

CASE ATTACHMENT COVER PAGE		(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Sep 1, 2022 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Mary E Williamson</i>
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ATTACHMENT NAME: Declaration: Plaintiffs' First Amended Class Action Complaint		
CASE NAME: Toy Sanchez vs. Air Methods Corporation		CASE NUMBER: CIVSB2208677
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all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

TOY SANCHEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

AIR METHODS CORPORATION, a
Delaware Corporation; and DOES 1
THROUGH 100, inclusive

Defendants.

Case No. CIVSB2208677

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

1. **Failure to Pay All Overtime Wages**
2. **Failure to Provide Rest Periods**
3. **Violations of Labor Code §§226.7, 512,
and IWC Wage Order No. 4-2001**
4. **Failure to Provide Accurate Wage
Statements**
5. **Unfair Competition**
6. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

This is an action brought by Plaintiff TOY SANCHEZ ("Plaintiff"), on behalf of herself and all others similarly situated, against AIR METHODS CORPORATION and other as of yet unnamed Defendants (hereinafter collectively "Defendants" or "AMC") alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys' fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges, as follows:

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II. GENERAL ALLEGATIONS

1. This is a California state-wide class action for wage and hour violations arising out of, among other things, Defendants' failure to compensate their California hourly non-exempt patient advocate and/or collections employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail compensate Plaintiff and class members overtime premiums based on the correct regular rate of pay, provide legally compliant non-captive paid rest breaks, provide premium pay remedies at the regular rate of compensation, and engage in other Labor Code violations.

2. Plaintiff seeks among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former hourly non-exempt employees who provided patient advocate and/or collections services for Defendants in California at any time during the period of four years prior to the filing of the original complaint through the date of class certification and received a bonus ("the Class").

3. This Court is the proper court and this action is properly filed in the County of San Bernardino and in this judicial district because Defendants do business in the County of San Bernardino and because Defendants' obligations and liability arise therein.

4. Plaintiff is a current non-exempt Patient Advocate for Defendants and a resident of the County of San Bernardino, State of California. During the relevant time period, Plaintiff performed collections-related services for Defendants in the State of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant Air Method Corporation is a Delaware Corporation that is headquartered in Greenwood Village, Colorado.

1 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious
3 names. Plaintiff will amend this Complaint to show their true names and capacities when they have
4 been ascertained.

5 7. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
6 omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting
7 as agents and/or employees, and/or under the direction and control of each of the other Defendants,
8 and that said acts and failures to act were within the course and scope of said agency, employment
9 and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times
10 material hereto Defendants were and are the agents of each other.

11 8. Plaintiff is informed and believes, and thereon alleges, that Defendant DOES 1 through
12 100 are the partners, owners, shareholders, or managers of Defendant Employers, and were acting
13 on behalf of Defendant Employers in the payment of wages to Plaintiff.

14 9. At all relevant times alleged herein Plaintiff was employed by Defendants, and Plaintiff
15 held a position with Defendants in the County of San Bernardino, State of California.

16 **I. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

17 10. Plaintiff and the Class worked as hourly non-exempt patient advocate/collections
18 employees for Defendants in the state of California and received bonuses.

19 11. Throughout the Class Period, Plaintiff and all Class members were and are employees
20 of Defendants, entitled to all of the protections afforded to employees under the Labor Code and
21 applicable IWC Wage Orders.

22 12. Defendants' primary business is providing helicopter-based air medical transport
23 services. In providing these air medical transport services, Defendants charge fees to patients,
24 insurance providers, and other financially responsible parties. Defendants collect these fees and issue
25 bills via patient advocate/collections services, which is performed in part by Plaintiff and the Class
26 members. As a Patient Advocate, Plaintiff is responsible for patient collections and ensuring
27 reimbursement to Defendants from responsible parties. In providing collections services, Plaintiff is
28 responsible for issuing billing statements, determining collectability, communicating with insurance

1 companies, and additional responsibilities in the service of collecting monies for the medical-related
2 air transport services provided by Defendants.

3 13. At all times during the liability period, Defendants failed to pay Plaintiff and Class
4 members overtime wages based on their regular rate of pay. Plaintiff and the Class members received
5 non-discretionary bonuses that were not included in the regular rate of pay for calculating overtime
6 premium pay.

