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11 LAURA RUSSELL

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 LAURA RUSSELL, an Individual,

15 Plaintiff,

16 vs.

17 SOUTHERN CALIFORNIA PERMANENTE
18 MEDICAL GROUP, INC., a/k/a SOCAL
19 PERMANENTE MEDICAL GROUP, a
20 California Corporation, KAISER
21 PERMANENTE INTERNATIONAL, a
22 California nonprofit corporation; KAISER
23 FOUNDATION HOSPITALS, a California
24 nonprofit corporation; KAISER
25 FOUNDATION HEALTH PLAN, INC., a
26 California nonprofit corporation; and DOES 1-
27 20, Inclusive,

28 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/26/2022 at 07:40:16 PM

Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

Case No. 37-2022-00034424-CU-OE-CTL

COMPLAINT FOR:

1. Failure to Pay Earned Wages (Labor Code § 204);
2. Failure to Pay Overtime Compensation (Labor Code §§ 510 & 1194);
3. Failure to Pay Minimum Wage (Labor Code §§ 1182.12, 1194, 1197);
4. Reporting Time Pay Violations (Labor Code § 204);
5. Meal Period Violations (Labor Code §§ 226.7, 512(a));
6. Rest Period Violations (Labor Code §§ 226.7, 512(a));
7. Failure to Furnish Accurate Wage and Hour Statements (Labor Code § 226(e));
8. Failure to Maintain Accurate Records (Labor Code § 1198.5);
9. Forced Patronage (Labor Code § 450);
10. Failure to Reimburse Expenses (Labor Code § 2802)
11. Unfair Business Practices (Business and Professions Code § 17200)
12. Waiting Time Penalties (Labor Code § 203)
13. Civil Penalties for Violations of the Labor Code (Labor Code § 2698 *et. seq.*);

1 Plaintiff LAURA RUSSELL (“RUSSELL” or “Plaintiff”), alleges in her Complaint, on
2 behalf of herself and all aggrieved employees, against Defendants SOUTHERN CALIFORNIA
3 PERMANENTE MEDICAL GROUP, INC. a/k/a SOCAL PERMANENTE MEDICAL GROUP,
4 KAISER PERMANENTE INTERNATIONAL, KAISER FOUNDATION HOSPITALS, and
5 KAISER FOUNDATION HEALTH PLAN (collectively “KAISER,” or “Defendants,”), and DOES
6 1-20 as follows:

7 (1) Failure to Pay Earned Wages (Cal. Lab. Code § 204) against all Defendants and DOES 1-
8 20;

9 (2) Failure to Pay Overtime (Cal. Lab. Code §§ 510 & 1194) against all Defendants and
10 DOES 1-20;

11 (3) Failure to Pay Minimum Wage (Cal. Lab. Code §§ 1182.12, 1194, 1197) against all
12 Defendants and DOES 1-20;

13 (4) Reporting Time Pay Violations (Cal. Lab. Code § 204) against all Defendants and DOES
14 1-20;

15 (5) Meal Period Violations (Cal. Lab. Code §§ 226.7 & 512(a)) against all Defendants and
16 DOES 1-20;

17 (6) Rest Period Violations (Cal. Lab. Code §§ 226.7 & 512(a)) against all Defendants and
18 DOES 1-20;

19 (7) Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226(e)) against
20 all Defendants and DOES 1-20;

21 (8) Failure to Maintain Accurate Records (Cal. Lab. Code § 1198.5) against all Defendants
22 and DOES 1-20;

23 (9) Forced Patronage (Cal. Lab. Code § 450) against all Defendants and DOES 1-20;

24 (10) Failure to Reimburse Expenses (Cal. Lab. Code § 2802) against all Defendants and
25 DOES 1-20;

26 (11) Unfair Business Practices (Business and Professions Code § 17200) against all
27 Defendants and DOES 1-20;

28 (12) Waiting Time Penalties (Labor Code §203) against all Defendants and DOES 1-20; and

1 (13) Civil Penalties for Violations of the Labor Code (Cal. Lab. Code § 2698 et. seq.)
2 pursuant to the Private Attorneys General Act of 2004 (“PAGA”) against all Defendants and DOES
3 1-20.

4 **Nature of the Action**

5 1. This is an individual and a representative action of a variety of employment-related
6 actions, brought by former employee, Plaintiff LAURA RUSSELL, namely: wage and hour
7 violations including failure to pay earned wages, failure to pay overtime, failure to pay minimum
8 wage, reporting time pay violations, meal period violations, rest period violations, failure to furnish
9 accurate wage and hour statements, failure to maintain accurate records, forced patronage, failure to
10 reimburse business expenses, unfair business practices, waiting time penalties, as well as a
11 representative enforcement action under California Labor Code section 2698 et. seq. (“PAGA”) to
12 recover civil penalties and any other available relief on behalf of Plaintiff, the State of California,
13 and other current and former employees who worked for Defendants at a California location as non-
14 exempt, hourly employees, employed as either Licensed Clinical Social Workers (“LCSW”) and/or
15 Licensed Marriage and Family Therapists (“LMFT”) or any provision regulating hours and days of
16 work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
17 forth in this complaint, at any time between one year prior to the filing of this complaint until
18 judgment (“Aggrieved Employees”).

19 **Jurisdiction and Venue**

20 2. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction
21 is proper in the Superior Court of California, County of San Diego, State of California.

22 3. Venue is proper in this Court because Defendants offered services in San Diego
23 County, California, and employed Plaintiff in San Diego County, California at all relevant times.

24 **The Parties**

25 4. Plaintiff RUSSELL is, and at all relevant times was, a competent adult residing in
26 San Diego County, California.

5. On information and belief, Defendant SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, INC. a/k/a SOCAL PERMANENTE MEDICAL GROUP is, and at all relevant times was, a California corporation offering services in San Diego County, California.

6. On information and belief, Defendant KAISER PERMANENTE is, and at all relevant times was, a California non-profit corporation offering services in San Diego County, California.

7. On information and belief, Defendant KAISER FOUNDATION HOSPITALS is, and at all relevant times was, a California non-profit corporation offering services in San Diego County, California.

8. On information and belief, Defendant KAISER FOUNDATION HEALTH PLAN is, and at all relevant times was, a California non-profit corporation offering services in San Diego County, California.

9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 20, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained.

General Allegations

10. Defendants failed to pay Plaintiff and other similarly situated employees (the “Aggrieved Employees”) all earned wages, failed to pay Plaintiff and the Aggrieved Employees overtime wages, failed to pay Plaintiff and the Aggrieved Employees minimum wage, committed reporting time pay violations, committed meal period violations by failing to provide Plaintiff and the Aggrieved Employees with meal periods, committed rest period violations by failing to provide Plaintiff and the Aggrieved Employees with rest periods, failed to furnish Plaintiff and the Aggrieved Employees with accurate wage and hour statements, failed to maintain accurate records, committed forced patronage by forcing Plaintiff and the Aggrieved Employees to subscribe to their health insurance plan, and Defendants’ actions constitute unfair business practices under Business & Professions Code § 17200.

11. The Aggrieved Employees is defined as all current and former non-exempt, hourly employees, employed as either Licensed Clinical Social Workers (“LCSW”) and/or Licensed Marriage and Family Therapists (“LMFT”).

