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12 Attorneys for LYNDA BROWNING, on
13 behalf of herself and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 LYNDA BROWNING, on behalf of
17 herself and all others similarly situated,

18 Plaintiff,

19 v.

20 PASADENA HOSPITAL
21 ASSOCIATION, LTD, a California non-
22 profit corporation; THE HUNTINGTON
23 MEDICAL FOUNDATION dba
24 HUNTINGTON HEALTH PHYSICIANS,
25 a California non-profit corporation; and
26 DOES 1-100,

27 Defendants

Case No.: 20STCV48262

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Failure to Pay Minimum Wage for All Hours Worked [Labor Code §§ 1194 And 1197]**
2. **Failure to Pay Wages for All Hours Worked at Overtime [Labor Code §§ 226.2, 510, 1194, And 1198]**
3. **Failure to Provide Meal Periods [Labor Code §§ 512 and 226.7]**
4. **Failure to Authorize or Permit Rest Periods [Labor Code § 226.7]**
5. **Failure to Provide Complete and Accurate Wage Statements [Labor Code § 226]**
6. **Failure to Pay All Wages Timely Upon Separation of Employment [Labor Code §§ 201, 202, And 203]**
7. **Failure to Reimburse Necessary Business Expenses [Labor § Code 2802]**
8. **Unfair Business Practices [Bus. & Prof. Code §§ 17200, Et Seq.] and**
9. **Violation of Private Attorney General Act (PAGA)**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles
01/18/2023

David W. Slayton, Executive Officer / Clerk of Court
By: K. Martinez Deputy

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff LYNDA BROWNING (“Plaintiff”) is an individual residing in the State of
3 California. Plaintiff, Aggrieved Employees (defined below), Class Members, as set forth below, are
4 all current and former non-exempt employees employed by The Huntington Medical Foundation
5 dba Huntington Health Physicians in the State of California, at any time beginning four years before
6 the filing of this Complaint (the “Class Period”).

7 2. Defendants PASADENA HOSPITAL ASSOCIATION, LTD. is a California
8 corporation, duly licensed to conduct business in the State of California and operates and employs
9 non-exempt employees within Los Angeles County. During the Class Period, Defendants employed,
10 and continues to employ non-exempt employees. On information and belief, PASADENA
11 HOSPITAL ASSOCIATION, LTD. had control and power over the working conditions and the
12 violations at issue in this Complaint.

13 3. On information and belief, Defendants THE HUNTINGTON MEDICAL
14 FOUNDATION DBA HUNTINGTON HEALTH PHYSICIANS is a business residing in the State
15 of California and is, and at all relevant times has been, a member of Defendants PASADENA
16 HOSPITAL ASSOCIATION, LTD. and had direct control and power over the working conditions
17 and the violations at issue in this Complaint (THE HUNTINGTON MEDICAL FOUNDATION
18 DBA HUNTINGTON HEALTH PHYSICIANS and PASADENA HOSPITAL ASSOCIATION,
19 LTD. are collectively referred to herein as “Defendants”).

20 4. Plaintiff is unaware of the names and capacities of those Defendants sued as DOES
21 1 through 100 but will amend this complaint when that information becomes known. Plaintiff is
22 informed and believes and thereon alleges that, at all relevant times, each of the defendants,
23 including the DOE defendants, was the officer, director, employee, agent, representative, alter ego,
24 or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was
25 acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise
26 specified, Plaintiff will refer to all Defendants as “Defendants,” and each allegation pertains to each
27 defendant.

28 5. Plaintiff is further informed and believes that, at all relevant times, each Defendant

1 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
2 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
3 interest of some or all of the other Defendants, and was engaged with some or all of the other
4 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
5 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
6 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants acted
7 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
8 each Defendants knew or should have known about, authorized, ratified, adopted, approved,
9 controlled, aided and abetted the conduct of all other Defendants.

10 6. At all relevant times, Defendants were and are legally responsible for all of the
11 unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants
12 are responsible for each of the unlawful acts or omissions complained of herein under the doctrine
13 of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
14 times undertaken as employees of Defendants, acting within the scope of their employment or
15 authority in all of the unlawful activities described herein.

16 7. Whenever and wherever reference is made in this complaint to any act or failure to
17 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
18 the acts and/or failures to act by each Defendant acting individually, jointly and severally.

19 **JURISDICTION AND VENUE**

20 8. This Court has jurisdiction over the claims asserted herein as Plaintiff was employed
21 in this County by Defendants and Defendants operate its business within this County.

22 **FACTUAL BACKGROUND**

23 9. Plaintiff resides in the County of Los Angeles. Plaintiff worked for Defendants as a
24 non-exempt employee registered nurse from approximately 1988 through May 2, 2019.

25 10. During the Class Period, Defendants employed the Class Members and Aggrieved
26 Employees, including Plaintiff, on an hourly basis. Plaintiff was paid \$39.77 and regularly worked
27 shifts between 8 to 14 hours a day, five days a week.

28 11. During the Class Period, Plaintiff, Aggrieved Employees, and the Class Members

1 were required to monitor their cell phones during meal and rest breaks in case of emergency, for
2 scheduling and coordination, among other job-related reasons. This policy and practice of requiring
3 Plaintiff, Aggrieved Employees, Class Members to monitor their cell phones during meal and rest
4 breaks resulted in Plaintiff, Aggrieved Employees and the Class Members being required to remain
5 on-duty during these meal and rest breaks. Additionally, upon information and belief, Defendants
6 maintained a policy and practice of requiring its non-exempt employees to remain on the premises
7 during rest periods, which, in effect, resulted in an on-duty rest break. Defendants failed to
8 compensate Plaintiff, Aggrieved Employees, and Class Members a one-hour premium for these on-
9 duty meal and rest breaks, in violation of the California Labor Code.

