Court should permit this action to be maintained as a Class Action pursuant to
5 Cal. Code of Civ. Proc. § 382 because:

- 6 (a) The questions of law and fact common to the CALIFORNIA LABOR
7 SUB-CLASS predominate over any question affecting only individual
8 CALIFORNIA LABOR SUB-CLASS Members;
- 9 (b) A Class Action is superior to any other available method for the fair and
10 efficient adjudication of the claims of the members of the CALIFORNIA
11 LABOR SUB-CLASS because in the context of employment litigation a
12 substantial number of individual CALIFORNIA LABOR SUB-CLASS
13 Members will avoid asserting their rights individually out of fear of
14 retaliation or adverse impact on their employment;
- 15 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous
16 that it is impractical to bring all members of the CALIFORNIA LABOR
17 SUB-CLASS before the Court;
- 18 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
19 Members, will not be able to obtain effective and economic legal redress
20 unless the action is maintained as a Class Action;
- 21 (e) There is a community of interest in obtaining appropriate legal and equitable
22 relief for the acts of unfair competition, statutory violations and other
23 improprieties, and in obtaining adequate compensation for the damages and
24 injuries which DEFENDANT's actions have inflicted upon the
25 CALIFORNIA LABOR SUB-CLASS;
- 26 (f) There is a community of interest in ensuring that the combined assets of
27 DEFENDANT are sufficient to adequately compensate the members of the
28 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
2 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide
3 relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS
4 as a whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The
7 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
8 Members who worked for DEFENDANT in California at any time during the
9 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to bring a
11 efficient and rapid conclusion to all litigation of all wage and hour related
12 claims arising out of the conduct of DEFENDANT as to the members of the
13 CALIFORNIA LABOR SUB-CLASS.

14 **First Cause of Action**

15 **For Unlawful Business Practices**

16 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

17 **By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants**

18 65. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 66. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
21 § 17021.

22 67. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
24 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as
25 follows:

26 Any person who engages, has engaged, or proposes to engage
27 in unfair competition may be enjoined in any court of
28 competent jurisdiction. The court may make such orders or
judgments, including the appointment of a receiver, as may be
necessary to prevent the use or employment by any person of
any practice which constitutes unfair competition, as defined

1 in this chapter, or as may be necessary to restore to any person
2 in interest any money or property, real or personal, which may
3 have been acquired by means of such unfair competition.

4 Cal. Bus. & Prof. Code § 17203.

5 68. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
6 in a business practice which violates California law, including but not limited to, the applicable
7 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair
9 Labor Standards Act and federal regulations promulgated thereunder, for which this Court should
10 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
11 necessary to prevent and remedy the conduct held to constitute unfair competition, including
12 restitution of wages wrongfully withheld.

13 69. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
14 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
15 substantially injurious to employees, and were without valid justification or utility for which this
16 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
17 Business & Professions Code, including restitution of wages wrongfully withheld.

18 70. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal
20 and rest periods, the required amount of compensation for missed meal and rest periods and overtime
21 and minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary business
22 expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime
23 worked as a result of failing to include non-discretionary incentive compensation into their regular
24 rates of pay for purposes of computing the proper overtime pay due to a business practice that cannot
25 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
26 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
27 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
28 wages wrongfully withheld.

1 71. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
2 and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

5 72. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
6 and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
7 required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as
8 required by Cal. Lab. Code §§ 226.7 and 512.

9 73. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
10 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
11 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
12 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of
13 work.

14 74. PLAINTIFFS further demand on behalf of themselves and each member of the
15 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
16 paid rest period was not timely provided as required by law.

17 75. By and through the unlawful and unfair business practices described herein,
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has
20 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment
21 of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
22 compete against competitors who comply with the law. Due to DEFENDANT's unfair and unlawful
23 business practices in violation of the California Labor Code, DEFENDANT has gained a
24 competitive advantage over other comparable companies doing business in the State of California
25 that comply with their obligations to authorize or permit rest and meal periods or pay proper meal
26 and rest period premiums in lieu thereof, to provide complete and accurate itemized wage
27 statements, to reimburse employees for all business expenses, and to pay all owed
28 minimum/overtime/double time wages.

76. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

77. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

78. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

79. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB CLASS and Against All Defendants)

1 80. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB- CLASS,
2 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
3 this Complaint.