12. The foregoing acts and other acts by the Defendants violated provisions of the Labor Code, including §§ 201, 202, 203, 204, 226, 450, 510, 512, 1174, 1182, 1194, and 1197; violated the applicable Wage Orders issued by the IWC of the State of California (the “Wage Order(s)”), including but not limited to 4-2001, committed unfair business practices that constitute a violation of Business and Professions Code § 17200, and violated the rights of Plaintiff and the Aggrieved Employees.

PAGA Representative Allegations

13. Defendants operate and manage a hospital business with locations in California, all of which are company-owned. Upon information and belief, Defendants employ over 1000 employees in California at company-owned locations.

14. According to Defendants' website, Defendants maintain their corporate headquarters in California. Additionally, upon information and belief, Defendants maintain a single, centralized Human Resources department at their corporate headquarters, which is responsible for conducting Defendants' recruiting and hiring of new employees, collecting and processing all new hire paperwork, and communicating and implementing Defendants' company-wide policies to employees throughout California.

15. In particular, Plaintiff and the Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies.

16. Upon information and belief, the usage of standardized documents and/or written policies, including new hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employee's assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire. At the time Plaintiff was hired, she received documents including, but not limited to, an Employee Handbook/Agreement, policies and

1 procedures, as well as other new hire documentation informing her that she would be subject to the
2 policies and rules set forth in the documents provided.

3 17. At the time Plaintiff was hired, she received an acknowledgment page for her
4 signature, informing her that she would be subject to the policies and rules listed in Defendants'
5 Employee Handbook. Upon information and belief, Defendants implement the same policies and
6 procedures set forth in the Employee Handbook for all locations in California.

7 18. On information and belief, all transactions regarding hiring, terminations,
8 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
9 employees were submitted to and processed by Defendants' HR department. Additionally, on
10 information and belief, Defendants' corporate records, business records, data, and other information
11 related to Defendants, including, in particular, HR records pertaining to Defendants' California
12 employees, are also maintained at Defendants' corporate headquarters.

13 19. Upon information and belief, Plaintiff and the Aggrieved Employees suffered the
14 same meal break violations arising out of Defendants' systematic practice of keeping employees too
15 busy to take compliant meal breaks.

16 20. Upon information and belief, Plaintiff and the Aggrieved Employees suffered the
17 same rest break violations arising out of Defendants' systematic practice of keeping employees too
18 busy to take compliant rest breaks.

19 21. Upon information and belief, Defendants maintain a centralized payroll department at
20 their corporate headquarters, which processes payroll for all non-exempt, hourly-paid employees
21 working for Defendants at their various locations in California, including Plaintiff and the
22 Aggrieved Employees.

23 22. Upon information and belief, Defendants issue the same formatted wage statements
24 to all non-exempt, hourly-paid employees in California, irrespective of their work location. Upon
25 information and belief, Defendants process payroll for departing employees in the same manner
26 throughout the State of California, regardless of the manner in which each employee's employment
27 ends.

1 23. Upon information and belief, Defendants issue the same formatted wage statements
2 to all non-exempt, hourly paid employees in California, irrespective of their location, job category,
3 or specific position. Accordingly, Plaintiff believes that all other Aggrieved Employees throughout
4 California were affected by Defendants' noncompliance with statement reporting requirements.

5 24. Upon information and belief, Defendants failed to maintain accurate records for all
6 non-exempt, hourly paid employees in California, irrespective of their location, job category, or
7 specific position. Accordingly, Plaintiff believes that all other Aggrieved Employees throughout
8 California were affected by Defendants' noncompliance with their requirement to maintain accurate
9 records.

10 25. Defendants jointly employed non-exempt, hourly paid employees, including Plaintiff,
11 at locations within California. Defendants continue to employ non-exempt or hourly employees at
12 locations within California.

13 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
15 advisors knowledgeable about California labor and wage law, employment and personnel practices,
16 and about the requirements of California law.

17 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants employed Plaintiff and the Aggrieved Employees as hourly, non-exempt
19 employees, but intentionally misclassified them as "Salaried Exempt."

20 28. At all times set forth herein, PAGA provides that any provision of law under the
21 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
22 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
23 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
24 behalf of themselves and other current or former employees pursuant to procedures outlined in
25 California Labor Code Section 2699.3.

26 29. PAGA defines an "aggrieved employee" in Labor Code Section 2699(c) as "any
27 person who was employed by the alleged violator and against whom one or more of the alleged
28 violations was committed."

1 30. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code Section 2699(c) in that they are all Defendants’ current or
3 former employees and one or more of the alleged violations were committed against them.

4 31. Pursuant to California Labor Code Sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
6 requirements have been met:

7 32. The aggrieved employee shall give written notice by electronic mail (hereinafter
8 “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions
9 of the California Labor Code alleged to have been violated, including the facts and theories to
10 support the alleged violations.

11 33. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
12 the aggrieved employee that it does not intend to investigate the alleged violation within sixty (60)
13 calendar days of the emailing of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the
14 LWDA Notice is not provided within sixty (60) calendar days of the postmark date of the
15 Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California
16 Labor Code Section 2699 to recover civil penalties in addition to any other penalties to which the
17 employee may be entitled.

18 34. The employer may cure the alleged violation within 60 calendar days of the postmark
19 date of the notice. The employer shall give written notice by certified mail within that period of time
20 to the aggrieved employee or representative and the agency if the alleged violation is cured,
21 including a description of actions taken, and no civil action pursuant to Section 2699 may
22 commence. If the alleged violation is not cured within the 60-day period, the employee may
23 commence a civil action pursuant to Section 2699.

24 35. On May 23, 2022, Plaintiff provided written notice by email to the LWDA and by
25 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
26 been violated, including facts and theories to support the alleged violations, in accordance with
27 California Labor Code Section 2699.3. A true and correct copy of Plaintiff’s written notice to the
28 LWDA and Defendants is attached hereto as “Exhibit 1.”

1 36. As of the filing date of this complaint, over 60 days have passed since Plaintiff sent
2 the LWDA Notice described above, and the LWDA has not responded that it intends to investigate
3 Plaintiff's claims and Defendants have not cured the violations. Thus, Plaintiff has satisfied the
4 administrative prerequisites under California Labor Code Section 2699.3(a) and 2699.3(c) to recover
5 civil penalties against Defendant, in addition to other remedies, for violations of California Labor
6 Code Sections 200-204, 218, 226, 226.7, 450, 510, 512, 558, 558.1, 1174(d), 1182.12, 1194, 1197,
7 1198, and 2802.

8 37. Labor Code Section 558(a) provides "any employer or other person acting on behalf
9 of an employer who violates or causes to be violated, a section of this chapter or any provision
10 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
11 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
14 dollars (\$100) for each underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code Section
16 558(d) provides "the civil penalties provided for in this section are in addition to other civil or
17 criminal penalty provided by law."

18 38. Defendants, at all times relevant to this complaint, were an employer or persons
19 acting on behalf of an employer(s) who violated Plaintiff and the Aggrieved Employees' rights by
20 violating various sections of the California Labor Code as set forth above.

21 39. As set forth below, Defendants violated numerous provisions of both the Labor Code
22 Sections regulating hours and days of work, overtime, minimum wage, meal and rest breaks, and
23 reporting time pay, as well as the applicable IWC Wage Order.