10 12. Plaintiff, Aggrieved Employees and Class Members did not receive timely,
11 compliant thirty-minute meal periods. Plaintiff, Aggrieved Employees and Class Members were
12 forced to take late first meal periods and/or work through their first meal periods or said meal periods
13 would be interrupted/cut short due to the nature and constraints of their job duties, commentary from
14 supervisors, among other reasons. Moreover, during the relevant period, Plaintiff, Aggrieved
15 Employees and Class Members were not provided a second meal period for shifts lasting more than
16 ten hours. Defendants did not pay a one-hour meal period premium for each missed/improper meal
17 periods.

18 13. Plaintiff, Aggrieved Employees and Class Members did not receive compliant,
19 timely ten-minute rest periods every four hours or major fraction thereof. Plaintiff, Aggrieved
20 Employees and Class Members, at times, were required to take late rest periods and/or work through
21 their rest periods, or any purported rest periods would be interrupted/cut short due to the nature and
22 constraints of their job duties, commentary from supervisors, among other reasons. Furthermore,
23 Defendants prohibited Plaintiff and other Aggrieved Employees from leaving the work premises
24 during any purported rest periods. This is illegal as employers cannot require employees to stay on
25 the work premises during their rest periods as “one cannot square the practice of compelling
26 employees to remain at the ready, tethered by time and policy to particular locations or
27 communications devices, with the requirement to relieve employees of all work duties and employer
28 control during 10-minute rest periods. [emphasis added].” *Augustus v. ABM Security Services, Inc.*,

1 (2016) 5 Cal.5th 257, 269. Defendants did not pay a one-hour rest period premium for each
2 missed/improper rest periods.

3 14. Upon information and belief, Defendants maintained a policy and practice of altering
4 time records to reduce payment for all hours worked (including overtime), and to show that
5 employees took meal periods when they in fact did not take them. For example, throughout
6 Plaintiff's employment and during the Class Period, Plaintiff was made aware that the office
7 manager for Defendants would manually edit her shift and meal period start and stop times in order
8 to avoid paying overtime and/or one-hour meal period premiums for missed/late meal periods. This
9 time shaving implemented by and through Defendants' unlawful policies and/or procedures,
10 resulted in not only time recordkeeping violations in violation of California Labor Code Sections
11 1174, 1174.5, 1199, and the applicable Wage Order, but also violations of California's minimum
12 and overtime wage laws.

13 15. During the Class Period, Defendants required Plaintiff to use her personal cell phone
14 to clock-in and clock-out each workday. Specifically, Defendants required Plaintiff to download a
15 smartphone application to clock-in and clock-out each workday. Defendants did not reimburse
16 Plaintiff for using her personal cell phone for work.

17 16. Upon information and belief, Defendants required the putative class members and
18 other Aggrieved Employees to use their respective personal cell phone to clock-in and clock-out
19 each workday. Specifically, Defendants required the putative class members and Aggrieved
20 Employees to download a smartphone application to clock-in and clock-out each workday.
21 Additionally, Defendants required Plaintiff, Aggrieved Employees and the Class Members to use
22 their cell phones for business-related scheduling, coordination and communication throughout their
23 shifts and/or prior to the start or after the close of their shifts. Defendants did not reimburse class
24 members and other Aggrieved Employees for using her personal cell phone work.

25 17. Based on the foregoing minimum wage, overtime, meal and rest period violations,
26 during the relevant period, Defendants failed to provide Plaintiff, Aggrieved Employees, and Class
27 Members with accurate, itemized wage statements in compliance with California law. Additionally,
28 Defendants' wage statements completely failed to itemize total hours worked or the true number of

1 overtime hours worked by Plaintiff, Aggrieved Employees and Class Members. This failure has
2 injured Plaintiff, Aggrieved Employees and Class Members by misrepresenting and depriving them
3 of hours, wages, and earnings information to which they are entitled, causing difficulty and expense
4 in attempting to reconstruct time and pay records, causing Plaintiff, Aggrieved Employees and the
5 class members to not to be paid wages entitled, and disallowing Plaintiff and the class members
6 under Labor Code §226(b) to review accurate itemized wage statement information by inspecting
7 the employers' underlying records.

8 18. Based on the foregoing minimum wage, overtime, meal and rest period violations,
9 during the Class Period, Defendants failed to timely pay all wages that were due and owing to
10 Plaintiff, Aggrieved Employees and the Class Members, including upon separation of employment.
11 Additionally, upon information and belief, Defendants would pay the final wages due to an
12 employee not on the date of discharge or separation, but at the end of the pay period on the same
13 pay date as regular payroll, which, in effect, resulted in systematic late final payment to its non-
14 exempt employees. For example, Plaintiff's final day of work was on May 3, 2019, yet her final
15 paycheck reflects a pay date of May 18, 2019.

16 **CLASS ACTION ALLEGATIONS**

17 19. Plaintiff brings this action on behalf of herself and all others similarly situated as a
18 class action pursuant to Code of Civil Procedure section 382. The Class Plaintiff seeks to represent
19 is defined as follows: "All current and former non-exempt employees of The Huntington Medical
20 Foundation dba Huntington Health Physicians in the State of California, at any time beginning four
21 years before the filing of this Complaint" (the "Class Members").