4 81. PLAINTIFF Sand the other members of the CALIFORNIA LABOR SUB-CLASS
5 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
6 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
7 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.
8 DEFENDANT violated California's minimum wage laws by failing to compensate PLAINTIFF and
9 the CALIFORNIA CLASS Members for all hours worked by virtue of, among other things,
10 DEFENDANT's auto-deduction policy and practice for meal periods, paying for scheduled hours
11 instead of actual hours worked, and off-the-clock work described above.

12 82. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
13 policy, an employer must timely pay its employees for all hours worked.

14 83. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
16 minimum so fixed is unlawful.

17 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
18 including minimum wage compensation and interest thereon, together with the costs of suit.

19 85. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time
21 they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
22 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS.

24 86. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
25 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a
26 policy and practice that denies accurate compensation to PLAINTIFFS and the other members of
27 the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.
28

1 87. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
3 by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

7 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 the correct minimum wage compensation for their time worked for DEFENDANT.

10 89. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
11 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members
12 to work without paying them for all the time they were under DEFENDANT's control. During the
13 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
15 constituting a failure to pay all earned wages.

16 90. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
17 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
18 for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR
19 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
20 presently unknown to them and which will be ascertained according to proof at trial.

21 91. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
23 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not
24 pay employees for their labor as a matter of company policy, practice and procedure, and
25 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of
26 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

27 92. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all

1 time worked and provide them with the requisite compensation, DEFENDANT acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of
3 the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights,
4 or the consequences to them, and with the despicable intent of depriving them of their property and
5 legal rights, and otherwise causing them injury in order to increase company profits at the expense
6 of these employees.

7 93. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 therefore request recovery of all unpaid wages and liquidated damages, according to proof, interest,
9 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum
10 as provided by the California Labor Code and/or other applicable statutes. To the extent minimum
11 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
12 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
13 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal.
14 Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-
15 CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
16 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
17 entitled to seek and recover statutory costs.

18 **THIRD CAUSE OF ACTION**

19 **For Failure to Pay Overtime Compensation**

20 **[Cal. Lab. Code § 510]**

21 **(By PLAINTIFFS and the CALIFORNIA SUB-CLASS and Against All Defendants)**

22 94. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of
24 this Complaint.

25 95. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
26 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
27 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
28

1 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
2 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

3 96. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
4 policy, an employer must timely pay its employees for all hours worked.

5 97. Cal. Lab. Code § 510 further provides that employees in California shall not be
6 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
7 unless they receive additional compensation beyond their regular wages in amounts specified by
8 law. Pursuant to Labor Code section 510 and the applicable Wage Order, employees in California
9 must be paid overtime, equal to one and one-half times the employee's regular rate of pay for all
10 hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the
11 first eight (8) hours worked on the seventh consecutive day of work in a workweek. Employees must
12 be paid double the regular rate of pay for all hours worked in excess of 12 hours in any workday
13 and for all hours worked in excess of eight (8) on the seventh consecutive day of work in a
14 workweek, unless they are exempt.

15 98. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
16 including minimum wage and overtime compensation and interest thereon, together with the costs
17 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
18 than those fixed by the Industrial Welfare Commission is unlawful.

19 99. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
20 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
22 overtime work.

23 100. PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS worked
24 overtime hours for which they were not compensated by DEFENDANT by virtue of
25 DEFENDANT's auto-deduction and time-rounding/time shaving policies and other mandated off-
26 the clock work policies and practices described above. DEFENDANT's unlawful wage and hour
27 practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
28 a whole, as a result of implementing a policy and practice that failed to accurately record overtime

1 worked by PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
2 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR
3 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
4 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

5 101. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
8 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
9 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
10 and regulations.

11 102. DEFENDANT also violated California's overtime laws as to those members of the
12 CALIFORNIA LABOR-SUB CLASS that were subject to an AWS but were required to work a
13 short shift. Under the relevant Wage Order, in the health care industry an acceptable AWS includes
14 "work days exceeding ten (10) hours but not more than 12 hours within a 40-hr workweek." Cal.
15 Code Regs tit. 8, section 11050(3)(B)(8). "If an employer... requires an [AWS] employee to work
16 fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the
17 employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular
18 rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required
19 to work the reduced hours." Cal. Code Regs. Tit. 8, section 11050(3)(B)(2).

