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15 individually and on behalf of all others similarly situated

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18
19 **FOR THE COUNTY OF ALAMEDA**

20 NHYELA WASHINGTON, individually and
21 on behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 PREDICINE, INC., a Delaware Corporation;
25 and DOES 1-50, inclusive,

26 Defendant.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
09/15/2023

Chad Firke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

CASE NO.: 21CV003730
Judge: Hon. Brad Seligman
Dept: 23

**FIRST AMENDED CLASS ACTION
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382 FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
7. Violation of Business & Professions Code § 17200, et seq.
8. Violation of Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff NHYELA WASHINGTON (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby
3 files this Complaint against Defendant PREDICINE, INC., a Delaware Corporation; and DOES 1-
4 50, inclusive (collectively “Defendant”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This is a representative action for recovery of penalties under the Private Attorneys
10 General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 et seq. PAGA permits “aggrieved
11 employees” to bring a lawsuit as a representative action on behalf of the general public as private
12 attorney general and all other current and former aggrieved employees, to recover civil penalties
13 and address an employer’s violations of the California Labor Code.

14 3. This Court has jurisdiction over this action pursuant to the California Constitution
15 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
16 except those given by statute to other courts. The statutes under which this action is brought do not
17 give jurisdiction to any other court.

18 4. This Court has jurisdiction over Defendant because, upon information and belief,
19 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
20 avails itself of the California market so as to render the exercise of jurisdiction over it by the
21 California Courts consistent with traditional notions of fair play and substantial justice.

22 5. The California Superior Court also has jurisdiction in this matter because the
23 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
24 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
25 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
26 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
27 statutes and law, including the Labor Code, IWC Wage Orders, CCP, California Civil Code (“CC”)
28 and B&PC.

6. Venue is proper in this Court because upon information and belief, one or more of the Defendant, resides, transact business, or have offices in this County and/or the acts or omissions alleged herein took place in this County.

II. PARTIES

7. Plaintiff NHYELA WASHINGTON was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendant in approximately April 2021 as a Non-Exempt Employee with the title of receptionist and worked during the liability period for Defendant until Plaintiff's separation from Defendant's employ in approximately June 2021. Plaintiff's duties included but were not limited to answering telephones and providing reception services.

8. Defendant PREDICINE, INC., a Delaware Corporation, operates as a laboratory. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendant over the last year.

9. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendant by such fictitious names. Plaintiff will amend this complaint when their true names and capacities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant.

III. CLASS ACTION ALLEGATION

11. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are

1 defined as follows:

2 All persons who have been employed by Defendant as Non-Exempt Employees or
3 equivalent positions, however titled, in the state of California within four (4) years from
4 the filing of the Complaint in this action until its resolution. (collectively referred to as the
"Class" or "Plaintiff's Class" or "Class Members").

5 12. Plaintiff also seeks to represent the subclass(es) composed of and defined as
6 follows:

7 **Sub-Class 1:** All Class Members who are or were employed by Defendant who worked in
8 excess of five or ten hours in a work day but were not provided with a timely,
9 uninterrupted, duty-free thirty-minute meal period (hereinafter collectively referred to as
the "Meal Period Subclass").

10 **Sub-Class 2:** All Class Members who are or were employed by Defendant who worked in
11 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
12 permitted a rest period (hereinafter collectively referred to as the "Rest Period Subclass").

13 **Sub-Class 3:** All Class Members who are or were employed by Defendant at any time
14 between December 2020 and the present and who received wage statements from
15 Defendant (hereinafter collectively referred to as the "Wage Statement Subclass").

16 **Sub-Class 4:** All Class Members who have been employed by Defendant at any time
17 between December 2018 and the present and have separated their employment (hereinafter
collectively referred to as the "Waiting Time Penalty Subclass")

18 **Sub-Class 5:** All Class Members who are or were employed by Defendant and subject to
19 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "Unfair
Business Practice Subclass").

20 13. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
21 applicable laws to amend or modify the class definition with respect to issues or in any other
22 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

23 14. The term "Class" includes Plaintiff and all members of the Class and each of the
24 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
25 this complaint.

26 15. There is a well-defined community of interest in the litigation and the proposed
27 Class is easily ascertainable through the records Defendant are required to keep.