22 20. There is a well-defined community of interest in the litigation and the class is
23 ascertainable.

24 21. **Numerosity:** While the exact number of class members is unknown to Plaintiff at
25 this time, Plaintiff is informed and believes the class consists of at least one hundred individuals. As
26 such, the Plaintiff classes are so numerous that the individual joinder of all members is impractical
27 under the circumstances of this case.

28 22. **Common Questions of Law and Fact:** This lawsuit is suitable for class treatment

1 because common questions of law and fact predominate over individual issues. Common questions
2 include, but are not limited to, the following:

3 (a) Whether Defendants failed to pay Class Members for all hours worked, including
4 all regular and overtime hours as required by California law;

5 (b) Whether Defendants failed to pay Class Members minimum wages as required by
6 California law;

7 (c) Whether Defendants failed to provide Class Members with accurate itemized
8 wages statements as required by Labor Code section 226;

9 (d) Whether Defendants violated California Labor Code section 226.7 and the
10 applicable Wage Order by failing to provide Class Members with required rest periods or paying
11 rest period premiums for missed rest periods;

12 (e) Whether Defendants violated California Labor Code sections 512 and 226.7, as
13 well as, the applicable Wage Order, by failing to provide Class Members with required meal periods
14 or paying meal period premiums for missed meal periods;

15 (f) Whether Class Members are entitled to unpaid wages, penalties, and other relief
16 pursuant to their claims;

17 (g) Whether, as a consequence of Defendants' unlawful conduct, the Class Members
18 are entitled to restitution, and/or equitable relief;

19 (h) Whether Defendants' affirmative defenses, if any, raise any common issues of law
20 or fact as to Plaintiff and as to the Class Members as a whole;

21 (i) Whether Defendants timely paid all wages that were due and owing to Class
22 Members, including upon separation of employment; and,

23 (j) Whether Defendants committed unlawful business acts or practice within the
24 meaning of Business and Professions Code section 17200 *et seq.*

25 23. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members.
26 Plaintiff and all Class Members sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct in violation of laws and regulations that have the force and
28 effect of law and statutes as alleged. Plaintiff was subjected to the same uniform policies and

1 practices complained of herein that affected all such employees. Thus, as Plaintiff was subjected to
2 the same unlawful policies and practices as all Class Members, her claims are typical of the class
3 she seeks to represent.

4 24. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
5 interests of the Class Members. Plaintiff has no interest that is adverse to the interests of the other
6 Class Members.

7 25. **Superiority:** A class action is superior to other available means for the fair and
8 efficient adjudication of this controversy since individual joinder of all members of the class is
9 impractical. Class action treatment will permit a large number of similarly situated persons to
10 prosecute their common claims in a single forum simultaneously, efficiently, and without the
11 unnecessary duplication of effort and expense that numerous individual actions would engender.
12 Furthermore, as the damages suffered by each individual member of the class may be relatively
13 small, the expenses and burden of individual litigation would make it difficult or impossible for
14 individual members of the class to redress the wrongs done to them, while an important public
15 interest will be served by addressing the matter as a class action. The cost to the court system of
16 adjudication of such individualized litigation would be substantial. Individualized litigation would
17 also present the potential for inconsistent or contradictory judgments. Finally, the alternative of
18 filing a claim with the California Labor Commissioner is not superior, given the lack of discovery
19 in such proceedings, the fact that there are fewer available remedies, and the losing party has the
20 right to a trial de novo in the Superior Court.

21 26. **Public Policy Consideration:** Employers throughout the state violate wage and hour
22 laws. Current employees often are afraid to assert their rights out of fear of direct or indirect
23 retaliation. Former employees fear bringing actions because they perceive their former employers
24 can blacklist them in their future endeavors with negative references and by other means. Class
25 actions provide the class members who are not named in the complaint with a type of anonymity
26 that allows for vindication of their rights.

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM
WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 226.2, 510, 1194, 1197, 1198
(As Against Defendants and DOE Defendants by the Class)

27. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

28. Pursuant to Labor Code sections 1194, 1197, 1197.1 and Wage Orders, Plaintiff and the Class Members are entitled to receive wages for all hours worked, i.e., all time subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the employees earned the wages.

29. Labor Code § 226.2. Labor Code Section 226.2 provides formula for calculating an employee's "regular rate" for purposes of paying rest periods.

30. Specifically, Labor Code Section 226.2 provides, in relevant part:

(3)(A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

31. Upon information and belief, Defendants maintained a policy and practice of altering time records to reduce payment for all hours worked (including overtime), and to show that employees took meal periods when they in fact did not take them. This time shaving implemented by and through Defendants' unlawful policies and/or procedures, resulted in Plaintiff and the Class Members not being paid for all hours worked, including minimum wages.

32. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

33. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff and the Class Members are entitled to recover unpaid minimum wages, interest thereon, liquidated damages in the

1 amount of their unpaid minimum wage, and attorney's fees and costs

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT OVERTIME IN**
4 **VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197 and 1198**
5 **(As Against Defendants and DOE Defendants by the Class)**

6 34. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
7 in the preceding paragraphs.