20 103. PLAINTIFF MORANVILLE and other CALIFORNIA LABOR-SUB CLASS
21 Members that were subject to an AWS worked a short shift (i.e. less than 12 hours) at least four
22 shifts per month. On those shifts, PLAINTIFF MORANVILLE and other CALIFORNIA LABOR-
23 SUB CLASS Members were entitled to overtime wages at 1.5 times their regular rate of pay for all
24 hours worked over eight hours in the shortened shift. Instead, DEFENDANT paid PLAINTIFF
25 MORANVILLE and other CALIFORNIA LABOR-SUB CLASS Members at their base rate for all
26 hours worked on the shortened shift, in violation of California's overtime laws.

27 104. Based on information and belief, DEFENDANT further violated California's
28 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not

1 limited to, shift differential pay and/or non-discretionary bonus pay and/or other forms of non-
2 discretionary pay, into the regular rate of pay for purposes of calculating the owed overtime rate and
3 the owed double time rate. DEFENDANT's failure to include all non-discretionary compensation
4 in the regular rate of pay resulted in a miscalculation of the overtime wage rate (and double time
5 rate), resulting in the underpayment of overtime and double time wages owed to PLAINTIFF and
6 the Class Members.

7 105. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 full compensation for overtime worked.

10 106. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
11 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
12 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and
13 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid
14 collective bargaining agreement that would preclude the causes of action contained herein this
15 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA
16 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
17 rights provided by the State of California.

18 107. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
19 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
20 worked that they are entitled to, constituting a failure to pay all earned wages.

21 108. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members of
22 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
24 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to
26 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
27 employees.

1 109. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
3 for the true amount of time they worked, PLAINTIFFS and the other members of the CALIFORNIA
4 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
5 which are presently unknown to them and which will be ascertained according to proof at trial.

6 110. DEFENDANT knew or should have known that PLAINTIFFS and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
8 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not
9 pay employees for their labor as a matter of company policy, practice and procedure, and
10 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of
11 the CALIFORNIA LABOR SUB-CLASS for overtime worked.

12 111. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all
14 overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted
15 and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for
17 their legal rights, or the consequences to them, and with the despicable intent of depriving them of
18 their property and legal rights, and otherwise causing them injury in order to increase company
19 profits at the expense of these employees.

20 112. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
21 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well
22 as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
23 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
24 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who
25 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
26 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal.
27 Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-
28 CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in

1 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
2 entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **For Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7 & 512]**

6 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**

7 **Defendants)**

8 113. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
9 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
10 this Complaint.

11 114. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
12 DEFENDANT was required to provide PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
13 Members with one 30-minute meal break free from all duties and employer control for all shifts
14 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than
15 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an
16 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
17 required meal period may be waived by mutual consent of the employer and employee, and (2) if
18 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
19 the required second meal period may be waived by mutual consent of the employer and employee,
20 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
21 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
22 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
23 period, it is presumed no meal period was provided.

24 115. PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members were regularly
25 unable to take timely, off duty, thirty-minute, uninterrupted meal periods in compliance with
26 California law. At times, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were
27 either unable to take a timely meal period and/or were interrupted during a meal period due to the
28 nature and constraints of their job duties and/or lack of relief workers. Moreover, PLAINTIFFS and

1 the CALIFORNIA LABOR SUB-CLASS Members were restricted to DEFENDANT's premises
2 and tethered to DEFENDANT's communication devices during purported meal periods, depriving
3 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members of lawful meal periods. Based
4 on information and belief, DEFENDANT had and continues to have a policy of clocking out
5 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members for 30 minutes for meal periods
6 not taken and/or interrupted and/or otherwise not relieved of all duties and employer control during
7 said meal periods, rendering the unpaid time compensable under California law.

8 116. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
9 to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
10 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
11 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-
12 CLASS Members did not prevent these employees from being relieved of all of their duties for the
13 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS
14 and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved
15 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
16 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
17 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from
18 time to time. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
19 Members with a second off-duty meal period in some workdays in which these employees were
20 required by DEFENDANT to work ten (10) hours of work from time to time. As a result,
21 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited
22 meal breaks without additional compensation and in accordance with DEFENDANT's strict
23 corporate policy and practice.

24 117. Based on information and belief, DEFENDANT had actual and/or constructive
25 knowledge that PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members did not
26 receive compliant meal periods. Based on further information and belief, DEFENDANT rounded
27 the start and end times of employee meal periods resulting in PLAINTIFFS and the CALIFORNIA
28 LABOR SUB-CLASS Members receiving late or shortened meal periods. PLAINTIFFS are further

1 informed and believe and thereon allege that DEFENDANT had actual or constructive knowledge
2 that its time-rounding and auto-deduction policies and practices resulted in the denial of meal
3 periods to PLAINTIFFS, in violation of California's meal period laws.

