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as individuals, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ABDUL SHEIKH and DENISE
VASQUEZ, as individuals, and on behalf
of all others similarly situated,

Plaintiffs,

v.

SURGICAL CARE AFFILIATES, LLC;
and DOES 1 through 20, inclusive,

Defendants.

Case No. Case No. 30-2022-01254790-CU-OE-CXC

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Sick Pay;
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Reimburse Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay Wages Timely During Employment;
9. Failure to Pay All Wages Due Upon Separation of Employment
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et seq.* ("PAGA").

1 Plaintiffs Abdul Sheikh and Denise Vasquez, as individuals and on behalf of others
2 similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Abdul Sheikh and Denise Vasquez (collectively, “Plaintiffs”) bring this
5 putative class action against defendants Surgical Care Affiliates, LLC, and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on Plaintiffs’ own behalf and on behalf of a putative class
7 of California citizens who are and were employed by Defendants as non-exempt employees
8 throughout California.

9 2. Defendants provide services or goods throughout California.

10 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to pay sick pay at the regular rate of pay;
- 18 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (d) failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (e) failing to reimburse necessary business expenses;
- 22 (f) failing to provide accurate itemized wage statements;
- 23 (g) failing to pay wages timely during employment; and
- 24 (h) failing to pay all wages due upon separation of employment.

25 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all others
26 similarly situated in California to recover, among other things, unpaid wages, benefits, interest,
27 attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202, 203,
28 203.1, 204, 210, 218, 218.5, 226, 226.8, 226.3, 226.7, 227.3, 246, 510, 512, 558, 558.1, 1174,

1 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2698
2 *et seq.*, and Code of California Civil Procedure § 1021.5.

3 **JURISDICTION AND VENUE**

4 6. This is a class action pursuant to California Code of Civil Procedure § 382, and
5 representative action for enforcement of the Private Attorneys General Act of 2004 (“PAGA”)
6 pursuant to California Labor Code §2698, *et seq.* The monetary damages, penalties, and
7 restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and
8 will be established according to proof at trial.

9 7. This Court has jurisdiction over this action pursuant to the California
10 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
11 except those given by statutes to other courts. The statutes under which this action is brought do
12 not specify any other basis for jurisdiction.

13 8. This Court has jurisdiction over all Defendants because, upon information and
14 belief, they are citizens of California, have sufficient minimum contacts in California, or
15 otherwise intentionally avail themselves of the California market so as to render the exercise of
16 jurisdiction over them by the California courts consistent with traditional notions of fair play and
17 substantial justice.

18 9. Venue is proper in this Court because, upon information and belief, Defendants
19 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
20 took place in this county.

21 **THE PARTIES**

22 10. Plaintiffs are residents of California and worked for Defendants during the
23 relevant time periods as alleged herein.

24 11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter
25 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
26 employers, whose employees were and are engaged throughout this county and the State of
27 California.

1 12. Plaintiffs are unaware of the true names or capacities of the defendants sued
2 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend
3 this Complaint and serve such fictitiously named defendants once their names and capacities
4 become known.

5 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
7 all relevant times.

8 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
12 employer and/or joint employer of Plaintiffs and the class members.

13 15. Plaintiffs are informed and believes, and thereon allege, that each and all of the
14 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
15 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
16 the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
17 official policy of Defendants.

18 16. At all relevant times, Defendants, and each of them, acted within the scope of
19 such agency or employment, or ratified each and every act or omission complained of herein. At
20 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
21 each and all the other Defendants in proximately causing the damages herein alleged.

22 17. Plaintiffs are informed and believe, and thereon allege, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **CLASS ACTION ALLEGATIONS**

26 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on Plaintiffs' own
27 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
28 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

1 19. All claims alleged herein arise under California law for which Plaintiffs seek
2 relief authorized by California law.

3 20. Plaintiffs' proposed class consists of and is defined as follows:

4 Class

5 All California citizens currently or formerly employed by Defendants as non-
6 exempt employees in the State of California at any time between October 17,
7 2017¹ and the date of class certification ("Class").

8 21. Plaintiffs also seek to certify the following subclasses of employees:

9 Waiting Time Subclass

10 All members of the Class who separated their employment with Defendant at any
11 time between October 17, 2018 and the date of class certification ("Waiting Time
12 Subclass").

13 22. Plaintiffs reserve the right to modify or re-define the Class, establish additional
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on
15 investigation, discovery, and specific theories of liability.