28 16. Numerosity. The members of the Class are so numerous that individual joinder of

1 all of them as Plaintiff is impracticable. While the exact number of the Class members is unknown
2 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are at least
3 100 (one hundred) Class members.

4 17. Commonality. Common questions of law and fact exist as to all Class members
5 and predominate over any questions that affect only individual members of the Class. These
6 common questions include, but are not limited to:

7 i. Whether Defendant failed to pay minimum wage compensation to Plaintiff
8 and Class Members for all hours worked;

9 ii. Whether Defendant failed to accurately pay overtime to Plaintiff and Class
10 Members;

11 iii. Whether Defendant failed to reimburse necessary business expense
12 pursuant to Labor Code § 2802;

13 iv. Whether Defendant violated Labor Code sections 226.7, 512, and
14 applicable IWC Wage Orders, by failing to authorize and permit daily rest periods to Plaintiff and
15 Class Members for every four hours or major fraction thereof worked and failing to compensate
16 said employees one hours wages in lieu of rest periods;

17 v. Whether Defendant violated Labor Code sections 226.7, 512 and applicable
18 IWC Wage Orders, by failing to provide a meal period to Plaintiff and Class Members on days
19 they worked work periods in excess of five and ten hours and failing to compensate said
20 employees one hour wages in lieu of meal periods;

21 vi. Whether Defendant failed to maintain accurate time record including
22 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
23 the applicable IWC Wage Orders;

24 vii. Whether Defendant provided accurate itemized wage statements pursuant to
25 Labor Code section 226;

26 viii. Whether Defendant violated Business and Professions Code and Labor
27 Code sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1,
28

1 and 1198, and applicable IWC Wage Orders which violation constitutes a violation of fundamental
2 public policy;

3 ix. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
4 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*;

5 x. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
6 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
7 to Labor Code sections 558, 1194 and 1197.

8 18. Typicality. Plaintiff's claims herein alleged are typical of those claims which could
9 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief
10 which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff
11 and all members of the Class and or Subclass sustained injuries and damages arising out of and
12 caused by Defendant's common course of conduct in violation of California laws, regulations, and
13 statutes as alleged herein.

14 19. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
15 interests of each member of the Class and/or Subclass with whom she has a well defined
16 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
17 obligation to make known to the Court any relationships, conflicts, or differences with any
18 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
19 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
20 settlement and experienced in handling such matters. Other former and current employees of
21 Defendant may also serve as representatives of the Class and Subclass if needed.

22 20. Superiority. A class action is superior to other available means for the fair and
23 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
24 court. Class action treatment will allow a large number of similarly situated persons to prosecute
25 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
26 duplication of effort and expense that numerous individual actions would require. The damages
27 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
28 and the expense and burden of individual litigation would make it extremely difficult or

1 impossible for the individual Class Members to seek and obtain individual relief. A class action
2 will serve an important public interest by permitting such individuals to effectively pursue
3 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
4 or contradictory judgments raised by individual litigation.

5 21. Public Policy Considerations: Employers in the state of California violate
6 employment and labor laws everyday. Current employees are often afraid to assert their rights out
7 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
8 they believe their former employers may damage their future endeavors through negative
9 references and/or other means. The nature of this action allows for the protection of current and
10 former employees' rights without fear or retaliation or damage.

11 **IV. FACTUAL ALLEGATIONS**

12 22. At all times set forth herein, Defendant employed Plaintiff and other persons in the
13 capacity of non-exempt positions, however titled, throughout the state of California.

14 23. Plaintiff are informed and believes Class Members have at all times pertinent
15 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
16 rules and regulations of the IWC California Wage Orders.

17 24. Defendant continue to employ Non-Exempt Employees, however titled, in
18 California and implement a uniform set of policies and practices to all non-exempt employees, as
19 they were all engaged in the generic job duties related to Defendant's laboratory services.

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendant are and were
21 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
22 the requirements of California's wage and employment laws.

23 26. On information and belief, during the relevant time frame, Plaintiff and Class
24 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
25 week.

26 27. During the relevant time frame, Defendant compensated Plaintiff and Class
27 Members based upon an hourly rate.

28 28. On information and belief, during the relevant time frame, Plaintiff and Class

1 Members typically worked five (5) days a week.

2 29. Plaintiff is informed and believes that the Class Members were required to keep
3 similar schedules.