4 118. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
5 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
6 CLASS Members who were not provided a meal period, in accordance with the applicable Wage
7 Order, one additional hour of compensation at each employee's regular rate of pay for each workday
8 that a meal period was not provided.

9 119. As a proximate result of the aforementioned violations, PLAINTIFFS and
10 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
11 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

12 **FIFTH CAUSE OF ACTION**

13 **For Failure to Provide Required Rest Periods**

14 **[Cal. Lab. Code §§ 226.7 & 512]**

15 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

17 120. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
19 this Complaint.

20 121. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
26 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* At
27 1029). The rest period requirement obligates employers to permit and authorize employees to take
28 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control

1 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. If the employer fails to provide any required rest period, the employer must pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday the employer did
4 not provide at least one legally required rest period, pursuant to Labor Code section 226.7.

5 122. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
6 time to time required to work in excess of four (4) hours without being provided ten (10) minute
7 rest periods. Further, these employees from time to time were denied their first rest periods of at
8 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
9 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
10 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
11 (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA LABOR SUB-
12 CLASS Members were also not provided with one hour wages in lieu thereof. Based on further
13 information and belief, when a rest premium was paid, DEFENDANT failed to include all non-
14 discretionary compensation into the regular rate of compensation for purposes of determining the
15 owed rest premium. As a result of their rigorous work schedules, PLAINTIFFS and other
16 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods
17 by DEFENDANT and DEFENDANT's managers.

18 123. Any purported rest periods were interrupted, cut short, and/or late due to
19 understaffing and/or the nature and constraints of their job duties. Moreover, any purported rest
20 periods were subject to DEFENDANT's control due to DEFENDANT's requirement that
21 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members remain on DEFENDANT's
22 premises and/or tethered to DEFENDANT's communication devices during purported rest periods.
23 Based on information and belief, PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
24 Members were pressured to complete their work and/or assist patients as needed such that rest
25 periods were only taken once tasks were completed/as time permitted.

26 124. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
28 CLASS Members who were not provided a rest period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each workday
2 that rest period was not provided.

3 125. As a proximate result of the aforementioned violations, PLAINTIFFS and
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
5 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **For Failure to Provide Accurate Itemized Statements**

8 **[Cal. Lab. Code § 226]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 126. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
12 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
13 this Complaint.

14 127. Cal. Labor Code § 226 provides that an employer must furnish employees with an
15 "accurate itemized" statement in writing showing:

- 16 (1) gross wages earned,
17 (2) total hours worked by the employee, except for any employee whose compensation is
18 solely based on a salary and who is exempt from payment of overtime under subdivision
19 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
20 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
21 paid on a piece-rate basis,
22 (4) all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
24 (5) net wages earned,
25 (6) the inclusive dates of the period for which the employee is paid,
26 (7) the name of the employee and his or her social security number, except that by January
27 1, 2008, only the last four digits of his or her social security number or an employee
28 identification number other than a social security number may be shown on the itemized
statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

128. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the other
members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements

1 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code
2 § 226 provides that every employer shall furnish each of his or her employees with an accurate
3 itemized wage statement in writing showing, among other things, gross wages earned and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time worked
5 at each hourly rate. DEFENDANT intentionally failed to provide PLAINTIFFS and CALIFORNIA
6 LABOR SUB-CLASS Members with complete and accurate wage statements in compliance with
7 Labor Code section 226, because they do not accurately reflect the total number of hours worked.
8 Notably, due to DEFENDANT's unlawful policies of automatically deducting meal periods,
9 rounding time entries, and uncompensated off-the-clock work, wage statements provided by
10 DEFENDANT fail to reflect the true total hours worked by PLAINTIFFS and other CALIFORNIA
11 LABOR SUB-CLASS Members. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8)
12 by failing to list the correct name and address of the legal entity that employs PLAINTIFFS and
13 other CALIFORNIA LABOR SUB-CLASS Members. Aside, from the violations listed above in
14 this paragraph, DEFENDANT fails to issue to PLAINTIFFS an itemized wage statement that lists
15 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
16 to time provides PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 with wage statements which violated Cal. Lab. Code § 226.

18 129. Moreover, as DEFENDANT failed to provide lawful meal and rest periods to
19 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, the wage statements issued by
20 DEFENDANT failed to correctly set forth (a) the gross wages earned, in violation of Labor Code
21 section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section
22 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all
23 applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9).