16 23. Members of the Class and the Waiting Time Subclass described above will be
17 collectively referred to as "Class Members."

18 24. There are common questions of law and fact as to the Class Members that
19 predominate over any questions affecting only individual members including, but not limited to,
20 the following:

21 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
22 (including minimum wages and overtime wages) for all hours worked by
23 Plaintiffs and Class Members.

24 (b) Whether Defendants required Plaintiffs and Class Members to work over
25 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
26

27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

(40) hours per week and failed to pay them proper overtime compensation for all overtime hours worked.

(c) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without legal compensation.

(d) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks.

(e) Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses.

(f) Whether Defendants failed to pay Plaintiffs and Class Members at the regular rate of pay for sick pay;

(g) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements.

(h) Whether Defendants failed to pay wages timely to Plaintiffs and Class Members;

(i) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(j) Whether Defendants' conduct was willful or reckless.

(k) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

1 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims
2 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
3 provisions of California's wage and hour laws entitled each Class Member to similar pay,
4 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
5 sustained by the Class Members, because they arise out of and are caused by Defendants'
6 common course of conduct as alleged herein.

7 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
8 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims
9 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed
10 class counsel, are competent and experienced in litigating large employment class actions and
11 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have
12 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
13 costs that have been and will be necessarily expended for the prosecution of this action for the
14 substantial benefit of the Class Members.

15 (d) Superiority: The nature of this action makes use of class action
16 adjudication superior to other methods. A class action will achieve economies of time, effort, and
17 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
18 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
19 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
20 to efficiently manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California violate
22 employment and labor laws every day. Current employees are often afraid to assert their rights
23 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
24 because they believe their former employers might damage their future endeavors through
25 negative references and/or other means. Class actions provide class members who are not named
26 in the complaint with a type of anonymity that allows for the vindication of their rights while
27 affording them privacy protections.

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3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
5 California residents as non-exempt employees throughout California at Defendants' California
6 business location(s).

7 27. Defendants continue to employ non-exempt employees within California.

8 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
10 were knowledgeable about California's wage and hour laws, employment and personnel
11 practices, and the requirements of California law.

12 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
14 worked (including minimum wages and overtime wages) and that they were not receiving all
15 wages earned for work that was required to be performed. In violation of the Labor Code and
16 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
17 wages and overtime wages) for all hours worked at the correct rate and within the correct time.

18 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and Class Members were entitled to receive all required meal
20 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
21 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
22 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal
23 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
24 rate of pay when they did not receive a timely, uninterrupted meal period.

25 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
27 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
28 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage

1 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
2 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
3 was missed, late, or interrupted.

4 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and Class Members were entitled to reimbursement for
6 necessary expenditures incurred in connection with the performance and execution of their job
7 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
8 adequate reimbursement for necessary business expenses, including, but not limited to,
9 reimbursement for cell phone expenses and cleaning/laundry expenses for scrubs and
10 surgical garb.

11 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and Class Members were entitled to receive the regular rate
13 of pay for sick pay pursuant to Labor Code section 246.

14 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
16 statements that accurately showed the following information pursuant to the Labor Code: (1)
17 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
18 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
19 deductions, provided that all deductions made on written orders of the employee may be
20 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
21 which the employee is paid; (7) the name of the employee and only the last four digits of his or
22 her social security number or an employee identification number other than a social security
23 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at
25 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
26 were not provided with accurate itemized wage statements.

27 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that the Waiting Time Subclass was entitled to timely payment of wages due

1 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
2 not receive payment of all wages within the permissible time periods.

3 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
5 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
6 failed to do so in order to increase Defendants' profits.

7 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
8 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,
9 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
10 period premium payments, unpaid rest period premium payments, interest, attorneys' fees,
11 penalties, costs, and expenses.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order
15 §3-4)

16 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
17 though fully set forth herein.

18 39. Labor Code §§ 1182.12, 1185, 1194 and 1197 provide that the minimum wage for
19 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of
20 a lesser wage than the minimum so fixed is unlawful.

21 40. Plaintiffs and Class Members were employees entitled to the protections of Labor
22 Code §§ 1182.12, 1185, 1194 and 1197.

23 41. During the relevant time period, Defendants failed to pay Plaintiffs and Class
24 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

25 42. During the relevant time period, Defendants failed to pay at least minimum wage
26 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1182.12, 1185,
27 1194 and 1197.