8 35. It is unlawful under California law for an employer to suffer or permit an employee
9 to work in excess of eight hours per workday or 40 hours per workweek without paying premium
10 wages under California Labor Code § 510 and IWC Wage Order 9 § 3. Employees who work more
11 than 12 hours per day are entitled to an overtime premium of twice their regular rate of pay. *Id.* It is
12 also unlawful under California law for an employer to suffer or permit an employee to work in
13 excess of 30 hours per workweek or six hours per day during any seven-day workweek under Labor
14 Code §§550-556, or to suffer or permit an employee to work on the seventh day of a seven-day
15 workweek without paying premium wages under California Labor Code §510 and IWC Wage Order
16 9 § 3.

17 36. California Labor Code §1198 makes employment of an employee for longer hours
18 than the IWC sets or under conditions the IWC prohibits unlawful. California Labor Code §1194(a)
19 entitles an employee to recover in a civil action the unpaid balance of all overtime compensation
20 due but not paid.

21 37. Plaintiff and the Class Members routinely worked in excess of eight and/or ten
22 hours per workday and/or in excess of 40 hours per workweek.

23 38. Plaintiff and the Class Members also worked five-day workweeks in excess of eight
24 hours per day and in excess of 40 hours per week.

25 39. Plaintiff and the Class Members would regularly work more than eight hours a day
26 and Defendants failed to pay Plaintiff and Class Member for each extra hour worked after eight
27 hours in a workday.

28 40. As previously described, upon information and belief, Defendants maintained a
policy and practice of altering time records to reduce payment for all hours worked (including

1 overtime), and to show that employees took meal periods when they in fact did not take them. This
2 time shaving implemented by and through Defendants' unlawful policies and/or procedures,
3 resulted in Plaintiff and the Class Members not being paid for all hours worked, including overtime
4 hours worked. Defendants unlawful policies and practice caused Plaintiff and the Class Members to
5 suffer unpaid overtime wages in violation of the provisions of California Labor Code Sections 510,
6 550-556, 1194(a), 1198 and Section 3 of the Industrial Welfare Commission Wage Order 4 and/or
7 any other applicable Wage Order.

8 41. As such, Plaintiff, individually and on behalf of Class Members, may bring this
9 action for overtime and double time wages, interest, costs of suit, and attorneys' fees pursuant to
10 California Labor Code Sections 1194(a) and 218.5.

11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF**
13 **CALIFORNIA LABOR CODE SECTIONS 512 AND 226.7**
14 **(As Against Defendants and DOE Defendants by the Class)**

15 42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 43. During the Class Period, Plaintiff and the Class Members were non-exempt
18 employees who performed work for Defendants that was covered by California Labor Code sections
19 512 and 226.7 and all applicable Wage Orders.

20 44. California law requires an employer to provide an employee an uninterrupted meal
21 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
22 relinquishes control over the employee's activities no later than the employee's sixth hour of work.
23 See Lab. Code §§ 226.7, 512; Wage Order No. 9 §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)*
24 (2012) 53 Cal. 4th 1004. An employer may not employ an employee for a work period of more than
25 10 hours per day without providing the employee with a second such meal period of not less than
26 30 minutes by no later than the start of the eleventh hour of work. *Id.* If the employee is not relieved
27 of all duty during a meal period, the meal period shall be considered an "on duty" meal period and
28 counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the
work prevents an employee from being relieved of all duty; and (2) the parties have a written

1 voluntary agreement agreeing to on duty meal periods.

2 45. During the Class Period, Plaintiff and the Class Members worked in shifts long
3 enough to entitle them to first and second meal periods under California law. Plaintiff and the Class
4 Members did not receive timely, compliant thirty-minute meal periods. Plaintiff and the Class
5 Members were forced to take late first meal periods and/or work through their first meal periods or
6 said meal periods would be interrupted/cut short due to the nature and constraints of their job duties,
7 commentary from supervisors, among other reasons. Plaintiff and the Class Members were also
8 required to take on-duty meal periods without agreeing in writing to an on-duty meal period waiver
9 agreement. Moreover, during the Class Period, Plaintiff and the Class Members were not provided
10 a second meal period for shifts lasting more than ten hours. Defendants did not pay a one-hour meal
11 period premium for each missed/late/interrupted/on-duty meal period in violation of California law.

12 46. Defendants are therefore liable to Plaintiff and the Class Members for one hour of
13 additional pay at the regular rate of compensation for each workday that the proper meal period was
14 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus
15 pre-judgment interest.

16 47. Plaintiff, on behalf of herself and the Class Members, seeks damages and all other
17 relief allowable, including a meal period premium wage for each workday Defendants failed to
18 provide all required 30-minute uninterrupted meal periods, plus pre-judgment interest.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF**
21 **CALIFORNIA LABOR CODE SECTIONS 226.2 AND 226.7**
(As Against Defendants and DOE Defendants by the Class)

22 48. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
23 in the preceding paragraphs.

24 49. During the Class Period, Plaintiff and the Class Members were non-exempt
25 employees who performed work for Defendants that was covered by Labor Code sections 226.2 and
26 226.7 and the applicable Wage Order.