7 14. When Class members worked shifts over eight (8) hours per day, or over forty (40) hours
8 per week, Defendants did not pay them overtime time in accordance with the California Labor Code
9 and applicable Wage Order.

10 15. Defendants failed to pay Plaintiff and the Class members overtime wages by failing to
11 include all remuneration when calculating the regular rate of pay for overtime by omitting non-
12 discretionary bonus payments.

13 16. Defendants' conduct, as alleged herein, has caused Plaintiff and Class members damages
14 including, but not limited to, loss of wages and compensation.

15 17. Defendants are liable to Plaintiff and the Class for failing to pay all earned overtime
16 wages, failing to provide legally compliant paid rest periods, failing to pay all meal and/or rest period
17 premium pay remedies at the correct regular rate of compensation, failing to provide accurate wage
18 statements, and unfair competition.

19 18. Plaintiff is a member of and seeks to be the representative for the Class of similarly
20 situated employees who all have been exposed to, have suffered, and/or were permitted to work
21 under, Defendants' unlawful employment practices as alleged herein.

22 19. Plaintiff and the Class were suffered and/or permitted to and worked in excess of eight
23 (8) hours in a day and/or forty (40) hours in a week without receiving all earned overtime pay for all
24 overtime hours worked. Despite knowing that Plaintiff and the Class were working overtime hours,
25 Defendants refused to pay the full amount of overtime premiums for all overtime hours worked.

26 20. Plaintiff is informed, believes and on that basis alleges that throughout the relevant time
27 period, Defendants failed to authorize and provide 10-minute paid rest periods compliant with the
28 provisions of the California Labor Code and applicable Wage Order. Plaintiff and Class members

1 were assigned to and required to work shifts lasting over four (4) hours and were not provided nor
2 allowed to take a non-captive paid ten-minute uninterrupted rest break during each four (4) hour
3 work period, or major fraction thereof, at the direction of Defendants and/or with Defendants
4 knowledge and acquiescence.

5 21. Plaintiff is informed, believes, and on that basis alleges that throughout the relevant time
6 period, Defendants failed to pay meal and/or rest period premium pay remedies at the correct regular
7 rate of compensation as required by the California Labor Code and applicable Wage Order. *See*
8 *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021).

9 22. The wage statements provided by Defendants failed to provide accurate information as
10 to the hourly rate for all hours worked, the net wages earned, and the gross wages earned per pay
11 period.

12 23. The underpayment of wages to Plaintiff and the Class are a consequence of Defendants'
13 unlawful policies and practices which were centrally devised, implemented, communicated, and
14 applied to Plaintiff and the Class.

15 24. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
16 continue to be systematically deprived of their earned wages to which they are entitled by law and
17 deprived of other benefits of the Labor Code, and applicable IWC Wage Orders, to the detriment of
18 herself and the public at large.

19 **CLASS DEFINITION AND CLASS ALLEGATIONS**

20 25. Plaintiff brings this action on her own behalf and on behalf of all others similarly
21 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class defined
22 as follows:

23 All current and former hourly non-exempt employees for Defendants in California
24 who at any time during the period of four years prior to the filing of the original
25 complaint through the date of class certification who provided patient advocate
and/or collections services and received bonus payments.

26 **Sub-Class 1**

27 All current and former hourly non-exempt employees for Defendants in California
28 All current and former hourly non-exempt employees for Defendants in California
who at any time during the period of four years prior to the filing of the original

1 complaint through the date of class certification who provided patient advocate
2 and/or collections services and received bonus payments and worked more than
3 eight (8) hours in a workday or forty (40) hours in a workweek. ("Regular Rate"
4 Sub-Class).

5 **Sub-Class 2**

6 All current and former hourly non-exempt employees for Defendants in California
7 who at any time during the period of four years prior to the filing of the original
8 complaint through the date of class certification who provided patient advocate
9 and/or collections services and worked more than four (4) hours in a workday.
10 ("Rest Period" Sub-Class).