25 130. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code §
26 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
27 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
28 the correct wages for all missed meal and rest breaks and the amount of employment taxes which

1 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
2 Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS may
3 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
5 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
6 event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member
7 of the CALIFORNIA LABOR SUB-CLASS herein).

8 131. Pursuant to California Labor Code § 226(h), PLAINTIFFS and CALIFORNIA
9 LABOR SUB-CLASS Members are entitled to bring an action for injunctive relief to ensure
10 DEFENDANT's compliance with California Labor Code § 226(a). Injunctive relief is warranted
11 because DEFENDANT continues to provide currently employed CALIFORNIA LABOR SUB-
12 CLASS Members with inaccurate wage statements in violation of California Labor Code § 226(a).
13 Currently employed CALIFORNIA LABOR SUB-CLASS Members have no adequate legal
14 remedy for the continuing injuries that will be suffered as a result of DEFENDANT's ongoing
15 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANT's
16 compliance with California Labor Code § 226(a).

17 132. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and
18 CALIFORNIA LABOR SUB-CLASS Members are entitled to recover the full amount of penalties
19 due under Section 226(e), reasonable attorneys' fees, and costs of suit.

20 **SEVENTH CAUSE OF ACTION**

21 **For Failure to Reimburse Employees for Required Expenses**

22 **[Cal. Lab. Code § 2802]**

23 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 133. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members reallege
26 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

28 134. Cal. Lab. Code § 2802 provides, in relevant part, that:

1 An employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence of the
3 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

4 135. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
5 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
6 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
7 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
8 CLASS members for expenses which included, but were not limited to, costs related to using their
9 personal cellular phones/data plan usage and charges on behalf of and for the benefit of
10 DEFENDANT, as well as costs associated with completing DEFENDANT's mandatory
11 trainings/continued education such as the cost of using a personal computer/laptop or similar device,
12 costs of using a personal vehicle to travel to a testing site and associated mileage costs, and costs
13 associated with the purchase and/or payment of COVID19 testing. Specifically, PLAINTIFFS and
14 other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their
15 personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and
16 practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
17 for expenses resulting from using their personal cellular phones and other expenses incurred for
18 DEFENDANT within the course and scope of their employment for DEFENDANT. These
19 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
20 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
21 necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
22 members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
23 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws
24 and regulations of California.

25 136. As a result of DEFENDANT's unlawful conduct, PLAINTIFFS and the
26 CALIFORNIA LABOR SUB-CLASS Members have suffered injury in that they were not
27 completely reimbursed as mandated by California law.
28

137. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and attorney's fees and costs under Cal. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

Violation of the Private Attorney's General Act of 2004

(By PLAINTIFFS, Aggrieved Employees, and the State of California against All Defendants)

138. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

139. PLAINTIFF brings this action under the Private Attorneys General Act of 2004 Labor Code section 2698, *et. seq.*, (“PAGA”), as a representative action on behalf of the State of California and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include: All current and former non-exempt employees that worked either directly or via a staffing agency for DEFENDANT in California at any time from one year and sixty-five days prior to the filing of the initial complaint through the present (“PAGA Period”).

140. PLAINTIFFS are each an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as each was employed by DEFENDANT during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFFS seek to recover on behalf of themselves, the State of California, and all other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFFS have standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as they were jointly employed by DEFENDANT and were thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

1 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

2 141. On February 3, 2022, PLAINTIFF PHAN, through his counsel, gave written notice
3 by only filing with the California Labor and Workforce Development Agency (“LWDA”) informing
4 it that DEFENDANT failed to comply with California’s lab laws with respect to the allegations
5 alleged in this Complaint. On April 1, 2022, PLAINTIFF MORANVILLE, through his counsel,
6 gave written notice by online filing with the LWDA informing it that DEFENDANT failed to
7 comply with California’s labor laws with regard to the allegations alleged in this Complaint (letters
8 collectively referred to herein as “PAGA Letters”).

9 142. The PAGA Letters, also sent to DEFENDANT via certified mail outlined
10 PLAINTIFFS’ claims for violations of the California Labor Code and the applicable wage orders
11 on behalf of themselves, the State of California and other Aggrieved Employees.

12 143. The LWDA did not provide notice of its intention to investigate DEFENDANT’s
13 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
14 alleged violations were curable, DEFENDANT failed to cure within the time allotted by PAGA.
15 Accordingly, PLAINTIFFS have exhausted the administrative remedies as required by Labor Code
16 section 2699.3. Consequently, PLAINTIFFS’ right to file the instant lawsuit has duly accrued.