27 50. California law requires an employer to authorize or permit an employee to take a rest
28 period of ten (10) net minutes for every four hours worked or major fraction thereof. See Lab. Code

1 § 226.7; applicable Wage Order. Such rest periods must be in the middle of the four-hour period
2 “insofar as practicable.” *Id.* If the employer fails to provide any required rest period, the employer
3 must pay the employee one hour of pay at the employee’s regular rate of compensation for each
4 workday the employer did not provide at least one legally required rest period. *Id.*

5 51. During the Class Period, Plaintiff and the Class Members worked in shifts long
6 enough to entitle them to first, second and third rest periods under California law. Plaintiff and the
7 Class Members did not receive timely, compliant ten-minute rest periods. Plaintiff and the Class
8 Members were forced to take late rest periods and/or work through their rest periods or said rest
9 periods would be interrupted/cut short due to the nature and constraints of their job duties,
10 commentary from supervisors, among other reasons. Plaintiff and the Class Members were also at
11 times required to take on-duty rest periods. Moreover, during the Class Period, Plaintiff and the
12 Class Members were not provided a third rest period for shifts lasting more than ten hours.
13 Defendants did not pay a one-hour rest period premium for each missed/late/interrupted/on-duty
14 rest period in violation of California law.

15 52. Defendants are therefore liable to Plaintiff and the Class Members for one hour of
16 additional pay at the regular rate of compensation for each workday that a require rest periods was
17 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus
18 pre-judgment interest.

19 53. Plaintiff, on behalf of herself and on behalf of the Class Members, seeks damages
20 and all other relief allowable including: rest period premium wages for each workday the employee
21 was not provided with all required rest periods of ten net minutes; and prejudgment interest.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**
24 **VIOLATION OF LABOR CODE SECTION 226**
(As Against Defendants and DOE Defendants by the Class)

25 54. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 55. During the Class Period, Plaintiff and the Class Members were non-exempt
28 employees who performed work for Defendants that was covered by California Labor Code section

1 226.

2 56. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the
3 other members of the class were entitled to receive, semimonthly or at the time of each payment of
4 wages, an itemized wage statement accurately stating the following:

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

22 57. During the Class Period, Defendants intentionally failed to provide Plaintiff and the
23 Class with accurate wage statements in compliance with Labor Code section 226, including, but not
24 limited to, failing to identify or include on the wage statement (1) the total hours worked, (2) the
25 overtime hours worked, (3) the proper applicable rates of pay, (4) premium pay for missed meal
26 periods and rest periods, and (5) the correct gross wage earned.

27 58. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
28 suffered injury. The absence of accurate information on their wage statements has prevented earlier
challenges to Defendants' unlawful pay practices, will require discovery and mathematical
computations to determine the amount of wages owed, and will cause difficulty and expense in
attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
inaccurate information about wages and amounts deducted from wages to state and federal
government agencies. As a result, Plaintiff and the Class Members are required to participate in this
lawsuit and create more difficulty and expense for Plaintiff and the Class Members from having to
reconstruct time and pay records than if Defendants had complied with its legal obligations.

59. Pursuant to California Labor Code section 226(e), Plaintiff and the Class Members are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

60. Pursuant to California Labor Code Section 226(h), Plaintiff and the Class Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with California Labor Code section 226(a). Injunctive relief is warranted because Defendants continues to provide currently employed Class Members with inaccurate wage statements in violation of California Labor Code section 226(a) and currently employed Class Members have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants' compliance with California Labor Code section 226(a).

61. Pursuant to California Labor Code sections 226(e) and 226(h), Plaintiff and the Class Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES TIMELY UOPN SEPARATION OF EMPLOYMENT
IN VIOLATION OF LABOR CODE SECTIONS 201, 202, and 203
(As Against Defendants and DOE Defendants by the Class)

62. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

63. During the Class Period, Plaintiff and the Class Members were non-employees who performed work for Defendants that was covered by California Labor Code sections 201 or 202.

64. Pursuant to California Labor Code sections 201 and 202, Plaintiff and the Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and

1 unpaid prior to resignation at the time or resignation.

2 65. As described herein, Defendants failed to timely pay Plaintiff and the Class Members
3 all wages earned and unpaid upon separation of employment, in accordance with California Labor
4 Code sections 201, 202, and 203.

5 66. Defendants' failure to pay Plaintiff and the Class Members all wages earned prior to
6 separation of employment timely in accordance with California Labor Code sections 201, 202, and
7 203 was willful. Defendants had the ability to pay all wages earned by non-employees prior to
8 separation of employment in accordance with California Labor Code sections 201, 202, 203, but
9 intentionally adopted policies or practices incompatible with the requirements of California Labor
10 Code sections 201, 202, and 203. As a result of Defendants' conduct, Plaintiff and the Class
11 Members have suffered injuries.

12 67. Pursuant to California Labor Code section 203, Plaintiff and the Class Members are
13 entitled to continuation of their wages, from the day their earned and unpaid wages were due upon
14 separation until paid, up to a maximum of 30 days.

15 **SEVENTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN VIOLATION OF**
17 **LABOR CODE SECTION 2802**
18 **(As Against Defendants and DOE Defendants by the Class)**

19 68. Labor Code § 2802 requires employers to indemnify employees for all necessary
20 expenditures incurred by employees in the discharge of their duties.

21 69. Defendants required Plaintiff and the Class Members to use personal cell phones
22 business-related purposes, including but not limited to, clocking in and out for the start and end of
23 their shifts and meal periods, for scheduling, coordination and communication throughout their
24 shifts and/or prior to the start or after the close of their shifts. Defendants did not reimburse Plaintiff
25 or the Class Members for using personal cell phones for work.

26 70. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
27 reimbursement in the amounts to be determined at trial, and is entitled to recovery of such amounts,
28 plus interest and penalties thereon, attorneys' fees, and costs.