11 **Sub-Class 3**

12 All current and former hourly non-exempt employees for Defendants in California
13 who at any time during the period of four years prior to the filing of the original
14 complaint through the date of class certification who provided patient advocate
15 and/or collections services and received bonus payments and received premium pay
16 remedies for meal and/or rest period violations. ("Premium Payment" Sub-Class).

17 **Sub-Class 4**

18 All current and former hourly non-exempt employees for Defendants in California
19 who at any time during the period of four years prior to the filing of the original
20 complaint through the date of class certification who provided patient advocate
21 and/or collections services and received a wage statement and is a member of Sub-
22 Class 1, 2 and/or 3. ("Wage Statement" Sub-Class).

23 26. Plaintiff reserves the right to amend or otherwise alter the class definition presented to
24 the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to facts
25 learned through discovery, legal arguments advanced by Defendants or otherwise.

26 27. Further, this action is brought for the benefit of the public, who are entitled to restitution
27 of those funds improperly withheld by Defendants.

28 28. This action has been brought and may be properly maintained as a class action pursuant
to the provisions of the Code of Civil Procedure §382 and other applicable law.

29 **29. Numerosity:** Members of the Class are so numerous that their individual joinder is
impracticable. The precise number of Class members and their addresses are known to Plaintiff or
will be known to Plaintiff through discovery. Class members may be notified of the pendency of this
action by mail, electronic mail, the internet, or published notice.

1 **30. Typicality:** Plaintiff's claims are typical of the claims of members of the proposed
2 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
3 to Defendants' unlawful employment practices, as alleged in this Complaint.

4 **31. Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
5 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
6 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
7 fairly and adequately protected by Plaintiff and her counsel.

8 **32. Common Questions of Law and Fact:** Common questions of law and fact exist as to
9 all Class members and predominate over any questions affecting solely individual members of the
10 proposed Class:

- 11 a. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and
12 the members of the Class the full amount of overtime wages, based on the correct
13 regular rate of pay, for each hour in excess of eight (8) per day, or forty (40) per
14 week, worked in violation of the applicable Labor Code provisions including §§510
15 and 1194;
- 16 b. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff
17 and the members of the Class paid rest periods in violation of IWC Wage Order No.
18 4-2001 and Labor Code §226.7 by requiring Plaintiff and Class members to remain
19 on Defendant's property during the rest breaks;
- 20 c. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff
21 and the members of the Class premium pay remedies for meal and/or rest period
22 violations at the regular rate of compensation in violation of IWC Wage Order No.
23 4-2001 and Labor Code §226.7;
- 24 d. Whether Defendants engaged in unfair practice and violated California Business and
25 Professions Code §17200 by failing to compensate Plaintiff and the members of the
26 Class their full amount of overtime wages;
- 27 e. Whether Defendants failed to provide accurate wage statements to Plaintiff and the
28 members of the Class; and

1 f. The nature and extent of class-wide injury and measure of damages for the injury.

2 33. **Superiority and Substantial Benefit:** A class action is the superior method for the fair
3 and efficient adjudication of this controversy. Defendants implemented illegal schemes that are
4 generally applicable to the members of the proposed plaintiff class and sub-classes. Damages
5 suffered by each Class member may be relatively small given the burden and expense of individual
6 prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further,
7 it would be virtually impossible for the Class members to redress the wrongs done to them on an
8 individual basis. Even if Class members could afford such individual litigation, the court system
9 could not. By contrast, the class action device presents far fewer management difficulties, and
10 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
11 by a single court.

12 34. Plaintiff knows of no difficulty that will be encountered in the management of this
13 litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes,
14 and on that basis alleges, that the amount of money due each Class member as economic damages
15 is ascertainable from Defendants' records or may readily be determined by other means.

16 35. The Classes should also be certified because:

- 17 a. The prosecution of separate actions by individual Class members would create a risk
18 of inconsistent or varying adjudications with respect to individual Class members,
19 which would establish incompatible standards of conduct for Defendants;
- 20 b. The prosecution of separate actions by individual Class members creates the risk of
21 adjudication with respect to them, which would, as a practical matter, be dispositive
22 of the interests of the other Class members not parties to the adjudications, or would
23 substantially impair or impede their ability to protect their interests; and
- 24 c. Defendants have acted or refused to act on grounds generally applicable to the Class,
25 and/or general public, thereby making appropriate final and injunctive relief with
26 respect to the Classes as a whole.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay All Overtime and Double Time Wages**

3 **Violation of Labor Code §§510 and 1194; IWC Wage Order No. 4-2001**

4 (Against all Defendants)

5 36. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 35 of this Complaint.