24 40. Pursuant to PAGA, and in particular, California Labor Code Sections 2699(a),
25 2699.3(a), 2699.3(c), 2699.5, and Section 558, Plaintiff, acting in the public interest as a private
26 attorney general, seeks assessment and collection of civil penalties for herself, the Aggrieved
27 Employees, and the State of California against Defendants, in addition to other remedies, for
28

1 violations of California Labor Code Sections 200-204, 218, 226, 226.7, 450, 510, 512, 558, 558.1,
2 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

3 41. California Labor Code §§ 2698, et. seq. (“PAGA”) permits Plaintiff to recover civil
4 penalties for the violations of the Labor Code sections enumerated in Labor Code Section 2699.5.
5 Section 2699.5 enumerates Labor Code Sections 200-204, 218, 226, 226.7, 450, 510, 512, 558,
6 558.1, 1174(d), 1182.12, 1194, 1197, 1198, and 2802. Labor Code Section 2699.3(c) permits
7 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
8 Code sections not found in section 2699.5.

9 42. Defendants’ conduct, as alleged herein, violates numerous sections of the California
10 Labor Code, including but not limited to, the following:

11 a. Violations of California Labor Code Section 201 for failing to pay Plaintiff and the
12 Aggrieved Employees all wages earned and unpaid at the time of discharge.

13 b. Violations of California Labor Code Section 203 for failing to pay Plaintiff and the
14 Aggrieved Employees waiting time penalties for all wages that are owed and have not been paid
15 after Plaintiff and the Aggrieved Employees’ employment was terminated.

16 c. Violations of California Labor Code Section 204 for failing to pay Plaintiff and the
17 Aggrieved Employees all wages earned and due.

18 d. Violations of California Labor Code Section 218.5, entitling Plaintiff and the
19 Aggrieved Employees to reasonable attorney fees, for violations not also applicable to California
20 Labor Code Section 1194.

21 e. Violations of Labor Code Section 226(e) for knowingly and intentionally failing to
22 comply with 226(a) by not providing Plaintiff and the Aggrieved Employees compliant wage
23 statements, entitling Plaintiff and the Aggrieved Employees to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
25 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
26 aggregate penalty of four thousand dollars per Aggrieved Employee, as well as an award of costs
27 and reasonable attorney’s fees.

1 f. Violations of Labor Code Section 226.7 for failing to provide Plaintiff and the
2 Aggrieved Employees with meal periods, entitling Plaintiff and the Aggrieved Employees one
3 additional hour of pay at their regular rate of compensation for each workday that the meal period is
4 not provided.

5 g. Violations of Labor Code Section 226.7 for failing to provide Plaintiff and the
6 Aggrieved Employees with rest periods, entitling Plaintiff and the Aggrieved Employees one
7 additional hour of pay at their regular rate of compensation for each workday that the rest period is
8 not provided.

9 h. Violations of Labor Code Section 450 for forcing Plaintiff and the Aggrieved
10 Employees to enroll in Defendants' health plan, which required Plaintiff and the Aggrieved
11 Employees to purchase prescription medications from Defendants as well as co-pays for medical
12 treatment.

13 i. Violations of Labor Code Section 510 for failing to compensate Plaintiff and the
14 Aggrieved Employees with overtime pay of one and a half times the regular rate of pay, when
15 Plaintiff and the Aggrieved Employees work(ed) in excess of eight hours in one workday, work(ed)
16 in excess of 40 hours in any one workweek, the first eight hours on the seventh day of work in any
17 one workweek, and failing to compensate Plaintiff and the Aggrieved Employees with twice the
18 regular rate of pay for any work worked in excess of 12 hours in one day or in excess of eight hours
19 on any seventh day of a workweek.

20 j. Violations of Labor Code Section 512 for work periods of more than five hours in
21 one day, failing to provide Plaintiff and the Aggrieved Employees with a meal period of not less
22 than 30 minutes.

23 k. Violations of Labor Code Section 558 for violating any provision regulating hours
24 and days of work in any Industrial Welfare Commission Wage Order for Plaintiff and the Aggrieved
25 Employees, for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
26 period for which the employee was underpaid in addition to an amount sufficient to recover
27 underpaid wages and for each subsequent violation, one hundred dollars (\$100) for each underpaid
28

1 employee for each pay period for which the employee was underpaid in addition to an amount
2 sufficient to recover underpaid wages.

3 l. Violations of Labor Code Section 558.1 for violating any provision regulating
4 minimum wages or hours and days of work in any order of the Industrial Welfare Commission for
5 Plaintiff and the Aggrieved Employees, or violates or causes to be violated, Sections 203, 226,
6 226.7, 1193.6, 1194, or 2802.

7 m. Violations of Labor Code Section 1174 for failing to maintain accurate payroll
8 records for Plaintiff and the Aggrieved Employees

9 n. Violations of Labor Code Section 1182.12 for failing to compensate Plaintiff and the
10 Aggrieved Employees with the California state minimum wage.

11 o. Violations of Labor Code Section 1194 for failing to compensate Plaintiff and the
12 Aggrieved Employees with at least the legal minimum wage or the legal overtime compensation
13 applicable to them, entitling them to recover in a civil action the unpaid balance of the full amount
14 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
15 fees, and costs of suit.

16 p. Violations of Labor Code Section 1197 for compensating Plaintiff and the Aggrieved
17 Employees at less than the minimum wage fixed by the commission.

18 q. Violations of Labor Code Section 1198 for employing Plaintiff and the Aggrieved
19 Employees for longer hours than the maximum hours of work fixed by the commission.

20 r. Violations of Labor Code Section 2802 for failing to reimburse Plaintiff and the
21 Aggrieved Employees for all necessary expenditures or losses incurred by Plaintiff and the
22 Aggrieved Employees in direct consequence of the discharge of their duties.

23 **Specific Allegations**

24 43. On April 22, 2019, Plaintiff was hired by KAISER as a permanent part-time
25 employee with the position of Psychosocial Clinician III in the Emergency Department. Plaintiff's
26 hourly rate at the time of her retirement was \$64.51.

27 44. On June 2, 2022, Plaintiff submitted her resignation notice to KAISER, effective July
28 4, 2022.

1 45. Plaintiff's final day of employment with KAISER was July 4, 2022 (hereinafter
2 referred to as "RETIREMENT DATE").

3 46. Plaintiff's employment was and is controlled by San Diego Municipal Code (SDMC)
4 Chapter 3, Article 9, Division 1 ("City of San Diego Earned Sick Leave and Minimum Wage
5 Ordinance"), all applicable California Labor Codes, and Wage Order 4-2001 ("Wage Order 4").

6 47. Wage Order 4 defines hours worked as "the time during which an employee is
7 subject to the control of an employer, and includes all the time the employee is sufficed or permitted
8 to work, whether or not required to do so."

9 48. Plaintiff's schedule consisted of a rotating two-week cycle. Each shift was ten hours
10 in length. Week one consisted of Thursday evenings from 3 PM to 1AM and Saturdays from 7 AM
11 to 5 PM. Week two consisted of Monday evenings from 3 PM to 1AM, Thursdays and Fridays from
12 7 AM to 5 PM.

13 49. In addition, Plaintiff was scheduled to be on call for an eight-hour shift from 11 PM
14 to 7 AM four to five times a month, for \$12 an hour, whether being called to work or not. These
15 shifts were mandatory. On these on-call shifts, Plaintiff was required to work if called, yet received
16 no additional compensation for her time, despite performing the same duties as she would on a
17 standard shift.

18 50. The on-call shifts that Plaintiff and the Aggrieved Employees were forced to work,
19 qualify as hours worked in the payroll period, entitling them to be paid no less than the applicable
20 minimum wage for all hours worked in the payroll period under Wage Order 4, subd. 4(B).