17 144. PLAINTIFFS seek to recover the PAGA civil penalties through a representative
18 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
19 Cal.4th 969. Therefore, class certification of the PAGA cause of action is not required.

20 145. From one year prior to PLAINTIFFS’ respective filing of the required PAGA Letter
21 with the LWDA, and continuing through the present, as alleged above, DEFENDANT violated the
22 California Labor Code sections 201-203, 204 *et seq.*, 216, 221-223, 226, 226.7, 227.3, 233, 234,
23 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802,
24 2810.5, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
25 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and all relevant
26 sections of the applicable Wage Orders, as to PLAINTIFFS and Aggrieved Employees. These
27 violations subject DEFENDANT to civil penalties as set forth in the foregoing statutes as well
28

1 as other provisions of the Labor Code, including without limitation, Labor Code sections 203,
2 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

3 146. As set forth above, DEFENDANT has committed numerous violations of the
4 California Labor Code due to including but not limited to their failure to pay all owed minimum
5 wages and overtime wages, failure to provide lawful meal and rest periods or compensation in lieu
6 thereof, failure to provide accurate wage statements, failure to reimburse business expenses, as
7 alleged above. PAGA penalties are in addition to any other relief available under the Labor Code.

8 147. Additionally, DEFENDANT has violated the following Labor Code sections and
9 provisions of the applicable Wage Order as to PLAINTIFFS and Aggrieved Employees.

10 148. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
11 keep “accurate and complete” payroll records showing, among other things, the hours worked daily
12 by all non-exempt employees. All applicable Wage Orders § 7 similarly require employers to keep
13 time records reflecting the times during which all owed meal periods were provided each day.

14 149. Due to DEFENDANT’s automatic meal break deductions, failure to relieve
15 employees of all duties and employer control during meal periods, time rounding, and other off-the-
16 clock work policies and practices described above, DEFENDANT failed, and continues to fail, to
17 keep accurate and complete records as required by law, including but not limited to the following
18 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS
19 and other Aggrieved Employees began and ended each work period, time records of meal periods,
20 shift start times and end times, and accurate itemized wage statements.

21 150. DEFENDANT’s failure to keep “accurate and complete” payroll records for
22 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
23 applicable Wage Orders, section 7. These violations subject DEFENDANT to civil penalties under
24 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
25 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
26 period during which the referenced statutes and Wage Order provisions were violated.¹

27 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
28 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
employee was underpaid”); All applicable Wage Orders, § 20 (establishing that “[i]n addition to any other civil

1 151. **Untimely Payment of Final Wages.** California Labor Code section 201(a) provides,
2 in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the
3 time of discharge are due and payable immediately.”

4 152. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
5 employee not having a written contract for a definite period quits his or her employment, his or her
6 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
7 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
8 to his or her wages at the time of quitting.”

9 153. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
10 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
11 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
12 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
13 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
14 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

15 154. Based in information and belief, DEFENDANT fails to timely pay final wages to
16 Aggrieved Employees upon termination or resignation. Based on information and belief,
17 DEFENDANT untimely provides final wages to Aggrieved Employees without regard to the timing
18 requirements of Labor Code sections 201-202. Moreover, final paychecks once provided to
19 Aggrieved Employees do not include all wages owed as they are devoid of, including but not limited
20 to, all owed minimum wages, overtime wages, double time wages, premium wages, vacation pay,
21 and all owed sick leave and/or paid time off wages at the properly accrued rates.

22 155. As a result, DEFENDANT violated Labor Code sections 201 and 202. These
23 violations subject DEFENDANT to civil penalties under Labor Code sections 203, 210, and/or 256.

24 156. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
25 employer’s refusal to pay wages due and payable and/or the denial of the validity of any claim to

26 _____
27 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
28 to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 wages due. DEFENDANT violated and continue to violate this section by failing to pay
2 PLAINTIFFS and other Aggrieved Employees for all hours worked at the proper wage rate and by
3 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
4 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
5 violations subject DEFENDANT to civil penalties under Labor Code section 225.5. Each violation
6 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
7 the statute provisions were violated.²