7 37. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any work
8 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
9 and the first eight hours worked on the seventh day of work in any one workweek shall be
10 compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
11 Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
12 regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
13 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of
14 an employee. Nothing in this section requires an employer to combine more than one rate of overtime
15 compensation in order to calculate the amount to be paid to an employee for any hour of overtime
16 work.” The California overtime requirement and wage requirement are non-waivable rights
17 pursuant to LC §219.

18 38. Section 3(a)(1) of Wage Order No. 4-2001 (“WO 4-01”) mandates that employers pay
19 one and one-half times the employees’ regular rate of pay for employees who work more than eight
20 hours in a day or forty hours in a week and two times their regular rate of pay for any work in excess
21 of twelve hours in one day.

22 39. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser wage,
23 any employee receiving less than the legal minimum wage or the legal overtime compensation
24 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
25 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s
26 fees, and costs of suit.”

27 40. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
28 overtime wages directly against the employer without first filing a claim with the Division of Labor

Standards Enforcement (“DLSE”) and may recover such wages, together with interest thereon, penalties, attorneys’ fees and costs. Further, pursuant to Labor Code §1198, it is unlawful to employ person for longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. WO 4-01, as amended, applies to Plaintiff.

41. However, Defendants have failed and refused to pay Plaintiff and the class members overtime compensation for all overtime hours worked in excess of eight (8) hours per day and forty (40) hours per week as required by LC §§510, 1194 and the applicable Wage Orders. Plaintiff is informed and believes and based thereon alleges that the obligations and responsibilities of the class employees are irrelevant because Plaintiff and all other similarly situated employees were subjected to Defendants’ unlawful pay plans and its failure to pay overtime based on the regular rate of pay for all overtime hours worked by Plaintiff and the class members.

42. Defendants, and each of them, consistently administered a corporate policy which required Plaintiff and the Class members to work overtime without proper premium overtime pay at the regular rate of pay. Accordingly, Plaintiff and the Class members were and are entitled to overtime compensation, under California law, at the appropriate regular rate of pay. Defendants have failed to properly include items of remuneration when determining Plaintiff’s and the Class Members’ regular rate, this includes but is not limited to the failure to include bonus payments to Plaintiff and the Class members.

43. Plaintiff and the class members have been deprived of rightfully earned overtime compensation as a direct and proximate result of Defendants’ common policies, practices, and refusal to pay the full amount of compensation earned for all overtime hours worked.

44. Plaintiff, and the class, are entitled to and seek the full amount of all earned unpaid overtime pay based on the correct regular rate of pay, attorneys’ fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

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1 (10) minute paid rest periods to Plaintiff and the Class member by requiring the rest periods to be
2 taken on Defendants' property.

3 53. As such, Plaintiff and the Class members were not allowed to leave Defendants'
4 premises for their rest breaks in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
5 257 as Defendants failed to relinquish control over how Plaintiff and the Class members spent their
6 rest breaks.

7 54. As such, as a matter of Defendants' established company policy and/or practice,
8 Defendants failed to authorize and permit all required paid rest periods established by Labor Code
9 §226.7 and 516 and Section 12 of the applicable Wage Order.

10 55. As a result of the unlawful acts of Defendants, Plaintiff and the Class members have
11 been deprived of legally compliant paid rest breaks and are entitled to recover damages under Labor
12 Code §226.7(b) and §12 of IWC Wage Order No. 4-2001 in the amount of one additional hour of
13 compensation at their regular rate of pay for each day a paid rest break was not provided.

14 56. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members
15 seek recover of pre-judgment interest on all amounts recovered herein.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE §§226.7, 512, and IWC Wage Order No. 4**

18 (Against all Defendants)

19 57. Plaintiff restates and incorporates by reference each and every allegation contained in
20 paragraphs 1 through 35, inclusive, as though fully set forth herein.