21 51. On April 22, 2019, the legal minimum wage that all employers must pay each
22 employee, for each hour worked within the geographic boundaries of the City of San Diego was
23 \$12.00.

24 52. On January 1, 2020, the legal minimum wage that all employers must pay each
25 employee, for each hour worked within the geographic boundaries of the City of San Diego was
26 \$13.00.

1 53. At all times referenced herein, Defendants were employers that were obligated from
2 April 22, 2019, to present, to pay all of its employees for each hour worked within the geographic
3 boundaries of the City of San Diego, at least \$13.00 per hour.

4 54. On these on-call shifts, from April 22, 2019, to July 4, 2022, Plaintiff was paid, a
5 sub-minimum wage for each hour of her on-call shifts.

6 55. On these on-call shifts, from April 22, 2019, to present, the Aggrieved Employees
7 were and are paid a sub-minimum wage for each hour of their on-call shifts.

8 56. From April 22, 2019, through December 31, 2019, Plaintiff and the Aggrieved
9 Employees were entitled to compensation for their on-call shifts, of at least the City of San Diego
10 minimum wage of \$12.00 per hour.

11 57. From January 1, 2020, through December 31, 2020, Plaintiff and the Aggrieved
12 Employees were entitled to compensation for their on-call shifts, of at least the City of San Diego
13 minimum wage of \$13.00 per hour.

14 58. From January 1, 2021, through December 31, 2021, Plaintiff and the Aggrieved
15 Employees were entitled to compensation for each hour of their on-call shifts, of at least the City of
16 San Diego minimum wage of \$14.00 per hour.

17 59. From January 1, 2022, through present, Plaintiff and the Aggrieved Employees were
18 and are entitled to compensation for each other of their on-call shifts, of at least the City of San
19 Diego minimum wage of \$15.00 per hour.

20 60. On these on-call shifts, from April 22, 2019, to July 4, 2022, Plaintiff was required to
21 use her own phone, own computer, and own utilities.

22 61. On these on-call shifts, from April 22, 2019, to present, the Aggrieved Employees
23 were and are required to use their own phones, own computers, and own utilities.

24 62. The hours on these on-call shifts were not tabulated towards Plaintiff receiving
25 overtime.

26 63. The hours on these on-call shifts were not and are not tabulated towards the
27 Aggrieved Employees receiving overtime.

1 64. Under California Labor Code § 2802, Plaintiff and the Aggrieved Employees were
2 and are entitled to be reimbursed for the use of their phones, computers, and utilities (including
3 internet) when they were forced to work these on-call shifts from home.

4 65. Plaintiff and the Aggrieved Employees were not reimbursed for the use of their
5 phones, computers, and utilities (including internet) when they were forced to work these on-call
6 shifts from home.

7 66. Defendants intentionally misclassified and continue to misclassify Plaintiff and the
8 Aggrieved Employees as exempt employees and therefore categorically denied and continue to deny
9 them all meal and rest breaks.

10 67. At all relevant times, Defendants have intentionally misclassified Plaintiff and the
11 Aggrieved Employees as “salaried exempt” employees, despite Plaintiff and the Aggrieved
12 Employees being paid by the hour.

13 68. Plaintiff and the Aggrieved Employees’ compensation was and is purely dependent
14 on the number of hours that they work.

15 69. Plaintiff and the Aggrieved Employees never received a salary from Defendants.

16 70. On almost every shift, Plaintiff was the only person working, and it was impossible
17 to take a meal or rest break, even if Defendants had permitted it.

18 71. Defendants have categorically denied Plaintiff her second meal break on every single
19 shift Plaintiff worked in excess of ten hours.

20 72. During her employment, Defendants failed to pay Plaintiff and the Aggrieved
21 Employees meal and rest break premiums in lieu of any of Plaintiff’s missed breaks.

22 73. During her employment, Defendants failed to pay Plaintiff and the Aggrieved
23 Employees overtime for hours worked in excess of 8-hours per shift or 40-hours per week.

24 74. Plaintiff was a member of the Psychosocial team, which is comprised of
25 approximately 9 permanent employees and an unknown number of per diem employees. The
26 Psychosocial team works at two of Defendants’ facilities, Kaiser Permanente San Diego Medical
27 Center (located at 9455 Clairemont Mesa Blvd., San Diego, CA 92123) and Kaiser Permanente Zion
28 Medical Center (located at 4647 Zion Ave., San Diego, CA 92120).

75. Since her retirement on July 4, 2022, Plaintiff, and similarly situated Aggrieved Employees, are entitled to waiting time penalties, for the unpaid wages that remain outstanding. Based on Plaintiff's daily shift of ten hours, multiplied by her final hourly rate of \$64.51, Plaintiff's daily rate of compensation was \$645.10. Plaintiff did not receive her unpaid wages within thirty days and is entitled to waiting time penalties of at least \$19,353.00.

First Cause of Action

Failure to Pay Earned Wages (California Labor Code § 204)

By Plaintiff Against All Defendants and DOES 1-20

76. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 75, inclusive, as though set forth fully herein.

77. Defendants failed to pay Plaintiff the wages that she earned, as required by the San Diego Municipal Code (SDMC) Chapter 3, Article 9, Division 1 (“City of San Diego Earned Sick Leave and Minimum Wage Ordinance”), California Labor Codes and Wage Order 4-2001.

78. Defendants failed to pay Plaintiff the minimum wage for on-call shifts from April 22, 2019, to July 4, 2022, as required by the City of San Diego Minimum Wage Ordinance, relevant Labor Codes and the Wage Order.

79. From April 22, 2019, through December 31, 2019, Defendants underpaid Plaintiff by \$2.00 per hour for all on-call shifts.

80. From January 1, 2020, to October 18, 2020, Defendants underpaid Plaintiff by \$3.00 per hour for all on-call shifts.

81. From October 19, 2020, to December 31, 2020, by \$1.00 per hour for all on-call shifts.

82. From January 1, 2021, to December 31, 2021, Defendants underpaid Plaintiff by \$2.00 per hour for all on-call shifts.

83. From January 1, 2022, to July 4, 2022, Defendants underpaid Plaintiff by \$3.00 per hour for all on-call shifts.

84. Defendants have failed to pay Plaintiff the agreed upon hourly wage for all hours that she worked during her on-call shifts, paying Plaintiff \$10.00 per hour until October 19, 2020, and \$12.00 per hour from October 19, 2020, until July 4, 2022, regardless of whether Plaintiff was working, or was on-call.

85. Industry standard is to pay an individual for a minimum of 2 hours once a person performing the same duties as Plaintiff receives a call while working an on-call shift.

86. Defendants' standard in Southern California is to pay persons performing the same duties as Plaintiff in 15-minute increments, at the individual's regular hourly rate, while working an on-call shift.

87. Defendants' standard within the Psychosocial team itself is inconsistent. One member of the Psychosocial team receives their full hourly rate for all on-call shifts and is permitted to work the on-call shift from Defendants' facilities. Plaintiff requested to perform her on-call shifts in-person and her request was denied.

88. Plaintiff is entitled to at least \$22,546.80 in unpaid wages related to her underpaid on-call time.

89. Upon information and belief, Defendants compensated the Aggrieved Employees in a similar manner.

90. Plaintiff and the Aggrieved Employees have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and the Aggrieved employees are entitled to recover such amounts, plus interest thereon, as well as reasonable attorneys' fees and costs.