4 30. In addition, the Class Members frequently worked in excess of eight (8) hours a
5 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at the
6 employee's correct rate of pay per hour for overtime.

7 31. Defendant also failed to properly calculate Plaintiff's and the Class Members'
8 regular rate of pay including but not limited to by failing to include all forms of
9 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
10 commissions, and other compensation for overtime calculation purposes.

11 32. Plaintiff and the Class Members were regularly required to work shifts in excess of
12 five hours without being provided a lawful meal period and over ten hours in a day without being
13 provided a second lawful meal period as required by law.

14 33. Plaintiff and Class Members were required to keep their personal cellphones on
15 their persons at all times during their shifts in order to respond to work related calls, even during
16 meal periods.

17 34. Indeed, during the relevant time, as a consequence of Defendant's staffing and
18 scheduling practices, work demands, and Defendant's policies and practices, Defendant frequently
19 failed to provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-
20 minute meal periods on shifts over five hours as required by law.

21 35. Similarly, as a consequence of Defendant's staffing and scheduling practices, work
22 demands, and Defendant's policies and practices, Defendant frequently failed to provide Plaintiff
23 and the Class Members legally compliant second meal periods on shifts over ten hours as required
24 by law.

25 36. On information and belief, Plaintiff and Class Members did not waive their rights
26 to meal periods under the law.

27 37. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
28 periods.

1 38. Despite the above-mentioned meal period violations, Defendant failed to
2 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
3 additional hour of pay at their regular rate as required by California law when meal periods were
4 not timely or lawfully provided in a compliant manner.

5 39. On information and belief, Defendant also automatically deducted 30 minutes of
6 time from Plaintiff and Class Members for meal periods that were not provided, late, interrupted
7 or cut short. This resulted in an underpayment of minimum and overtime wages.

8 40. Plaintiff is informed and believes, and thereon alleges, that Defendant know,
9 should know, knew, and/or should have known that Plaintiff and the other Class Members were
10 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
11 were not receiving such compensation.

12 41. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
13 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
14 period for every four hours worked or major fraction thereof, which is a violation of the Labor
15 Code and IWC wage order.

16 42. Plaintiff and Class Members were required to keep their personal cellphones on
17 their persons at all times during their shifts in order to respond to work related calls, even during
18 rest breaks.

19 43. Defendant maintained and enforced scheduling practices, policies, and imposed
20 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
21 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
22 requisite rest periods were not timely authorized and permitted as a result of Defendant's failure to
23 provide relief for Plaintiff and Class Members to take their lawfully required breaks.

24 44. Despite the above-mentioned rest period violations, Defendant did not compensate
25 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
26 their regular rate as required by California law, including Labor Code section 226.7 and the
27 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
28 permitted.

1 45. Defendant also failed to reimburse Plaintiff and Class Members for business
2 expenses incurred pursuant to Labor Code section 2802. For instance, Plaintiff and Class Members
3 were required to use their personal cellphones during work shifts and would receive calls on their
4 personal cellphones. In addition, Plaintiff and Class Members were required to use their personal
5 cellphones to enter the building for work.

6 46. Defendant also failed to provide accurate, lawful itemized wage statements to
7 Plaintiff and the Class Members in part because of the above specified violations. In addition,
8 upon information and belief, Defendant omitted an accurate itemization of total hours worked,
9 including premiums due and owing for meal and rest period violations, gross pay and net pay
10 figures from Plaintiff and the Class Members' wage statements.

11 47. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
15 rest period premiums, and that Defendant had the financial ability to pay such compensation, but
16 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
17 specified violations.

18 48. Upon information and belief, Defendant knew and or should have known that it is
19 improper to implement policies and commit unlawful acts such as:

20 (a) requiring employees to work four (4) hours or a major fraction thereof without
21 being provided a minimum ten (10) minute rest period and without compensating the employees
22 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
23 rest period was not provided;

24 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
25 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
26 and without compensating employees with one (1) hour of pay at the regular rate of compensation
27 for each workday that such a meal period was not provided;

28 (c) failing to pay overtime and minimum wages;

- (d) failing to provide accurate itemized wage statements;
- (e) failing to timely pay Plaintiff and Class Members ;
- (f) failure to reimburse business expenses; and
- (g) conducting and engaging in unfair business practices.