///

EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND
PROFESSIONS CODE SECTION 17200, ET SEQ.
(As Against Defendants and DOE Defendants by the Class)

71. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

72. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of California Business and Professions Code Section 17200. This unfair conduct includes Defendants' use of policies and procedures which resulted in: failure to pay minimum and overtime wages; failure to authorize or permit, or provide, all required meal and rest periods or pay premium wages; failure to reimburse for business-related expenses; failure to provide accurate wage and hour statements; and failure to pay all wages due upon termination. Due to its unfair and unlawful business practices in violation of the California Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest and meal periods or pay rest period and meal period premium wages, reimbursement business expenses, accrue and pay all sick leave pay, to provide accurate wage and hour statements, and to pay minimum and overtime wages.

73. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injury in fact and lost money or property, as described in more detail above. Pursuant to California Business and Professions Code Section 17203, Plaintiff and Class Members are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of its unlawful and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the Class Members enjoining Defendants, and any and all persons acting in concert with it, from engaging in each of the unlawful practices, policies and patterns set forth herein.

NINTH CAUSE OF ACTION
Violation of the Private Attorneys General Act of 2004
(By PLAINTIFF, Aggrieved Employees, and the State of California Against All
DEFENDANTS)

74. Plaintiff incorporates all preceding paragraphs as if full alleged herein.

75. Plaintiff brings this action under the Private Attorneys General Act of 2004, Labor

1 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of California
2 and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein
3 as to all Aggrieved Employees. Said "Aggrieved Employees" include:

4 All current and former non-exempt, hourly-paid employees employed
5 by Defendants in California at any time from December 18, 2019, to
6 the present.

7 76. Plaintiff is an "aggrieved employee," as that term is defined under Labor Code
8 section 2699(c), as she was employed by Defendants during the applicable statutory limitations
9 period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff
10 seeks to recover on behalf of herself, the State of California, and all other Aggrieved Employees,
11 the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. Plaintiff has
12 standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as
13 she was jointly employed by Defendants and is thereby affected by one or more of the alleged
14 violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A
15 PAGA plaintiff has authority to seek penalties for all known violations committed by the employer
16 – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

17 77. On May 27, 2022, Plaintiff, through her counsel, gave written notice by online filing
18 with the California Labor and Workforce Development Agency ("LWDA") informing it that
19 Defendants failed to comply with California's labor laws with regard to the allegations alleged in
20 this Complaint ("PAGA Letter"). The PAGA Letter is attached hereto as Exhibit A. The PAGA
21 Letter was sent to Defendants via certified mail.

22 78. The PAGA Letter outlined Plaintiff's claims for violations of the California Labor
23 Code and the applicable wage orders on behalf of herself, the State of California and other
24 Aggrieved Employees.

25 79. The LWDA did not provide notice of its intention to investigate Defendants'
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
27 alleged violations were curable, Defendants failed to cure within the time allotted by PAGA.
28 Accordingly, Plaintiff has exhausted the administrative remedies as required by Labor Code section

1 2699.3. Consequently, Plaintiff's right to file the instant lawsuit has duly accrued.

2 80. Plaintiff seeks to recover the PAGA civil penalties through a representative action
3 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
4 969. Therefore, class certification of the PAGA claims is not required.

5 81. From one year prior to Plaintiff's filing of the required PAGA notice with the
6 LWDA, and continuing through the present, as alleged herein, Defendants violated California Labor
7 Code sections 201-203, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, 2802 and all relevant
8 sections of the applicable Wage Orders, as to Plaintiff and Aggrieved Employees. These violations
9 subject Defendants to civil penalties as set forth in the foregoing statutes as well as other
10 provisions of the Labor Code, including without limitation, Labor Code sections 203, 210, 226,
11 226.3, 256, 558.1, 1197.1 and 2699.

12 82. As set forth above, Defendants have committed numerous violations of the California
13 Labor Code due to including but not limited to their failure to pay all owed minimum wages and all
14 owed overtime wages, failure to provide lawful meal and rest periods or compensation in lieu
15 thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and
16 failure to timely pay all wages owed upon separation of employment as alleged above. PAGA
17 penalties are in addition to any other relief available under the Labor Code.

18 83. Under the provisions of PAGA and the foregoing Labor Code sections and all
19 relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
20 California Courts and administrative bodies, as well as any other law that is enforceable through
21 PAGA, Defendants are liable for the following penalties:

22 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant
23 California Labor Code provisions listed herein only if permitted by the PAGA statute,
24 pursuant to Labor Code section 2699(a); and

25 b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations
26 without a civil penalty recoverable under the PAGA, all in the default amounts provided by
27 Labor Code section 2699(f).

28 c. The proper measure of penalties under PAGA is the number of violations, whether those

1 violations were committed as against Plaintiff or any Aggrieved Employee, whether a party
2 to this action or not.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of herself and
5 all aggrieved similarly situated employees:

- 6 1. For compensatory damages according to proof;
- 7 2. For an order requiring Defendants to make restitution of all amounts wrongfully
8 withheld from Plaintiff and the Class Members;
- 9 3. For restitution of all monies due Plaintiff and Class Members;
- 10 4. For disgorgement of all profits garnered as a result of Defendants' unlawful
11 practices;
- 12 5. For all penalties allowed by law;
- 13 6. For pre-judgment and post-judgment interest as permitted by law;
- 14 7. For reasonable attorney's fees and costs of suit;
- 15 8. For civil penalties according to proof, including PAGA penalties (75% payable to
16 the LWDA and 25% payable to Aggrieved Employees); and
- 17 9. For such other and further relief as the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff LYNDA BROWNING demands a trial on all claims so triable.