Second Cause of Action

Failure to Pay Overtime Compensation

(California Labor Code §§ 510 & 1194)

By Plaintiff Against All Defendants and DOES 1-20

91. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 90, inclusive, as though set forth fully herein.

92. Defendants typically scheduled Plaintiff shifts for ten hours per shift, entitling Plaintiff (as a non-exempt employee under California Labor Code § 510) to premium overtime pay in the amount of 1.5x her hourly rate for all hours worked in excess of 8 hours.

93. Plaintiff did not agree to an alternative workweek schedule and is therefore entitled to overtime pay for all hours worked in excess of eight hours.

94. When Plaintiff worked additional shifts, she was only compensated at her regular hourly rate, not time and a half.

95. Defendants did not pay Plaintiff any overtime compensation during her employment with Defendants.

96. Upon information and belief, Defendants have not and continue to fail to pay the Aggrieved Employees overtime compensation.

97. Defendants deprived Plaintiff and the Aggrieved Employees of their rightfully earned overtime compensation.

98. As a direct and proximate result of Defendants' failure to pay said compensation, Plaintiff is entitled to overtime compensation, in an amount equivalent to at least \$73,277.10 plus interest thereon, attorney's fees, and costs.

Third Cause of Action

Failure to Pay Minimum Wage

(Cal. Lab. Code §§ 1182.12, 1194, 1197)

By Plaintiff Against All Defendants and DOES 1-20

99. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 98, inclusive, as though set forth fully herein.

100. Plaintiff is entitled to minimum wage as provided under the City of San Diego Minimum Wage Ordinance, California Labor Code and the Wage Orders.

101. Defendants paid Plaintiff \$10.00 per hour for on-call shifts, from April 22, 2019, to October 18, 2020, despite the statutory minimum wage in the City of San Diego being \$12.00 until January 1, 2020.

102. Defendants paid Plaintiff \$12.00 per hour, for on-call shifts, from October 19, 2020, to July 4, 2022, despite the statutory minimum wage in the City of San Diego increasing to \$13.00 on January 1, 2020, \$14.00 on January 1, 2021, and \$15.00 on January 1, 2022.

103. As a result, Defendants failed to pay Plaintiff minimum wage for all hours worked, as required by the City of San Diego Minimum Wage Ordinance, California Labor Code and the Wage Orders.

104. Defendants were required to pay Plaintiff at least minimum wage for all on-call hours.

105. Defendants thus required Plaintiff to work under conditions prohibited by order of the IWC, in violation of those orders.

106. Upon information and belief, Defendants failed to and continue to fail to pay all Aggrieved Employees the statutory minimum wage for on-call shifts.

107. Defendants deprived Plaintiff and the Aggrieved Employees of their rightfully earned minimum wage compensation.

108. As a direct and proximate result of Defendants' failure to pay said compensation, Plaintiff and the Aggrieved Employees are entitled to recover such amounts, plus interest thereon, reasonable attorneys' fees, and costs.

Fourth Cause of Action

Reporting Time Pay Penalties (Labor Code § 204)

By Plaintiff Against All Defendants and DOES 1-20

109. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 108, inclusive as though set forth fully herein.

110. Throughout the course of her employment, Plaintiff was required by her supervisor to attend mandatory meetings on her days off.

111. If Plaintiff would miss a meeting, or was on vacation when the meeting took place, Plaintiff's supervisor demanded that Plaintiff use vacation time to cover the missed meeting.

1 112. Plaintiff was paid her hourly rate for two and a half hours per meeting (regardless of
2 its length); however, Plaintiff was entitled to reporting time pay in addition to the time of the
3 meeting, of at least half of her regular shift length of ten hours.

4 113. Upon information and belief, Defendants required all Aggrieved Employees to attend
5 mandatory meetings on days off.

6 114. Upon information and belief, all Aggrieved Employees were also entitled to reporting
7 time pay in addition to the time of attending the mandatory meetings.

8 115. Upon information and belief, Defendants failed to pay Plaintiff and all Aggrieved
9 Employees reporting time pay for all meetings that were attended over the course of Plaintiff's
10 employment.

11 116. These meetings would take place twice per month. As such, Plaintiff is
12 entitled to at least \$11,273.40 in reporting time pay.

13 **Fifth Cause of Action**

14 **Meal Period Violations**

15 **(Cal. Lab. Code §§ 226.7, 512(a))**

16 **By Plaintiff Against All Defendants and DOES 1-20**

17 117. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 116,
18 inclusive as though set forth fully herein.

19 118. Throughout the course of her employment, Plaintiff has been scheduled for 10-hour
20 shifts.

21 119. Defendants categorically denied Plaintiff a first uninterrupted meal period.

22 120. Defendants categorically denied Plaintiff a second uninterrupted meal period on
23 shifts that exceeded 10 hours in length.

24 121. Due to Defendants' failure to provide meal periods, Plaintiff is entitled to a premium
25 of one hour of pay for every shift on which she did not receive a meal period.

26 122. Defendants did not pay Plaintiff premiums for their failure to provide compliant meal
27 breaks.

1 123. Upon information and belief, Defendants failed to provide all Aggrieved Employees
2 meal breaks or a premium in lieu of a break.

3 124. Defendants deprived Plaintiff of her rightfully earned compensation for meal periods
4 as a direct and proximate result of Defendants' failure to pay meal periods premiums.

5 125. Plaintiff is entitled to at least \$24,425.70 in meal period premiums from Defendants.

6 **Sixth Cause of Action**

7 **Rest Period Violations**

8 **(Cal. Lab. Code §§ 226.7, 512(a))**

9 **By Plaintiff Against All Defendants and DOES 1-20**

10 126. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 125,
11 inclusive, as though set forth fully herein.

12 127. Throughout the course of her employment, Plaintiff was scheduled for 10-hour shifts.

13 128. Plaintiff was entitled to one ten-minute paid rest period for every four hours worked.

14 129. Plaintiff was entitled to two ten-minute paid rest periods on every 10-hour shift.

15 130. Defendants categorically denied Plaintiff all rest breaks.

16 131. Due to Defendants' failure to provide rest periods, Plaintiff was entitled to a premium
17 in lieu of these rest periods.

18 132. Defendants did not pay Plaintiff premiums for their failure to provide compliant rest
19 periods.

20 133. Upon information and belief, Defendants failed to provide all Aggrieved Employees
21 rest breaks or a premium in lieu of a break.

22 134. Defendants deprived Plaintiff of her rightfully earned compensation for rest periods
23 as a direct and proximate result of Defendants' failure to pay rest period premiums.

24 135. Plaintiff is entitled to at least \$24,425.70 in rest period premiums from Defendants.

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1 145. Plaintiff worked for Defendants in exchange for compensation in the form of hourly
2 wages.

3 146. Defendants failed to maintain accurate records reflecting Plaintiff and all Aggrieved
4 Employee's hours worked, correct differentials, and correct minimum wage, thereby harming
5 Plaintiff and denying her earned wages during her employment with Defendant.

6 147. Due to Defendants' failure to maintain accurate records, Plaintiff and the Aggrieved
7 Employees have been harmed.

8 148. Plaintiff is entitled to a penalty of \$750.00 and attorney's fees.

9
10 **Ninth Cause of Action**

11 **Forced Patronage**

12 **(Cal. Lab. Code § 450)**

13 **By Plaintiff Against All Defendants and DOES 1-20;**

14 149. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 148,
15 inclusive, as though set forth full herein.