49. In addition to the violations above, and on information and belief, Defendant knew they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein, and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

50. Plaintiff and Class Members they seek to represent are covered by, and Defendant are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES INCLUDING OVERTIME

(Against All Defendant)

51. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

52. At all times relevant, the IWC wage orders applicable to Plaintiff’s and the Class require employers to pay its employees for each hour worked at least minimum wage. “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked.

53. At all relevant times, Labor Code §1197 provides that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff

1 and Class Members' employment by Defendant provided that employees working for more than
2 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
3 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
4 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
5 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

6 54. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
7 acting individually as an officer, agent, or employee of another person, who pays or causes to be
8 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
9 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
10 damages payable to the employee, and any applicable penalties pursuant to Section 203.

11 55. Labor Code §510 codifies the right to overtime compensation at the rate of one and
12 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
13 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
14 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
15 seventh day of work in a particular work week.

16 56. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
17 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
18 et. seq. and the Labor Code.

19 57. At all times relevant, Plaintiff and Class Members consistently worked in excess of
20 eight (8) hours in a day and/or forty (40) hours in a week and Defendant'ss failed to accurately
21 calculate overtime pay to Plaintiff and Class Members.

22 58. Defendant'ss automatic deduction of 30 minutes of time from Plaintiff and Class
23 Members pay for meal breaks that were not provided, late, interrupted or cut short also resulted in
24 an inaccurate payment of minimum and overtime wages to Plaintiff and Class Members.

25 59. Defendant further failed to incorporate bonuses and other remunerations into the
26 employees' regular rates of pay for purposes of calculating overtime.

27 60. At all times relevant, Defendant have failed to accurately pay minimum and
28 overtime owed to Plaintiff and Class Members.

1 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
2 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
3 employment by Defendant. As a proximate result of the aforementioned violations, Plaintiff and
4 the other Class Members have been damaged in an amount according to proof at time of trial.

5 67. By their failure to provide a compliant meal period for each shift worked over five
6 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
7 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
8 lieu of such non-provided meal periods, as alleged above, Defendant violated the provisions of
9 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

10 68. Plaintiff and the Class Members she seeks to represent did not voluntarily or
11 willfully waive meal periods and were regularly required to work shifts without being provided all
12 of their legally required meal periods. Defendant created a working environment in which Plaintiff
13 and Class Members were not provided all of their meal periods due to shift scheduling and/or
14 work related demands placed upon them by Defendant as discussed above. On information and
15 belief, Defendant's implemented a policy and practice which resulted in systematic and class-wide
16 violations of the Labor Code. On information and belief, Defendant's violations have been
17 widespread throughout the liability period and will be evidenced by Defendant's time records for
18 the Class Members.

19 69. As a result of the unlawful acts of Defendant described herein, Plaintiff and the
20 Class Members they seek to represent have been deprived of premium wages in amounts to be
21 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
22 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
23 with interest and penalties thereon, attorneys' fees, and costs.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

26 **(Against All Defendant)**

27 70. Plaintiff incorporates and re-alleges each and every allegation contained above as
28 though fully set forth herein.

71. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members' employment by Defendant, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period mandated by an applicable order of the IWC.

72. Defendant were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendant, Defendant failed and refused to authorize and permit Plaintiff and Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

73. On information and belief Defendant created a working environment in which Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or work related demands placed upon them by Defendant to meet the needs of Defendant's business as discussed above. On information and belief, Defendant implemented a policy and practice which resulted in systematic and class-wide violations of the Labor Code. On information and belief, Defendant's violations have been widespread throughout the liability period.

74. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in which Defendant failed to provide a rest period to Plaintiff and the Class, plus interest and penalties thereon, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION

FAILURE TO PAY TIMELY PAY WAGES

1 **(Against All Defendant)**

2 75. Plaintiff incorporates and re-alleges each and every allegation contained above as
3 though fully set forth herein.

4 76. Labor Code §§201-202 requires an employer who discharges an employee to pay
5 compensation due and owing to said employee immediately upon discharge and that if an
6 employee voluntarily leaves his or her employment, his or her wages shall become due and
7 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
8 two (72) hours previous notice of his or her intention to quit, in which case the employee is
9 entitled to his or her wages on their last day of work.