43. Defendants' failure to pay Plaintiffs and Class Members the required minimum wage violates Labor Code §§ 1182.12, 1185, 1194 and 1197. Pursuant to these sections, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

44. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

45. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

48. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

49. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh

1 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
2 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
3 seventh day of work in a workweek.

4 50. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
5 of more than six days in a workweek is only permissible if the employer pays proper overtime
6 compensation as set forth herein.

7 51. Plaintiffs and Class Members were employees entitled to the protections of
8 California Labor Code §§ 510 and 1194.

9 52. During the relevant time period, Defendants required Plaintiffs and Class
10 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
11 seventh consecutive day of work, entitling them to overtime wages.

12 53. During the relevant time period, Defendants failed to pay Plaintiffs and Class
13 Members overtime wages at the regular rate of pay for all overtime hours worked. To the extent
14 these hours qualify for the payment of overtime wages, Plaintiffs and Class Members were not
15 paid proper overtime wages at their regular rate of pay.

16 54. In violation of California law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiffs and Class Members for all wages earned and
18 all hours worked.

19 55. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code §§
21 510 and 1198, and is therefore unlawful.

22 56. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
23 recover their unpaid overtime and double time compensation as well as interest, costs, and
24 attorneys' fees.

25 **THIRD CAUSE OF ACTION FAILURE TO PAY SICK PAY**

26 (Violation of Labor Code § 246)

27 57. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

1 58. Labor Code § 246(l) sets forth the requirements for the calculation and pay for
2 paid sick leave.

3 59. At all relevant times, Defendants failed to pay Plaintiffs and Class Members in
4 accordance with Labor Code § 246(l).

5 60. During the relevant time period, Defendants failed to pay Plaintiffs and Class
6 Members sick pay at the regular rate of pay when earning non-discretionary forms of payment
7 and sick pay in the same pay period.

8 61. As a result of Defendants' failure to pay Plaintiffs and Class Members in
9 accordance with Labor Code § 246(l), Plaintiffs and Class Members suffered and continue to
10 suffer a loss of wages and compensation.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

14 62. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
15 though fully set forth herein.

16 63. Labor Code § 226.7 provides that no employer shall require an employee to work
17 during any meal period mandated by the IWC Wage Orders.

18 64. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
19 employ any person for a work period of more than five (5) hours without a meal period of not
20 less than 30 minutes, except that when a work period of not more than six (6) hours will
21 complete the day’s work the meal period may be waived by mutual consent of the employer and
22 the employee.”

23 65. Labor Code § 512(a) provides that an employer may not require, cause, or permit
24 an employee to work for a period of more than five (5) hours per day without providing the
25 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
26 the total work period per day of the employee is not more than six (6) hours, the meal period may
27 be waived by mutual consent of both the employer and the employee.

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66. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

67. During the relevant time period, Plaintiffs and Class Members did not receive compliant meal periods for working more than five (5) and ten (10) hours per day because their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second meal period.

68. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant meal period is not provided.

69. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal period premiums at the regular rate of pay for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order.

70. As a result of Defendants' failure to pay Plaintiffs and Class Members an additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

71. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

72. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

73. Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the

1 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
2 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

3 74. During the relevant time period, Plaintiffs and Class Members did not receive a
4 ten (10) minute rest period for every four (4) hours or major fraction thereof worked, including
5 working in excess of ten (10) hours in a day, because they were required to work through their
6 rest periods and/or were not authorized to take their rest periods.

7 75. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
8 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
9 compensation for each work day that a compliant rest period is not provided.

10 76. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
11 period premiums at the regular rate of pay for missed, late, and/or interrupted rest periods
12 pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

13 77. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
14 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
15 Members suffered and continue to suffer a loss of wages and compensation.

16 SIXTH CAUSE OF ACTION

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 (Violation of Labor Code §§ 2800, 2802)

19 78. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 79. Labor Code § 2800 states that an employer shall in all cases indemnify his
22 employee for losses.

23 80. Labor Code § 2802 requires employers to indemnify their employees for all
24 necessary expenditures or losses incurred by employees in direct consequence of the discharge
25 of their duties.

26 81. During the relevant time period, Defendants required Plaintiffs and Class
27 Members to incur necessary business expenses, including, but not limited to, cell phone
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1 expenses and cleaning/laundry expenses for scrubs and surgical garb, without properly
2 compensating them for such expenses.