16 150. California Labor Code Section 450 states that no employer may compel or coerce an
17 employee to patronize her employer or any other person in the purchase of anything of value.

18 151. Throughout her employment with Kaiser, Plaintiff and all Aggrieved Employees
19 were required to purchase insurance through Kaiser's insurance administrator, Kaiser Foundation
20 Health Plan.

21 152. Employees of Kaiser did not have the option to opt out, or purchase insurance
22 through another source. Employees were only permitted to have alternative health insurance if they
23 were covered under their spouse's insurance policy.

24 153. Due to Defendants' policy of forced patronage, Plaintiff and the Aggrieved
25 Employees have been harmed.

26 154. Due to Defendants' policy of forced patronage, Defendants have been improperly
27 enriched.

1 **Tenth Cause of Action**

2 **Failure to Reimburse Expenses**

3 **(Cal. Lab. Code § 2802)**

4 **By Plaintiff Against all Defendants and DOES 1-20**

5 155. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 154,
6 inclusive, as though set forth fully herein.

7 156. From April 22, 2019, until July 4, 2022, Plaintiff was required to work on-call shifts,
8 4-5 times per month. On these on-call shifts, Plaintiff worked from home.

9 157. These on-call shifts were mandatory, and Plaintiff was required to work from home.
10 She was not permitted to work on-site at Defendants' facilities.

11 158. Plaintiff was required to use her own cell phone for these on-call shifts. She was not
12 reimbursed by Defendants for this cost.

13 159. Plaintiff was required to use her own computer for these on-call shifts. She was not
14 reimbursed by Defendants for this cost.

15 160. Plaintiff was required to use her own utilities, broadband internet and electricity for
16 these on-call shifts. She was not reimbursed by Defendants for these costs.

17 161. Upon information and belief, all Aggrieved Employees were required to use their
18 own cell phones, internet, and computers for on-call shifts.

19 162. Plaintiff is entitled to reimbursement for these costs, pursuant to California Labor
20 Code Section 2802, as well as attorney's fees and costs.

21 **Eleventh Cause of Action**

22 **Unfair Business Practices**

23 **(Business & Professions Code § 17200)**

24 **By Plaintiff Against all Defendants and DOES 1-20**

25 163. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 162,
26 inclusive, as though set forth fully herein.

27 164. Plaintiff brings this action as a private attorney general acting on her own behalf,
28 pursuant to California Business & Professions Code § 17200 et. seq., more commonly referred to as

1 the Unfair Competition Law (“UCL”). Plaintiff is acting in this capacity to remedy the ongoing
2 unlawful, unfair, and fraudulent business practices alleged herein, and to seek injunctive relief and
3 restitution. The foregoing acts and omissions of these Defendants, as alleged herein, affect trade and
4 commerce as that term is defined under the UCL.

5 165. The UCL defines unfair competition to include any unlawful, unfair, or fraudulent
6 business act or practice and provides that a court may order injunctive relief and restitution to the
7 affected parties as a remedy for any violation of the UCL.

8 166. Beginning at least on the dates alleged herein, and at all times relevant herein,
9 Defendants and DOES 1-20, and each of them, on behalf of themselves, have committed acts of
10 unfair competition proscribed by the UCL including the acts and practices alleged herein against the
11 Plaintiff by violating several California Labor Code statutes.

12 167. As a result of Defendants’ unlawful conduct, Plaintiff is entitled to restitution or
13 disgorgement of any profits that Defendants received as a result of their unlawful, unfair, or
14 fraudulent business practices.

15 168. Defendants willfully violated several California Labor Code statutes, depriving
16 Plaintiff of certain substantial rights and remedies, in violation of law, and thereby engaged in unfair
17 business practices, that significantly and illegally increased the profits collected by Defendants, by
18 significantly and illegally decreasing their costs by underpaying Plaintiff and her co-workers.

19
20 **Twelfth Cause of Action**

21 **Waiting Time Penalties (Labor Code § 203)**

22 **By Plaintiff Against all Defendants and DOES 1-20**

23 169. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 168,
24 inclusive, as though set forth fully herein.

25 170. Plaintiff’s final day of employment with Defendants was July 4, 2022.

26 171. Defendants did not pay Plaintiff all of the wages she was due at the time of her
27 retirement.

28 172. At the time of the filing of this complaint, Defendants owe Plaintiff unpaid wages.

173. Pursuant to Labor Code § 203, Plaintiff is entitled to waiting time penalties, equivalent to \$645.10, representing Plaintiff's daily wage, multiplied by the number of days the wages remain unpaid, up to a maximum of 30 days, equaling \$19,353.00 in waiting penalties owed to Plaintiff.

Thirteenth Cause of Action

For Civil Penalties for Violations of the Labor Code

(California Labor Code Section 2698, *et seq.*)

By Plaintiff Individually, on Behalf of All Similarly Aggrieved, and On Behalf of the Public

Against All Defendants

174. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 173, inclusive, as though set forth fully herein.

175. During the relevant liability period and continuing so long as the violations persist, (the “Civil Penalty Period”), Defendants have violated and, on information and belief, continue to violate provisions of the Labor Code, including §§ 204, 218, 226, 226.7, 450, 510, 512, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

176. Labor Code sections 2699(a) and (g) authorize any aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

177. Plaintiff has complied with the procedure for bringing suit specified in Labor Code § 2699.3. On May 23, 2022, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of Plaintiff's allegations of Labor Code violations. The LWDA failed to notify this representative Plaintiff by 60 calendar days of the postmark date of the notice filing and failed to send any notice within 65 days of Plaintiff's filing of the notice of its intention to investigate Plaintiff's claimed violations.

178. Pursuant to § 2699.3, subdivision (a)(2), Plaintiff may seek civil penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

1 179. Pursuant to Labor Code § 2699, subdivisions (a) and (f), RUSSELL is entitled to
2 recover civil penalties for Defendants' violations of Labor Code §§ 204, 218, 226, 226.7, 450, 510,
3 512, 1182.12, 1194, 1197, 1198, and 2802 in the following amounts:

4 a. For violation of Labor Code § 204, one hundred dollars (\$100.00) for each underpaid
5 employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for
6 each subsequent violation or any willful or intentional violation, for each underpaid employee for
7 each pay period, plus percent of the amount unlawfully withheld (penalty amounts established by
8 Labor Code Section 2699(f)(2));

9 b. For violation of Labor Code § 218 in an amount to be proven at the time of trial.

10 c. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each
11 employee per pay period for the initial violation and one thousand dollars (\$1,000.00) per employee
12 in a subsequent violation (penalty amounts established by Labor Code Section 226.3);

13 d. For violation of Labor Code § 226.7, fifty dollars (\$50.00) for each underpaid
14 employee for each pay period the employee was underpaid, and one hundred dollars (\$100.00) for
15 each subsequent violation for each underpaid employee for each pay period (penalty amounts
16 established by Labor Code Section 558));

17 e. For violation of Labor Code § 510, fifty dollars (\$50.00) for each underpaid
18 employee for each pay period the employee was underpaid, and one hundred dollars (\$100.00) for
19 each subsequent violation for each underpaid employee for each pay period (penalty amounts
20 established by Labor Code Section 558));

21 f. For violation of Labor Code § 512, fifty dollars (\$50.00) for each underpaid
22 employee for each pay period the employee was underpaid, and one hundred dollars (\$100.00) for
23 each subsequent violation for each underpaid employee for each pay period (penalty amounts
24 established by Labor Code Section 558));

25 g. For violation of Labor Code § 450, one hundred dollars (\$100.00) for each underpaid
26 employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for
27 each subsequent violation for each underpaid employee for each pay period (penalty amounts
28 established by Labor Code Section 2699(f)(2));

h. For violation of Labor Code § 1182.12, one hundred dollars (\$100.00) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2));

i. For violation of Labor Code § 1194(a), one hundred dollars (\$100.00) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2));

j. For violation of Labor Code § 1197, one hundred dollars (\$100.00) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$250.00) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 1197.1);

k. For violation of Labor Code § 1198, one hundred dollars (\$100.00) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2));

1. For violation of Labor Code § 2802, one hundred dollars (\$100.00) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200.00) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2));

180. Plaintiff further demands reasonable attorney's fees, costs of suit, and interest pursuant to California Labor Code §§ 2699(g)(1).