21 58. Labor Code §226.7(c) provides in relevant part that "If an employer fails to provide an
22 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
23 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
24 Commission . . . the employer shall pay the employee one additional hour of pay at the *employee's*
25 *regular rate of compensation* for each workday that the meal or rest or recovery period is not
26 provided." (Emphasis added).

27 59. The "regular rate of compensation" as set forth in Labor Code §226.7 has the same
28 meaning as "regular rate of pay" as used in Labor Code §510 for overtime and "encompasses all

1 non-discretionary payments, not just hourly wages”. *Ferra v. Loews Hollywood Hotel, LLC*, 11
2 Cal.5th 858, 863.

3 60. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend
4 working condition orders with respect to break periods, meal periods, and days of rest for any
5 workers in California consistent with the health and welfare of those workers.”

6 61. Section §11(B) of the IWC Wage Order No. 4-2001 states: “If an employer fails to
7 provide an employee a meal period in accordance with the applicable provisions of this order, the
8 employer shall pay the employee one (1) hour of pay at the **employee’s regular rate of compensation**
9 for each workday that the meal period is not provided.” (Emphasis added).

10 62. Defendants’ uniform policy and practice failed to provide Plaintiff and the Class
11 members, who incurred meal and/or rest period violations, the full amount of paid meal and/or rest
12 period premium payments, at the regular rate of compensation, for noncompliant meal and/or rest
13 periods. Defendants’ uniform policy and practice was to underpay meal and/or rest period premiums
14 with payment at a rate significantly less than the employee’s regular rate of compensation.

15 63. Plaintiff incurred meal and/or rest period violations and received premium payments
16 that were paid at a rate less than the regular rate of compensation, this includes but is not limited to
17 the exclusion of non-discretionary bonuses from the regular rate of pay.

18 64. As such, as a matter of Defendants’ established company policy, Defendants failed to
19 provide meal and/or rest periods and then failed to provide meal and/or rest period premium
20 payments at the regular rate of compensation in violation of Labor Code §§226.7(b), 516, and
21 Section 11(B) of Wage Order 4-2001.

22 65. As a result of the unlawful acts of Defendants, Plaintiff and the Class members have
23 been deprived of legally compliant meal and/or rest breaks and the full amount of meal and/or period
24 premium payments at the regular rate of compensation and are entitled to recover damages under
25 Labor Code §226.7(b) and §12 of IWC Wage Order No. 4-2001 in the full amount of one additional
26 hour of compensation at their regular rate of pay for each day a compliant meal and/or rest break
27 was not provided.

28 66. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class members

1 seek recovery of pre-judgment interest on all amounts recovered herein.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

4 **Violation of Labor Code §226**

5 (Against all Defendants)

6 67. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
7 paragraphs 1 through 35 of this Complaint.

8 68. California Labor Code §226 provides:

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

25 69. Section 7(A) of the Wage Order requires accurate information pertaining to total wages
26 paid each payroll period, total hours worked in the payroll period and applicable rates of pay, and
27 incentive plan formula provided to the employees.

28 70. Labor Code §226(e) provides that an employee is entitled to recover the greater of all
actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226 occurs
and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate penalty
of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys' fees, for all
pay periods in which the employer knowingly and intentionally failed to provide timely and accurate
itemized statements to the employees.

71. At all material times, Defendants knowingly and intentionally failed to provide Plaintiff and the Class members with wage statements reflecting the gross wages earned, net wages earned, the applicable hourly rates at the corresponding hours worked, and/or list the rest period premium payment on the wage statement.

72. Plaintiff and the Class members suffered injury as a result of Defendants' knowing and intentional failure to provide accurate itemized wage statements as Plaintiff and the Class member were owed but not paid premium compensation for all premium hours worked, premium payments for rest period violations which were not reflected on the wage statements, and premium payments for meal and/or rest period violations at the regular rate of compensation. Plaintiff and the Class members suffered injury as a reasonable person could not promptly and easily determine from the wage statements alone the accurate amount of gross wages, applicable hourly rates at the corresponding hours worked, the net wages earned for the pay period and/or the number of rest period premium payments on the wage statements.