3 82. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
4 Plaintiff and class members for these expenses.

5 83. In committing the violations as herein alleged, Defendants have intentionally and
6 willfully failed to fully reimburse Plaintiff and class members for necessary business-related
7 costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to
8 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
9 expenses, and attorney's fees.

10 SEVENTH CAUSE OF ACTION

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

12 (Violation of Labor Code § 226; Violation of IWC Wage Order)

13 84. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 85. Labor Code § 226(a) requires Defendants to provide each employee with an
16 accurate wage statement in writing showing nine pieces of information, including, the following:
17 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
18 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
19 deductions, provided that all deductions made on written orders of the employee may be
20 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
21 which the employee is paid, (7) the name of the employee and the last four digits of his or her
22 social security number or an employee identification number other than a social security number,
23 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate by the employee.

26 86. During the relevant time period, Defendants have knowingly and intentionally
27 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
28 and Class Members. The deficiencies include, among other things, including non-working hours

1 in total hours worked and the failure to correctly state the gross and net wages earned, total hours
2 worked, all applicable hourly rates in effect, and the number of hours worked at each hourly rate
3 by Plaintiffs and Class Members.

4 87. As a result of Defendants' knowing and intentional failure to comply with Labor
5 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their
6 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
7 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
8 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
9 their protected interest in receiving, accurate itemized wage statements under Labor Code
10 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
11 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
12 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to
13 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to
14 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
15 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.
16 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
17 Defendants.

18 88. Plaintiffs and Class Members are entitled to recover from Defendants the greater
19 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
20 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
21 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
22 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

23 89. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
24 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
25 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
26 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
27 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
28 to proof at trial.

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

3 (Violation of Labor Code §§ 204, 210)

4 90. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 91. Pursuant to California Labor Code § 204, employees must be paid within a certain
7 number of days of the close of the pay period.

8 92. During the relevant time period, Defendants failed to timely pay Plaintiffs and
9 Class Members wages earned during the pay period.

10 93. Such a pattern, practice and uniform administration of corporate policy regarding
11 timely payment of wages as described herein is unlawful and creates an entitlement to recovery
12 by Plaintiffs in a civil action, for the unpaid balance of the full amount of damages owed,
13 including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of
14 California Labor Code § 210.

15 94. As a direct and proximate cause of these violations, Class Members have been
16 damaged, in an amount to be determined at trial.

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

19 (Violation of Labor Code §§ 201, 202, 203, 218.5, and 227.3)

20 95. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 96. Labor Code §§ 201, 202 and 227.3 provide that if an employer discharges an
23 employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
25 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
26 employee has given seventy-two (72) hours previous notice of an intention to quit, in which case
27 the employee is entitled to his or her wages at the time of quitting.
28

97. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

98. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201, 202, and 227.3.

99. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201, 202, and 227.3, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

100. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

101. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

102. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

103. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies

1 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
2 suffer injuries-in-fact.

3 104. Defendants' policies and practices violated state law in at least the following
4 respects:

- 5 (a) Failing to pay all wages earned (including minimum wage and overtime
6 wages) to Plaintiffs and Class Members at the proper rate and in a timely
7 manner in violation of Labor Code §§ 204, 218, 218.5, 226.8, 246, 510,
8 558, 558.1, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
9 2804;
- 10 (b) Failing to provide compliant meal periods without paying Plaintiffs and
11 Class Members premium wages for every day said meal periods were not
12 provided in violation of Labor Code §§ 226.7 and 512;
- 13 (c) Failing to authorize or permit compliant rest breaks without paying
14 Plaintiffs and Class Members premium wages for every day said rest
15 breaks were not authorized or permitted in violation of Labor Code §
16 226.7;
- 17 (d) Failing to provide Plaintiffs and Class Members with accurate itemized
18 wage statements in violation of Labor Code § 226;
- 19 (e) Failing to timely pay all earned wages to the members of the Waiting
20 Time Subclass upon separation of employment in violation of Labor Code
21 §§ 201, 202, and 203; and
- 22 (f) Failing to reimburse business expenses in violation of Labor Code §§
23 2800 and 2802.

24 105. As alleged herein, Defendants systematically engaged in unlawful conduct in
25 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
26 (minimum and overtime wages), failing to provide meal periods and rest breaks or
27 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all
28

1 wages due and owing upon separation of employment in a timely manner to the Waiting Time
2 Subclass, all in order to decrease their costs of doing business and increase their profits.