10 77. Labor Code §203 provides that if an employer willfully fails to pay compensation
11 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting
12 time penalties in the form of continued compensation for up to thirty (30) work days.

13 78. During the relevant time period, Defendant willfully failed and refused, and
14 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
15 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
16 leaving Defendant's employ. These wages include regular and overtime.

17 79. As a result, Defendant are liable to Plaintiff and members of the Non-Exempt
18 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
19 according to proof at the time of trial.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **(Against All Defendant)**

23 80. Plaintiff incorporates and re-alleges each and every allegation contained above as
24 though fully set forth herein.

25 81. Section 226(a) states that An employer, semimonthly or at the time of each
26 payment of wages, shall furnish to his or her employee, either as a detachable part of the check,
27 draft, or voucher paying the employee's wages, or separately if wages are paid by personal check
28 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours

1 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units
2 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
5 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
6 social security number or an employee identification number other than a social security number,
7 (8) the name and address of the legal entity that is the employer.

8 82. Section 226(a) of the California Labor Code requires Defendant to itemize in wage
9 statements all deductions from payment of wages and to accurately report total hours worked by
10 Plaintiff and the Class including applicable hourly rates among other things. Defendant have
11 knowingly and intentionally failed to comply with Labor Code section 226 and 204 on wage
12 statements that have been provided to Plaintiff and the Class.

13 83. IWC Wage Orders require Defendant to maintain time records showing, among
14 others, when the employee begins and ends each work period, meal periods, split shift intervals
15 and total daily hours worked in an itemized wage statement, and must show all deductions and
16 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
17 the Class. On information and belief, Defendant have failed to record all or some of the items
18 delineated in Industrial Wage Orders and Labor Code §226.

19 84. Defendant have failed to accurately record all time worked.

20 85. Defendant have also failed to accurately record the meal and rest period premiums
21 owed and all wages owed per pay period.

22 86. Plaintiff and the Class have been injured as they were unable to determine whether
23 they had been paid correctly for all hours worked per pay period among other things.

24 87. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a
25 maximum of \$4,000 each for record keeping violations.

26 88. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee a
2 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

5 **(Against All Defendant)**

6 89. Plaintiff incorporates and re-alleges each and every allegation contained above as
7 though fully set forth herein.

8 90. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Class Members
9 for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As
10 a necessary part of employment, Plaintiff and on information and belief Class Members, were not
11 adequately reimbursed by Defendant for expenses related to all expenses incurred as a result of
12 their personal cellphone usage as described above, which was incurred as a direct consequence of
13 the discharge of duties by Plaintiff and Class Members. Despite these realities of the job,
14 Defendant failed to provide reimbursements.

15 91. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
16 implied, made by any employee to waive the benefits of this article or any part thereof is null and
17 void, and this article shall not deprive any employee or his or her personal representative of any
18 right or remedy to which he is entitled under the laws of this State.

19 92. As a result of the unlawful acts of Defendant, Plaintiff and the Class Members have
20 been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to the
21 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant
22 to Labor Code § 2802.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

25 **(Against All Defendant)**

26 93. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 94. Defendant’s conduct, as alleged in this complaint, has been, and continues to be,

1 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendant's competitors, and the
2 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of the California Code of Civil Procedure §1021.5.

4 95. Defendant's policies, activities, and actions as alleged herein, are violations of
5 California law and constitute unlawful business acts and practices in violation of California
6 Business and Professions Code §§17200, et seq.

7 96. A violation of California Business and Professions Code §§17200, et seq., may be
8 predicated on the violation of any state or federal law. Defendant's policy of failing to accurately
9 pay overtime, failing to pay minimum wages, failing to reimburse expenses, failing to provide
10 accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods
11 and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not
12 provided or provided outside of the required time frames, violates Labor Code § 226, §512,
13 §226.7, §1194, 2802 and applicable IWC Wage Orders and California Code of Regulations.

14 97. Plaintiff and Class Members have been personally aggrieved by Defendant's
15 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
16 property.

17 98. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
18 and Class Members are entitled to restitution of the wages withheld and retained by Defendant
19 during a period that commences four (4) years prior to the filing of this complaint; an award of
20 attorneys' fees, interest; and an award of costs.