8 **157. Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
9 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
10 wages. As described above, DEFENDANT willfully and systematically denied PLAINTIFFS and
11 other Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
12 which resulted in the payment of less than statutorily required wages. DEFENDANT acted with the
13 intent to deprive them of statutory wages, including, but not limited to, overtime wages and
14 minimum wages, to which they were entitled to under California law. Thus, DEFENDANT paid
15 PLAINTIFFS and other Aggrieved Employees lower wages than those they were entitled to while
16 purporting that PLAINTIFFS and other Aggrieved Employees were properly paid. As a result,
17 PLAINTIFFS and other Aggrieved Employees are entitled to recover penalties, attorney's fees,
18 costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

19 **158. Standard Conditions of Labor Violations:** Together, Labor Code sections 1198
20 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
21 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
22 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
23 commission. Therefore, DEFENDANT's violations with respect to meal periods, rest periods,
24 record keeping provisions, minimum wages, overtime wages, and business expenses result in
25

26
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 separate violations of sections 1198 and 1199, which subject DEFENDANT to civil penalties under
2 Labor Code sections 1197.1 and 2699.

3 159. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
4 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
5 to said employee.” PLAINTIFFS alleges on information and belief that DEFENDANT made
6 unlawful deductions from Aggrieved Employees paychecks during the relevant period, including
7 but not limited to deductions titled as ‘Cafeteria’ and ‘Hyatt Legal’ on wage statements issued by
8 DEFENDANT. Based on information and belief, these deductions are unlawful and in violation of
9 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANT to civil
10 penalties under Labor Code Section 2699.

11 160. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for
12 each pay period during which the statute provisions were violated. *See* Lab. Code §225.5
13 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
14 provided in this article, every person who unlawfully withholds wages due any employee in
15 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
16 to pay each employee”).

17 161. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
18 Agreements. Labor Code section 432.5 provides that “no employer...shall require any employee or
19 applicant for employment to agree, in writing, to any term or condition which is known by such
20 employer...to be prohibited by law.” Based on information and belief, DEEFENDANT
21 required/continue to require Aggrieved Employees to agree in writing to submit to unlawful criminal
22 and/or financial checks as a condition of obtaining and/or continuing employment in violation of
23 Labor Code section 432.5.

24 162. The California Labor Code places certain procedural and substantive limits on an
25 employers’ ability to conduct employee background checks and on how employers can use the
26 information they obtain through those background checks. Labor Code section 1024.5 states that
27 employers, except for financial institutions, may order a credit check only if the individual works
28 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,

1 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
2 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
3 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
4 background check, including but not limited to identifying an appropriate reason for the background
5 check, a separate consent form with required disclosures and certain formatting requirements,
6 additional forms such as a summary of rights, a way by which to request a copy of the report, as
7 well as proper notice of adverse actions taken, among other statutory requirements.

8 163. Based on information and belief, DEFENDANT ordered unlawful financial credit
9 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
10 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
11 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

12 164. Based on information and belief, DEFENDANT required Aggrieved Employees to
13 submit and/or agree to submit in writing to unlawful criminal background checks which failed to
14 abide by the requirements set forth in Cal. Civ. Code section 1786 *et. seq.*, and 15 U.S.C. section
15 1681, *et. seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure,
16 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
17 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
18 failing to provide a way by which the individual could request a copy of the report, failing to disclose
19 the name, address, and telephone number of the third party preparing the report, and/or failing to
20 properly obtain authorization or consent to such a background check, and thus was an unlawful
21 background check.

22 165. Based on further information and belief, DEFENDANT also required Aggrieved
23 Employees to agree in writing to provide DEFENDANT with ongoing consent to conduct
24 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
25 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
26 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

1 166. Based on further information and belief, DEFENDANT knew that requiring
2 PLAINTIFFS and Aggrieved Employees to agree to unlawful criminal and/or financial background
3 checks as a condition of obtaining and/or holding employment was unlawful.

4 167. By requiring that Aggrieved Employees sign off on the illegal background and/or
5 financial checks, DEFENDANT violated Labor Code section 432.5.

6 168. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
7 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
8 then, certain limitations apply. Based on information and belief, DEFENDANT asked Aggrieved
9 Employees about arrests not resulting in convictions on its employment application, in violation of
10 California law.

11 169. Upon information and belief, DEFENDANT, in violation of California law,
12 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
13 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
14 employment and/or otherwise impermissibly inquired into criminal history on its employment
15 application in violation of California law.

16 170. By asking about arrests not resulting in convictions, DEFENDANT violated Labor
17 Code section 432.7. By asking about convictions at the application phase or prior to extending an
18 employment offer, DEFENDANT violated California’s Fair Chance Act, and thereby violated
19 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
20 disclose arrests and/or convictions as a condition of employment.