73. Plaintiff and the Class members are entitled to damages of statutory penalties pursuant to Labor Code §226(e) for these violations, in an amount to be determined at trial.

74. Plaintiff and the Class members are entitled to and seek costs and reasonable attorneys' fees pursuant to Labor Code §226(e).

75. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs pursuant to Labor Code §226(h).

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(Against all Defendants)

76. Plaintiff re-alleges and incorporates by reference each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

77. Beginning on an exact date unknown to Plaintiff but believed to have occurred at least since four (4) years before the filing of this action, Defendants have engaged in a pattern and practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged herein.

1 78. Defendants, and each of them, are “persons” as defined by Business and Professions
2 Code §17201.

3 79. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues on
4 her own behalf and on behalf of the current, former, and future employees of the Defendants that
5 were required to work overtime hours without receiving the full amount of overtime compensation,
6 required to work shifts without legally compliant rest periods, provided meal and/or rest period
7 premium pay at a rate not equal to the regular rate of compensation, and as parties harmed by
8 Defendants unfair business practices.

9 80. Plaintiff and the Class members suffered injuries-in-fact and have lost money as a result
10 of the Defendants’ unfair competition alleged herein.

11 81. Defendants previously or continue to engage in unlawful, unfair, and/or fraudulent
12 business practices, as alleged in this Complaint, in violation of California’s B&PC §17200 *et seq.*
13 by:

- 14 a. Failing and refusing to pay Plaintiff and the Class members the full amount of
15 overtime compensation in violation of Labor Code §§510, 1194, &1197 and IWC
16 Wage Order No. 4-2001; and
- 17 b. Failing and refusing to provide Plaintiff and the Class members legally compliant rest
18 breaks or premium payments, at the regular rate of pay, in lieu thereof in violation of
19 Labor Code §§226.7, 512 and IWC Wage Order No. 4-2001; and
- 20 c. Failing and refusing to provide Plaintiff and the Class members meal and/or rest
21 period premium payments, at the regular rate of pay, in lieu thereof in violation of
22 Labor Code §§226.7, 512 and IWC Wage Order No. 4-2001.

23 82. All of these allegations constitute unfair business practices and/or unlawful business
24 practices in violation of California B&PC §17200, *et seq.*

25 83. Defendants have avoided payment of wages, overtime wages and other benefits as
26 required by the California Labor Code, the California Code of Regulations and applicable IWC
27 Wage Orders. As a result of Defendants’ unfair business practices, Defendants have reaped unfair
28 benefits and illegal profits at the expense of Plaintiff, the Class members, and others similarly

1 situated, and the members of the public. Defendants should be made to disgorge their ill-gotten
2 gains and to restore them to the Class, including Plaintiff.

3 84. Plaintiff and the Class members seek full restitution of said monies, as necessary and
4 according to proof, to restore any and all monies withheld and/or acquired by Defendants by means
5 of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff seeks, on
6 behalf of all current and former employees of Defendants, restitution of monies retained by
7 Defendants. Plaintiff further seeks, on behalf of themselves and the Class members, the appointment
8 of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The restitution
9 includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or fraudulent
10 business practices; including interest thereon. Absent a statutory provision specifically governing
11 the type of claim at issue, the prejudgment interest rate is 10 percent. The acts complained of herein
12 occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

13 85. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
14 Defendants have engaged in unlawful, deceptive, and unfair business practices prohibited by
15 California B&PC §17200, thereby depriving their employees and the Class members, the minimum
16 working condition, standards and conditions due to them under the California labor laws and
17 Industrial Welfare commission wage orders as specifically described herein. Plaintiff further seeks
18 an order requiring Defendants to identify by full name, telephone number, and last known address
19 employees who worked or still work for Defendants for the Class members from four (4) years
20 preceding the filing of the original Complaint through the date of class certification. Plaintiff further
21 seeks an order requiring Defendants to timely pay restitution to all current and former employees,
22 including back wages, and interest.

23 86. By and through its unfair, unlawful, and/or fraudulent business practices and acts
24 described herein, Defendants have obtained valuable services from Plaintiff and all persons similarly
25 situated, and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
26 guaranteed by law, all to their detriment.