21 **EIGHTH CAUSE OF ACTION**

22 **REPRESENTATIVE CLAIMS**

23 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

24 99. Plaintiff incorporates by reference and re-alleges each and every allegation
25 contained above, as though fully set forth herein.

26 100. On or about December 7, 2021, Plaintiff complied with notice requirements
27 pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached
28 hereto as Exhibit A, indicating that the LWDA and Defendant were put on notice of the

1 claims alleged here and that the notice requirement has been satisfied. Sixty-five days have
2 passed and the LWDA has not indicated intent to investigate the claims. Therefore,
3 Plaintiff may proceed with this action in a representative capacity. The substance and
4 violations set forth in this Complaint of which the LWDA was provided timely notice,
5 Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the
6 LWDA.

7 101. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
8 Plaintiff brings this cause of action on behalf of all current and former California Non-
9 Exempt Employees of Defendant.

10 102. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
11 which Defendant are liable due to numerous Labor Code violations as set forth in this
12 Complaint, including without limitation Labor Code section 201-203, 510, 512, 558, 226,
13 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 et seq.,
14 applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 et
15 seq. 47. At all times relevant, Plaintiff and all other aggrieved employees regularly
16 performed non-exempt work in excess of 50% of the time, and thus, were subject to the
17 meal and rest break requirements of the applicable IWC wage order and the Labor Code.

18 103. Defendant violated Labor Code section 200, 558, 1194, 1197, by failing to
19 accurately pay at least minimum wages due as a result of Defendant's automatic
20 deductions of 30-minutes of time for meal periods that were not provided, late, cut/short,
21 or interrupted.

22 104. Defendant violated Labor Code section 510, and 1194 by failing to accurately pay
23 overtime wages owed as discussed above due to Defendant's failure to incorporate bonuses
24 and other forms of remuneration as described above into the regular rate of pay for
25 overtime calculation purposes. Defendant further failed to accurately pay overtime wages
26 due to Defendant's automatic deductions of 30-minutes of time for meal periods that were
27 not provided, late, cut/short, or interrupted. Therefore, Defendant violated section 510 and
28 1194 by not compensating its Non-Exempt Employees for work performed in excess of

1 eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code
2 codifies the right to overtime compensation at the rate of one and one-half times the
3 regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40)
4 hours in a work week and to overtime compensation twice the regular rate of pay for hours
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
6 the seventh day of work in a particular work week.

7 105. Defendant failed to provide Plaintiff and all other aggrieved employees
8 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendant
9 implemented and enforced policies of on duty meal period practices which required
10 employees to work during their meal periods, to forego their meal periods, and/or to return
11 to work from meal periods prior to thirty (30) uninterrupted minutes. As a proximate result
12 of the aforementioned violations, Plaintiff and all other aggrieved employees have been
13 damaged in an amount according to proof at time of trial.

14 106. Plaintiff, and on information and belief, all aggrieved employees, were
15 systematically not permitted or authorized to take ten minute rest periods for every four
16 hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
17 wage order. Plaintiff and on information and belief, aggrieved employees, were not
18 compensated with one hour of wages for every day in which a rest period was missed or
19 untimely as a result of Defendant's policies, practices, or work demands. By failing to
20 authorize and permit a ten-minute rest period for every four hours or major fraction thereof
21 worked per day by its Non-Exempt Employees, and by failing to provide compensation for
22 such non-provided or shortened rest periods, as alleged above, Defendant willfully violated
23 the provisions of Labor Code sections 226.7, 512 and the applicable IWC Wage Order.

24 107. Defendant also willfully violated Labor Code sections 201-203 by failing to
25 provide all owed wages at separation from employment. Labor Code sections 201 and 202
26 require Defendant to pay their employees all wages due either at time of firing, or within
27 seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor
28 Code provides that if an employer willfully fails to timely pay such wages the employer

1 must, as a penalty, continue to pay the subject employee's wages until the back wages are
2 paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

3 108. Plaintiff and all other aggrieved employees who were separated from employment
4 are entitled to compensation for all forms of wages earned, including but not limited to
5 compensation regular and overtime wages, and for non-provided meal and rest periods, but
6 to date have not received such compensation, therefore entitling them to penalties under
7 PAGA for violations of Labor Code sections 201-203.