Prayer for Relief

WHEREFORE, Plaintiff hereby prays that the Court enter judgment in her favor and against Defendants and Does 1 through 20, Inclusive, and each of them, as follows:

1. For unpaid wages in an amount according to proof;
2. For unpaid overtime compensation;

3. For unpaid minimum wage in an amount according to proof;
4. For reporting time pay violations in an amount according to proof;
5. For meal period premiums in an amount according to proof;
6. For rest period premiums in an amount according to proof;
7. For Labor Code § 226(e) statutory penalties in an amount according to proof;
8. For Labor Code § 1198.5 statutory penalties in an amount according to proof;
9. For reimbursement for incurred expenses pursuant to Labor Code §2802 according to proof;
10. For statutory attorney fees pursuant to Labor Code § 1194;
11. For contract damages according to proof;
12. For all penalties entitled under Labor Code § 2699 and the relevant Labor Codes referenced herein;
13. For prejudgment interest on the foregoing at the legal rate;
14. For reasonable attorney fees as allowed by law;
15. For costs of suit incurred herein;
16. For such further relief as the Court may deem appropriate.

Dated: August 26, 2022

POKALA LAW APC

By: 
Kalyan Pokala
Attorneys for Plaintiff
Laura Russell

EXHIBIT 1

May 23, 2022

VIA ONLINE SUBMISSION

PAGAfiling@dir.ca.gov

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Kaiser Permanente (Parent Entity for all named Defendants)
Southern California Permanente Medical Group, Inc. a/k/a SoCal Permanente Medical Group
Kaiser Permanente International
Kaiser Foundation Hospitals
Kaiser Foundation Health Plan, Inc.

Agent for Service of Process
2710 Gateway Oaks Drive Suite 150N
Sacramento, CA 95833

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3(a) (the “PAGA”) re: Laura Russell and all Aggrieved Employees

To Whom It May Concern:

Plaintiff Laura Russell (“Plaintiff”) retained our firm, Pokala Law APC, to represent her and other similarly situated current and/or former employees of Southern California Permanente Medical Group, Inc. a/k/a SoCal Permanente Medical Group, Kaiser Permanente International, Kaiser Foundation Hospitals, and Kaiser Foundation Health Plan, Inc. (collectively “Kaiser” or “Defendants”) for alleged violations of the California Labor Code. Defendants employed Plaintiff and other similarly situated employees throughout California (collectively, the “Aggrieved Employees”). The Aggrieved Employees consist of all current and former non-exempt, hourly employees, employed as either Licensed Clinical Social Workers (“LCSW”) and/or Licensed Marriage and Family Therapists (“LMFT”), or whose employment is otherwise covered by the NUHW Kaiser Psycho-Social Chapter Collective Bargaining Agreement, who suffered one or more of the Labor Code violations set forth in this letter, at any time between one year prior to the filing of this complaint until judgment, and worked for Kaiser at locations throughout California, including but not limited to, Kaiser Permanente San Diego Medical Center, located at 9455 Clairemont Mesa Blvd. San Diego, CA 92123 and/or Kaiser Permanente Zion Medical Center located at 4647 Zion Ave. San Diego, CA 92120. As will be explained in detail below, Plaintiff alleged that Defendants violated numerous California Labor Codes; thus, entitling Plaintiff and the Aggrieved Employees to penalties under the PAGA.

This letter formally serves as notice to the Labor & Workforce Development Agency

("LWDA") of the Labor Code violations of Southern California Permanente Medical Group, Inc. a/k/a SoCal Permanente Medical Group, Kaiser Permanente International, Kaiser Foundation Hospitals, and Kaiser Foundation Health Plan, Inc. (collectively, "Kaiser," "Employers", or "Defendants"). We submit this notice in accordance with Labor Code § 2699.3(a).

Employer currently employs our client, Laura Russell ("Ms. Russell"). We submit this notice on behalf of Ms. Russell and all other Aggrieved Employees that were employed by Employer. In compliance with Labor Code § 2699.3(a)(1), Ms. Russell furnished Employer with a copy of this notice by certified mail. Unless the LWDA proceeds against Employer, Ms. Russell intends to pursue a representative civil action against Employers, in accordance with Labor Code § 2698, et seq.

Ms. Russell has already filed a civil complaint for her individual claims and will amend her complaint to include claims under the Private Attorneys General Act ("PAGA") if the LWDA does not intend to investigate Ms. Russell's claims. A true and correct copy of the complaint on file in San Diego County Superior Court, titled *Russell v. Southern California Permanente Medical Group Inc. et.al*, Case No. 37-2022-00019215-CU-OE-CTL, is attached hereto as **Exhibit A** and is incorporated by reference herein.

This letter formally serves to inform Defendants of Plaintiff's intent to file a class action complaint (the "Complaint") against Defendants and bring causes of action for violations of the PAGA for Defendants' failure to: pay the Aggrieved Employees (1) for all wages earned; (2) for overtime compensation; (3) for minimum wage; (4) for reporting time pay violations; (5) for pay premiums for meal period violations; (6) for pay premiums for rest period violations; (7) provide accurate, itemized wage statements; (8) maintain accurate records; (9) for forced patronage; (10) for failure to reimburse expenses; (11) timely pay all wages due during employment; (12) timely pay all wages due at the time of separation or termination of employment. During the relevant time period, and as alleged in the Complaint, Defendants failed to pay Plaintiff and the Aggrieved Employees for non-overtime and overtime wages, failed to properly pay shift differentials, failed to pay minimum wage for standby pay, failed to provide compliant meal periods, failed to provide compliant rest periods, failed to provide accurate wage statements, failed to maintain accurate records, failed to reimburse Plaintiff and the Aggrieved Employees' expenses, and failed to pay Plaintiff and the Aggrieved Employees additional wages and penalties for said violations, and forced the Aggrieved Employees to patronize Defendants by requiring the Aggrieved Employees to enroll in Defendants' health insurance plan. As a result, Defendants violated, among other statutes and regulations, Labor Code §§ 200-204, 218, 226, 226.7, 450, 510, 512, 558, 558.1, 1174(d), 1194, 1197, 1198, and provisions of Industrial Welfare Commission ("IWC") Wage Order 4-2001 ("Wage Order 4").

Plaintiff is informed and believes that said violations are ongoing, systematic, and uniform. Defendants have been notified repeatedly by Plaintiff and other Aggrieved Employees of the continued existence of these violations, and Defendants willfully choose not to rectify their conduct and continue to engage in the same conduct. If Defendants fail to cure these alleged violations, as stated above,

Plaintiff will bring an action against Defendants under the PAGA to recover wages and penalties as provided by California law.¹

I. STATUTE OF LIMITATIONS

Ms. Russell's representative claims under PAGA are still within the statutory period for such PAGA action. Ms. Russell is currently employed by Kaiser.