27 87. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to and
28 do seek such relief as may be necessary to restore to them the money and property which Defendants

1 have acquired, or of which Plaintiffs and class members have been deprived by mean of the herein
2 described unfair, unlawful, and/or fraudulent business practices.

3 88. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled
4 to and do seek a declaration that the above-described business practices are unfair, unlawful, and/or
5 fraudulent, and declaratory relief of Defendants engaging in any of the herein described unfair,
6 unlawful, and/or fraudulent business practices.

7 89. Plaintiff and the Class members request attorney's fees and costs pursuant to Code of
8 Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class and
9 the public.

10 **SIXTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **Violation of Labor Code §§2698, *et seq.***

13 **(Against all Defendants)**

14 90. Plaintiff on behalf of herself and on behalf of all other aggrieved employees herein re-
15 alleges and incorporates each and every one of the allegations contained in the preceding paragraphs
16 as if fully set forth herein.

17 91. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004,
18 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
19 Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees
20 for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee
21 on behalf of himself or herself, and collectively on behalf of all other current or former employees.

22 92. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
23 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized
24 to exercise the same discretion, subject to the same limitations and conditions to assess a civil
25 penalty.

26 93. Plaintiff and Defendants' non-exempt hourly employees who provided patient advocate
27 and/or collections services for Defendants are "aggrieved employees" as defined by Labor Code
28 §2699, in that they are all current or former employees of Defendants, and one or more of the alleged

1 violations was committed against them.

2 94. Plaintiff gave written notice electronically to the LWDA, and by certified mail to
3 Defendants of the specific provisions of this code alleged to have been violated, including the facts
4 and theories to support the alleged violations as required by Labor Code §2699.3. More than 65
5 days has lapsed since notice to the LWDA and the LWDA has not responded to Plaintiff's notice.
6 Accordingly, Plaintiff may commence a civil action to recover civil penalties for herself and other
7 current and former employees under Labor Code §2699 pursuant to §2699.3.

8 95. Plaintiff asserts all of the claims in this Complaint against Defendants, individually and
9 on behalf of the aggrieved employee class in her capacity as a private attorney general and seeks all
10 applicable civil penalties available under the Labor Code for these alleged violations.

11 96. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of the aggrieved
12 employee class, requests and seeks to recover from the Defendants; unpaid overtime and double time
13 wages at the regular rate of pay, rest period premiums, meal and/or rest period premium payments
14 at the regular rate of pay, waiting time penalties, wage statement violations and penalties according
15 to proof. Plaintiff is further entitled to attorneys' fees and costs pursuant to Labor Code §2699(g)(1),
16 as well as all civil penalties, including, but not limited to:

- 17 1) Penalties under Code of Regulations, Title 8 §11090 in the amount of \$50 for
18 each aggrieved employee per pay period for the initial violation, and \$200 for
19 each aggrieved employee per pay period for each subsequent violation;
- 20 2) Penalties under Labor Code §256, in addition to and entirely independent and
21 apart from other penalties provided in the Labor Code, including Labor Code
22 §203, for any aggrieved employee who was discharged or quit, and was not
23 paid all earned wages at termination in accordance with Labor Code §§201,
24 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of
25 pay for each day that the aggrieved employee was paid late, until payment
26 was/is made, up to a maximum of thirty (30) days;
- 27 3) Penalties under Labor Code §558, in addition to and entirely independent and
28 apart from other penalties provided under the Labor Code, in the amount of

1 \$50 for each underpaid aggrieved employee for each pay period the aggrieved
2 employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages, and \$100 for each subsequent violation for each underpaid
4 employee for each pay period for which the employee was underpaid in
5 addition to an amount sufficient to recover underpaid wages, with all wages
6 recovered pursuant to Labor Code §558 provided to the affected employees;

7 4) Penalties under Labor Code §226.3, in addition to and entirely independent
8 and apart from other penalties provided in the Labor Code, in the amount of
9 \$250 for each aggrieved employee per pay period for each violation, and
10 \$1,000 for each aggrieved employee per pay period for each subsequent
11 violation;

12 5) Penalties under Labor Code §1197.1, in addition to and entirely independent
13 and apart from other penalties provided in the Labor Code, as follows:

14 i. For any initial violation that is intentionally committed, \$100 for each
15 underpaid employee for each pay period for which the employee is
16 underpaid;

17 ii. For each subsequent violation for the same specific offense, \$200 for
18 each underpaid employee for each pay period for which the employee
19 is underpaid regardless of whether the initial violation is intentionally
20 committed; and

21 iii. Any and all wages, liquidated damages, and any applicable penalties
22 imposed pursuant to Section 203, recovered pursuant to Labor Code
23 §1197.1 to be paid to the affected employee;

24 6) Penalties under Labor Code §2699(f), in addition to and entirely independent
25 and apart from other penalties provided in the Labor Code and for Labor Code
26 violations without a specific civil penalty, in the amount of \$100 for each
27 aggrieved employee per pay period for each violation, and \$200 for each
28 aggrieved employee per pay period for each subsequent violation;

97. Any and all additional civil penalties and sums as provided by the Labor Code and/or other statutes.

98. Plaintiff seeks and is entitled to have 75% of all penalties obtained be allocated to the LWDA and 25% to aggrieved employees.

99. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §§2699(g)(1).

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be appointed class representatives;
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, address and telephone number: All current and former hourly non-exempt employees for Defendants in California who at any time from four years preceding the filing of the original complaint through the date of class certification who provided patient advocate and/or collections services and received bonus;
5. For all unpaid wages due to Plaintiff and each Class member in amounts to be proven at trial;
6. For all unpaid overtime and double time wages due Plaintiff and each Class member;
7. For restitution of all unpaid wages due Plaintiff and each Class member;
8. For all applicable statutory penalties, in amounts to be proven at trial;
9. For general damages including compensatory damages according to proof;
10. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
11. For all applicable interest on damages, wages, expenses, and penalties due;
12. For injunctive relief to prevent further violations of the California Labor Code;
13. For declaratory relief that Defendants engaged in unfair practices;

- 1 14. For declaratory relief that Defendants violated Labor Code §§226, 226.7, 510, 512,
2 1194, and 1197;
- 3 15. For restitution of all moneys due to Plaintiff and Class members, and disgorged profits
4 from the unlawful and/or unfair business practices of Defendants, pursuant to
5 California Business & Professions Code §17200;
- 6 16. For one (1) hour of pay at each of the employees' regular rate of compensation for each
7 workday that a legally compliant rest break was not provided;
- 8 17. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and
9 (h), 1194(a), 2699(g)(1), Code of Civil Procedure §1021.5, and all other applicable law;
- 10 18. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil
11 penalties authorized by LC §2699, including but not limited to:
- 12 a) For civil penalties per LC §226.3 in the amount of \$250 for each aggrieved
13 employee per pay period for each violation, and \$1,000 for each aggrieved
14 employee per pay period for each subsequent violation;
 - 15 b) For civil penalties per LC §256 in the amount of one day of pay, at the same
16 rate, for each day that an aggrieved employee was paid late, at the time of
17 termination, until payment was/is made, up to a maximum of thirty (30)
18 days;
 - 19 c) For civil penalties pursuant to LC §558 as follows:
 - 20 1) For any initial violation, fifty dollars (\$50) for each underpaid
21 employee for each pay period for which the employee was underpaid
22 in addition to an amount sufficient to recover underpaid wages;
 - 23 2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid
26 wages;
 - 27 d) For civil penalties per Code of Regulations, Title 8 §11090 in the amount of
28 \$50 for each aggrieved employee per pay period for the initial violation, and

\$200 for each aggrieved employee per pay period for each subsequent violation;

e) For civil penalties per Labor Code §1197.1, in the amount of:

i. \$100 for each underpaid employee for each initial pay period for which the employee was intentionally underpaid;

ii. \$200 for each underpaid employee for each subsequent pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed; and

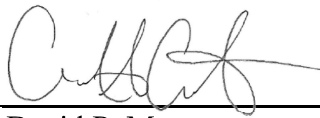
iii. Any and all wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to Labor Code §1197.1 to be paid to the affected employee;

f) For civil penalties under LC §2699(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, and;

19. For all such other and further relief that the Court may deem just and proper.

Dated: 8/31/2022

THE MYERS LAW GROUP, A.P.C.

By: 

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