21 171. **Sick Pay Violations.** DEFENDANT violated California’s paid sick leave laws
22 including Labor Code section 245-248.5 and 233-234. DEFENDANT either failed to provide sick
23 leave pay to PLAINTIFFS and other Aggrieved Employees or failed to properly accrue paid sick
24 leave due to DEFENDANT’s failure to account for actual hours worked (by virtue of
25 DEFENDANT’s meal period auto-deduction, and time rounding practices, and other off-the-clock
26 work described herein), and/or failure to incorporate all forms of non-discretionary remuneration
27 into the sick pay calculation.

1 172. DEFENDANT further failed to give Aggrieved Employees notice of their paid sick
2 leave rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5
3 notice. In addition, based on information and belief, DEFENDANT failed to maintain accurate
4 records of used sick leave and the balance of paid sick leave left to the employees, which affected
5 Aggrieved Employees’ intelligent exercise of their paid sick leave.

6 173. But for this failure, PLAINTIFFS and other Aggrieved Employees would have used
7 their paid sick leave at least prior to their respective separations, for as on several occasions
8 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
9 compensation.

10 174. Based on information and belief, in violation of Labor Code section 247.5,
11 DEFENDANT failed to maintain records documenting the hours worked and paid sick days accrued
12 and used by PLAINTIFFS and all Aggrieved Employees, permitting the presumption that
13 PLAINTIFFS and all Aggrieved Employees were entitled to the maximum number of hours
14 accruable.

15 175. Upon information and belief, DEFENDANT failed and continue to fail to comply
16 with Labor Code section 246, by failing to provide Aggrieved Employees with a Labor Code section
17 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid
18 time off leave an employer provides in lieu of sick leave, at the time it pays wages.

19 176. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

20 177. On information and belief, PLAINTIFFS allege that all of these practices were
21 experienced and continue to be experienced by other Aggrieved Employees.

22 178. Accordingly, PLAINTIFFS seek all appropriate relief under the PAGA, including
23 but not limited to injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by
24 law.

25 179. Under the provisions of PAGA and the following Labor Code sections, 201-203, 204,
26 210, 216, 221-223, 226, 226.7, 227.3, 233, 234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1,
27 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, California Code of Regulations, Title
28 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14)

(Failure to Provide Seating), and all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANT is liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFFS are entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum and overtime compensation due PLAINTIFFS and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
5 statutory rate;
- 6 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
7 which a violation occurs and one hundred dollars (\$100) per each member of the
8 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
9 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
10 an award of costs for violation of Cal. Lab. Code § 226;
- 11 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197; and,
- 15 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
16 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
17 costs of suit.
- 18 3. On all claims:
- 19 A) An award of interest, including prejudgment interest at the legal rate;
- 20 B) Such other and further relief as the Court deems just and equitable; and,
- 21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
22 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
23 §2802.
- 24 4. On behalf of PLAINTIFFS, Aggrieved Employees and the State of California:
- 25 A) For civil penalties according to proof, including PAGA penalties (75% payable to
26 the LWDA and 25% payable to Aggrieved Employees).
- 27
28

1 Dated: July 12, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
CROSNER LEGAL, PC

2 By: /s/ Norman B. Blumenthal

3 Norman B. Blumenthal

4 Attorneys for Plaintiffs Thanh Phan and Mark Moranville

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6
7
8
9
10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFFS demand a trial by jury on all claims so triable.

12
13 Dated: July 12, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
CROSNER LEGAL, PC

14 By: /s/ Norman B. Blumenthal

15 Norman B. Blumenthal

16 Attorneys for Plaintiffs Thanh Phan and Mark Moranville

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Karla Horne, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037.

On July 12, 2022, I served the document(s) described as:

FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

X (ELECTRONIC/E-MAIL): Pursuant to CCP §§ 1010.6 and 1013(g), by e-mailing the document(s) from the following e-mail address: Karla@Bamlawca.com to the persons at the confirmed e-mail address(es) below.

 (FEDERAL EXPRESS): I caused the above-described document to be delivered via overnight delivery (Federal Express), by placing a copy in a separate FEDERAL EXPRESS mailer and attaching a completed Federal Express air bill, with Standard Overnight delivery/Priority Delivery requested, and caused said mailer to be deposited in the Federal Express collection box at San Diego, California.

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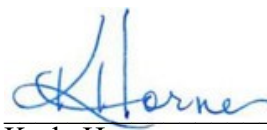
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 12, 2022, at San Diego, California.



Karla Horne