20 Dated: January 9, 2023

Respectfully submitted,

21
22 **CROSNER LEGAL, PC**

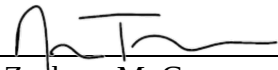
23 By: 
24 Zachary M. Crosner, Esq.
25 Michael R. Crosner, Esq.
26 Jamie Serb, Esq.
27 Attorneys for Plaintiff
28 LYNDA BROWNING

EXHIBIT “A”



Zachary Crosner, Esq.
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Los Angeles Office
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zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

May 27, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Christina Douglas
Agent for Service of Process for:
**The Huntington Medical Foundation dba
Huntington Health Physicians**
100 W California Blvd.
Pasadena, CA 91105

Jennie Ritchie
Agent for Service of Process for:
Pasadena Hospital Association, LTD
100 W California Blvd.
Pasadena, CA 91105

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; The Huntington Medical Foundation dba Huntington Health Physicians; and Pasadena Hospital Association, LTD
Date: May 27, 2022
Subject: *Lynda Browning v. The Huntington Medical Foundation dba Huntington Health Physicians et. al.*

Introduction

This office represents COMPLAINANT, Lynda Browning (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual

managing agents of said entities: The Huntington Medical Foundation dba Huntington Health Physicians; and Pasadena Hospital Association, LTD (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt, hourly-paid employees employed by EMPLOYER in California at any time from December 18, 2019, to the present (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT and AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, 2802, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT and AGGRIEVED EMPLOYEES.

General Information

On information and belief, The Huntington Medical Foundation dba Huntington Health Physicians is a business residing in the State of California, and is and at all relevant times has been, a member of Pasadena Hospital Association, LTD and had direct control and power over the working conditions and the violations alleged herein. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the

applicable California Industrial Welfare Commission (“IWC”) Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California’s labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee from approximately 1988 through May 2019. COMPLAINANT worked for EMPLOYER as a registered nurse. COMPLAINANT was paid \$39.77 and regularly worked shifts between 8 to 14 hours a day, five days a week.

Among other things, EMPLOYER (1) failed and continues to fail to pay COMPLAINANT and AGGRIEVED EMPLOYEES minimum wages for all hours worked; (2) failed and continues to fail to pay proper overtime wages to COMPLAINANT and AGGRIEVED EMPLOYEES; (3) failed and continues to fail to provide COMPLAINANT and AGGRIEVED EMPLOYEES with proper meal and/or rest periods, and/or compensate COMPLAINANT and AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (4) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and AGGRIEVED EMPLOYEES; (5) failed and continues to fail to timely pay wages to COMPLAINANT and AGGRIEVED EMPLOYEES upon separation of employment; and (6) failed and continues to fail to reimburse COMPLAINANT and AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a

rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal periods. COMPLAINANT and AGGRIEVED EMPLOYEES were required to monitor their cell phones during meal periods in case of emergency, for scheduling and coordination, among other job-related reasons. This policy and practice of requiring COMPLAINANT and AGGRIEVED EMPLOYEES to monitor their cell phones during meal periods resulted in COMPLAINANT and AGGRIEVED EMPLOYEES being required to remain on-duty during purported meal periods. EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES a one-hour premium for these on-duty meal periods, in violation of the California Labor Code.

COMPLAINANT and AGGRIEVED EMPLOYEES did not receive timely, compliant thirty-minute meal periods as they were forced to take late first meal periods and/or work through their first meal periods or said meal periods would be interrupted/cut short due to the nature and constraints of their job duties, commentary from supervisors, among other reasons. Moreover, COMPLAINANT and AGGRIEVED EMPLOYEES were not provided a second meal period for shifts lasting more than ten hours.

Furthermore, EMPLOYER did not pay a one-hour meal period premium to COMPLAINANT and other AGGRIEVED EMPLOYEES for each missed/improper meal period.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.¹

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

COMPLAINANT and AGGRIEVED EMPLOYEES worked shifts long enough to entitled them to first, second, and third rest periods under California law, Yet, EMPLOYER did not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other AGGRIEVED EMPLOYEES were required to monitor their cell phones during rest periods in case of emergency, for scheduling and coordination, among other job-related reasons. This policy and practice of requiring COMPLAINANT and AGGRIEVED EMPLOYEES to monitor their cell phones during rest periods resulted in COMPLAINANT and AGGRIEVED EMPLOYEES being required to remain on-duty during rest periods.

Additionally, upon information and belief, EMPLOYER maintained a policy and practice of requiring its AGGRIEVED EMPLOYEES to remain on the premises during rest periods, which, in effect, resulted in an on-duty rest period. Despite this, EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES a one-hour premium for these on-duty rest periods, in violation of the California labor code.

COMPLAINANT and AGGRIEVED EMPLOYEES, at times, were required to take late rest periods and/or work through their rest periods, or any purported rest periods would be interrupted/cut short due to the nature and constraints of their job duties, commentary from supervisors, among other reasons. Furthermore, EMPLOYER prohibited COMPLAINANT and other AGGRIEVED EMPLOYEES from leaving the work premises during purported rest periods. This is illegal as employers cannot require employees to stay on the work premises during rest periods as "one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to

relieve employees of all work duties and employer control during 10-minute rest periods. *Augustus v ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. EMPLOYER did not pay a one-hour rest period premium for each missed/improper rest period.