3 106. At all relevant times herein, Defendants held themselves out to Plaintiffs and
4 Class Members as being knowledgeable concerning the labor and employment laws of
5 California.

6 107. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
7 and Class Members wages and monies, thereby creating for Defendants an artificially lower
8 cost of doing business in order to undercut their competitors and establish and/or gain a greater
9 foothold in the marketplace.

10 108. By violating the foregoing statutes and regulations as herein alleged, Defendants'
11 acts constitute unfair and unlawful business practices under California Business and Professions
12 Code §§ 17200, *et seq.*

13 109. As a result of the unfair and unlawful business practices of Defendants as alleged
14 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
15 restitution in an amount to be shown according to proof at trial.

16 110. Plaintiffs seek to enforce important rights affecting the public interest within the
17 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
18 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members,
19 and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class
20 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
21 Procedure § 1021.5 and Labor Code §218.5.

22 **ELEVENTH CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 111. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs
25 as though fully set forth herein.

26 112. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development
28 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or

1 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Labor Code § 2699.3.

4 113. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 114. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201, 202, 203, 203.1, 204, 210, 218, 218.5,
12 226.3, 226.8, 227.3, 246, 510, 558, 558.1, 1182.12, 1185, 1194, 1194.2,
13 1197, 1197.1, 1198, 1199, and 2804, for failure to timely pay all earned
14 wages (including minimum wage and overtime wages) owed to Plaintiffs
15 and other aggrieved employees during employment and upon separation
16 of employment as herein alleged;
- 17 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
18 periods to Plaintiffs and other aggrieved employees and failure to pay
19 premium wages at the regular rate of pay for missed meal periods as
20 herein alleged;
- 21 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
22 Plaintiff and other aggrieved employees and failure to pay premium
23 wages at the regular rate of pay for missed rest periods as herein alleged;
- 24 d. violation of Labor Code § 226 for failure to provide accurate itemized
25 wage statements to Plaintiff and other aggrieved employees as herein
26 alleged;

- 1 e. violation of Labor Code §§ 1174, 1174.5, 1198.5 for failure to maintain
2 accurate and complete records showing, among other things, the hours
3 worked daily by and the wages paid to aggrieved employees; and
4 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
5 Plaintiff and other aggrieved employees for necessary business expenses
6 as herein alleged.

7 115. Plaintiffs are “aggrieved employees” because they were employed by the alleged
8 violator and had one or more of the violations committed against them, and therefore are
9 properly suited to represent the interests of all other aggrieved employees.

10 116. Plaintiffs have exhausted the procedural requirements under Labor Code §
11 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
12 himself and all other aggrieved employees under PAGA.

13 117. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
14 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
15 cited above.

16 118. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs
17 incurred herein.

18 **PRAYER FOR RELIEF**

19 On Plaintiffs’ behalf and on behalf of all others similarly situated, Plaintiffs pray for
20 relief and judgment against Defendants, jointly and severally, as follows:

- 21 1. For certification under California Code of Civil Procedure § 382 of the proposed
22 Class and any other appropriate subclass;
- 23 2. For appointment of Abdul Sheikh and Denise Vasquez as class representatives;
- 24 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
- 25 4. For compensatory damages in an amount according to proof at trial;
- 26 5. For an award of damages in the amount of unpaid compensation including, but
27 not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
- 28 6. For economic and/or special damages in an amount according to proof at trial;

- 1 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 2 8. For statutory penalties to the extent permitted by law, including those pursuant to
- 3 the Labor Code and IWC Wage Orders;
- 4 9. For injunctive relief as provided by the California Labor Code and California
- 5 Business and Professions Code §§ 17200, *et seq.*;
- 6 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 7 11. For an order requiring Defendants to restore and disgorge all funds to each
- 8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
- 9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
- 10 Code §§ 17200, *et seq.*;
- 11 12. For pre-judgment interest;
- 12 13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
- 13 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
- 14 226(e), 218.5, and 1194; and
- 15 14. For such other relief as the Court deems just and proper.
- 16

17 Dated: September 3, 2024

AEGIS LAW FIRM, PC

18

19 By: Alexander G.L. Davies

20 Alexander G.L. Davies

21 Attorneys for Plaintiffs

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