8 109. On information and belief, Defendant willfully failed to pay all wages due and
9 owing upon separation from employment. These wages include regular and overtime
10 wages, and meal and rest period premiums.

11 110. On information and belief, Defendant failed to provide accurate itemized wage
12 statements which failed to include the rate of pay and total hours worked per pay period,
13 failed to account for all hours worked, including overtime, and lastly the accurate
14 accounting of, the lawful meal and rest period premiums due and owing to Plaintiff and the
15 aggrieved employees, pursuant to Labor Code section 226(a).

16 111. Defendant have failed to provide Plaintiff and Aggrieved Employees rates of pay
17 and the hours for which they worked for any given pay period.

18 112. Defendant have failed to accurately record all time worked.

19 113. Defendant have also failed to accurately record the meal and rest period premiums
20 owed and all wages owed per pay period.

21 114. Plaintiff and Aggrieved Employees have been injured as they were unable to
22 determine whether they had been paid correctly for all hours worked per pay period among
23 other things

24 115. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
25 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
26 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
27 per employee for each violation in a subsequent citation, for which the employer fails to
28 provide the employee a wage deduction statement or fails to keep the records required in

subdivision (a) of Section 226.

116. On information and belief, Defendant failed to reimburse Plaintiff and Aggrieved Employees for business expenses incurred as described above. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Aggrieved Employees for necessary expenditures incurred in direct consequences of the discharge of his or her duties. Despite these realities of the job, Defendant failed to provide reimbursements.

117. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State.

118. Additionally, Defendant have no accurate records relating to aggrieved employees’ work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendant failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

119. As a result of Defendant’s unlawful conduct, Plaintiff and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

120. Plaintiff and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys’ fees and costs under Labor Code section 2698, et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That Plaintiff be appointed as the representative of the Subclass; and
4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

On the First Cause of Action

1. For compensatory damages equal to the unpaid balance of minimum wage compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
3. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code §§ 1194.2, 558;
4. For such other and further relief as the Court deems proper.

On the Second Cause of Action

1. For one (1) hour of premium pay for each day in which a required meal period was not provided or not provided in a timely manner; and
2. For such other and further relief as the Court deems proper.

On the Third Cause of Action

1. For one (1) hour of premium pay for each day in which a required rest period was not authorized or permitted; and
2. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

1. For statutory penalties pursuant to Labor Code §203;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For statutory penalties pursuant to Labor Code §226;
2. For interest for wages untimely paid;
3. For penalties pursuant to Labor Code §266.3; and
4. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

1. For statutory penalties pursuant to Labor Code §2802;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1 1. That Defendant, jointly and/or severally, pay restitution of sums to Plaintiff and
2 Class Members for their past failure to accurately pay overtime, failing to pay minimum wages,
3 failing to reimburse expenses, failing to provide accurate itemized wage statements and failing to
4 provide Plaintiff and the Class with meal periods and rest breaks or the one (1) hour of premium
5 pay when a meal or rest break period was not provided or provided outside of the required time
6 frames as described herein to Plaintiff and Class Members over the last four (4) years in an
7 amount according to proof;

8 2. For pre-judgment interest on any unpaid wages due from the day that such amounts
9 were due;

10 3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
11 recover;

12 4. For costs of suit incurred herein; and

13 5. For such other and further relief as the Court deems proper.

14 On the Eighth Cause of Action

15 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

16 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

17 2. For reasonable attorneys' fees and costs; and

18 3. For such other and further relief as the Court deems proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff and members of the Class and Subclass request a jury trial in this matter.

21
22 Dated: August 29, 2023

JAMES HAWKINS APLO

23
24 By: _____

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
JEANNE SARMIENTO, ESQ.

25
26
27 Attorneys for Plaintiff NHYELA
WASHINGTON, individually and on behalf
28 of all others similarly situated

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

December 7, 2021

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

Predicine, Inc.
Agent for Service of Process: Shidong Jia
3555 Arden Road
Hayward, CA 94545
Receipt No. 7021 0950 0000 7376 5187

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Nhyela Washington, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and Predicine, Inc., through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Alameda County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

FIRST AMENDED CLASS ACTION COMPLAINT

[XX] BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

SERVICE LIST

Attorneys for Defendant

Executed on August 29, 2023, at Irvine, California

Alma Chavarin
Alma Chavarin