The aforementioned conduct results in violations of Labor Code sections 226.7, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.²

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “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.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked. Upon information and belief, EMPLOYER maintained a policy and practice of altering time records to reduce payment for all hours worked (including overtime), and to show that employees took meal periods when they in fact did not take

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

them. For example, throughout COMPLAINANT's employment, COMPLAINANT was made aware that the office manager for EMPLOYER would manually edit her shift and meal period start and stop times in order to avoid paying overtime and/or one hour meal period premiums for missed/late meal periods. This time shaving implemented by and through EMPLOYER's unlawful policies and/or procedures, resulted in not only time recordkeeping violations in violation of California Labor Code sections 1174, 1174.5, 1199, and the applicable Wage Order, but also violations of California's minimum and overtime wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

COMPLAINANT and the AGGRIEVED EMPLOYEES routinely worked in excess of eight and/or ten hours per workday and/or in excess of 40 hours per workweek. Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly record the total number of hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

As alleged above, based on information and belief, EMPLOYER maintained a policy and practice of altering time records to reduce payment for all hours worked (including overtime), and to show that employees took meal periods when they in fact did not take them. For example, throughout COMPLAINANT's employment, COMPLAINANT was made aware that the office manager for EMPLOYER would manually edit her shift and meal period start and stop times in order to avoid paying overtime and/or one hour meal period premiums for missed/late meal periods. This time shaving implemented by and through EMPLOYER's unlawful policies and/or procedures, resulted in not only time recordkeeping violations in violation of California Labor Code sections 1174, 1174.5, 1199, and the applicable Wage Order, but also violations of California's overtime wage laws.

³ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

This conduct results in violations of Labor Code sections 510, 558, 1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

Based on the foregoing minimum wage, overtime, meal and rest period violations, EMPLOYER failed to provide COMPLAINANT and AGGRIEVED EMPLOYEES with accurate, itemized wage statements in compliance with California law. Additionally, EMPLOYER issued wage statements that completely failed to itemize the total hours worked or the true number of overtime hours worked by COMPLAINANT and the AGGRIEVED EMPLOYEES. As such, EMPLOYER intentionally failed to provide COMPLAINANT and the AGGRIEVED EMPLOYEES with accurate wage statements in compliance with Labor Code section 226, including but not limited to, failing to identify or include on the wage statement (1) the total hours worked, (2) the overtime hours worked, (3) the proper applicable rates of pay, (4) premium pay for missed meal periods and rest periods, and (5) the correct gross wages earned.

This failure injured COMPLAINANT and the AGGRIEVED EMPLOYEES by misrepresenting and depriving them of hours, wages, and earnings information to which they are entitled, causing difficulty and expense in attempting to reconstruct time and pay records, causing COMPLAINANT and the AGGRIEVED EMPLOYEES to not be paid wages to which they were entitled, and disallowing COMPLAINANT and the AGGRIEVED EMPLOYEES under Labor Code section 226(b) to review accurate itemized wage statement information by inspecting the employer's underlying records.

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁵

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on the foregoing minimum wage, overtime, meal and rest period violations, EMPLOYER failed to timely pay all wages that were due and owing to COMPLAINANT and the AGGRIEVED EMPLOYEES, including upon separation of employment. As such, EMPLOYER failed to timely pay COMPLAINANT and AGGRIEVED EMPLOYEES all wages earned and unpaid upon separation of employment, in accordance with California Labor Code section 201, 202, and 203. Additionally, upon information and belief, EMPLOYER would pay the final wages due to an employee not on the date of discharge or separation, but at the end of the pay period on the same pay date as regular payroll, which, in effect, resulted in systematic late final payment to the AGGRIEVED EMPLOYEES. For example, COMPLAINANT's final day of work was on May 3, 2019, yet her final paycheck reflects a pay date of May 18, 2019.

EMPLOYER's failure to pay COMPLAINANT and the AGGRIEVED EMPLOYEES all wages earned prior to separation of employment timely in accordance with California Labor Code section 201, 202, and 203 was willful. EMPLOYER had the ability to pay all wages earned by AGGRIEVED EMPLOYEES prior to separation of employment in accordance with California Labor Code sections 201, 202, and 203, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code sections 201, 202, and 203. As a result of EMPLOYER's conduct, COMPLAINANT and the AGGRIEVED EMPLOYEES have suffered injuries.

⁵ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁶

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, “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 personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone. For example, EMPLOYER required COMPLAINANT to use her personal cell phone to clock-in and clock-out each workday. Specifically, EMPLOYER required COMPLAINANT to download a smartphone application to clock-in and clock-out each workday. EMPLOYER did not reimburse COMPLAINANT for using her personal cell phone for work.

Upon information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to use their respective personal cell phone to clock-in and clock-out each workday. Specifically, EMPLOYER required the AGGRIEVED EMPLOYEES to download a smartphone application to clock-in and clock-out each workday. Additionally, EMPLOYER required COMPLAINANT and the AGGRIEVED EMPLOYEES to use their cell phones for business-related scheduling, coordination and communication throughout their shifts and/or prior to the start or after the close

⁶ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

of their shifts. EMPLOYER did not reimburse AGGRIEVED EMPLOYEES for using a personal cell phone for work-related purposes.

EMPLOYER's failure to provide COMPLAINANT and AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions and all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3 and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES of EMPLOYER as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

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CROSNER LEGAL, PC

SERVICE LIST

LYNDA BROWNING VS. PASADENA HOSPITAL ASSOCIATION, LTD et al.

Los Angeles Superior Court Case No 20STCV48262

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