II. LABOR CODE VIOLATIONS

Employer has violated at least the following specifically enumerated Labor Code sections, in addition to any other Labor Code sections implicated by the actions described in the Facts & Theories portions of this notice letter: §§ 201, 202, 203, 204, 218, 226, 226.7, 450, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1197, 1198, 2802 and the applicable Wage Order.

III. FACTUAL BACKGROUND

Laura Russell was hired by Kaiser as a per diem Psychosocial Clinician on August 28, 2017. Her per diem hourly rate was \$51.00. On April 22, 2019, Ms. Russell was hired by Kaiser as a full-time employee with the position of Psychosocial Clinician III in the Emergency Department, at the hourly rate of \$62.63. Her schedule as a permanent employee consists of a rotating two-week cycle. Week one consists of Thursday evenings from 3 PM to 1AM and Saturdays from 7 AM to 5 PM. Week two consists of Monday evenings from 3 PM to 1AM, Thursdays and Fridays from 7 AM to 5 PM. In addition, Ms. Russell was scheduled to be on call from 11 PM to 7 AM four to five times a month, for \$12.00 an hour whether being called in or not, despite the minimum wage in San Diego, California increasing to \$13.00 on January 1, 2020, \$14.00 on January 1, 2021, and \$15.00 on January 1, 2022.

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes, each of the following, as is set forth in Labor Code § 2699.5, which states: The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

On these on-call shifts, Ms. Russell and the Aggrieved Employees were required to work if called, yet received no additional compensation for their time, even though they were performing the same work that they would be performing if they were physically at Defendants' Emergency Department. Ms. Russell and the Aggrieved Employees were entitled to compensation at their regular hourly rate (plus applicable shift differentials and overtime when applicable) for work that was performed during standby time.

Kaiser intentionally misclassified Ms. Russell, and her similarly situated co-workers as exempt employees, and therefore Kaiser categorically denied them with meal and rest breaks. This is despite the fact that hourly employees cannot be exempt under California labor law. Ms. Russell was a non-salaried, hourly employee, as were the other Aggrieved Employees. Ms. Russell's compensation was based on how many hours that she worked, rather than a fixed salary. The more Ms. Russell worked, the more money that Ms. Russell made. On almost every shift, Ms. Russell was the only person working, and it was impossible to take a meal or rest break, even if Kaiser had permitted it. Additionally, Ms. Russell was categorically denied her second meal period on every single shift she worked in excess of ten hours. Kaiser failed to pay Ms. Russell, or her coworkers, meal or rest break premiums for these noncompliant meal and rest breaks. Ms. Russell was and is an hourly employee of Kaiser, and therefore, Kaiser's intentional misclassification of Ms. Russell as exempt is an improper violation of the Labor Code and the applicable Wage Order.

Ms. Russell's shifts were often 10 hours or longer, with no meal or rest period. Ms. Russell was told by her supervisor, that she was not entitled to a lunch because her supervisor had negotiated that on her behalf. Kaiser routinely denied Ms. Russell the correct payment for overtime and double time worked. In fact, Kaiser would pay Ms. Russell at her regular hourly rate, when working overtime. Similarly, Ms. Russell was not properly paid her differentials for evening and night shifts. For the hours of 3 PM to 12 AM, Ms. Russell was entitled a differential of \$2.75. For the hours of 12 AM to 1 AM, Ms. Russell was entitled to a differential of \$4.50. Ms. Russell was also improperly trained by her supervisor to calculate these differentials, and for several years Ms. Russell did not realize that she was being paid incorrectly each and every week.

IV. LABOR CODE VIOLATIONS

Failure to Pay Earned Wages (Labor Code § 204)

Throughout her employment with Kaiser, Ms. Russell and the Aggrieved Employees have not been compensated correctly for all hours worked. Ms. Russell and the Aggrieved Employees have not been paid minimum wage for all hours worked, she and the Aggrieved Employees have not been adequately compensated for overtime or double time, and she and the Aggrieved Employees have not been provided a meal or rest break or a premium in lieu of a compliant break, and she and the Aggrieved Employees have not been paid the correct differentials. Therefore, Kaiser has failed to pay and continues not to pay, Ms. Russell and the Aggrieved Employees all of their earned wages.

On information and belief Kaiser has failed to pay all of their employees correctly for all wages earned in violation of California Labor Code section 204.

Overtime and Double Time Violations (Labor Code §§ 510 & 1194)

Throughout her employment with Kaiser, Ms. Russell often worked shifts in excess of 8-hours a day or 40 hours per week. Kaiser would then pay Ms. Russell her standard hourly rate instead of the statutory 1.5x or 2x the employee's standard hourly rate. On information and belief, Kaiser paid all of their hourly employees, including the Aggrieved Employees, in this manner, in violation of the California Labor Code sections 510 and 1194.

Unpaid Minimum Wage (Labor Code §§ 1182.12, 1194, 1197)

Throughout her employment with Kaiser, Kaiser failed to raise the on-call hourly rate from \$12.00, despite the State of California (and the city of San Diego) regularly increasing the statutory minimum wage. Therefore, Kaiser has failed to pay Ms. Russell and the Aggrieved Employees the proper minimum wage for their on-call shifts, beginning on January 1, 2020 and continuing to the present. On information and belief, Kaiser failed to pay all of their hourly employees the correct minimum wage for all hours worked for on-call shifts.

Meal Period Violations (Labor Code §§ 226.7, 512(a))

Throughout her employment with Kaiser, Ms. Russell and the Aggrieved Employees were categorically denied a 30-minute duty free rest break on shifts when they worked over 5-hours. Subsequently, Ms. Russell and the Aggrieved Employees were denied a second meal period when they worked shifts over 10-hours. Therefore, Ms. Russell and the Aggrieved Employees are entitled to a meal period premium for each shift in which they were denied a first and/or second lunch break.

Rest Period Violations (Labor Code §§ 226.7, 512(a))

Ms. Russell and the Aggrieved Employees were categorically denied a 10-minute rest period throughout their employment with Kaiser. Therefore, Ms. Russell and the Aggrieved Employees are entitled to a rest break premium for each shift in which they did not receive a rest break. On information and belief Kaiser did not provide any of their employees, including the Aggrieved Employees and other employees in Ms. Russell's position (or similar positions) with compliant meal and rest breaks or a premium, in violation of California Labor Code section 226.7 and 512.

Failure to Furnish Accurate Wage and Hour Statements (Labor Code § 226)

Due to the violations discussed above, Ms. Russell's wage and hour statements provided by

Kaiser did not accurately reflect all wages owed to her for all hours worked. On information and belief, Kaiser did not issue any of the Aggrieved Employees their accurate wage and hour statements due to their failure to pay appropriately for all hours worked, failure to provide meal and rest breaks or a premium, and their failure to pay overtime or double time when appropriate, in violation of California Labor Code section 226.

Failure to Maintain Accurate Records (Labor Code § 1198.5)

Due to the violations discussed above, Defendants have not maintained accurate records for Ms. Russell and the Aggrieved Employees, a violation under California Labor Code section 1198.5.

Forced Patronage (Labor Code § 450)

As a condition of her employment, Ms. Russell (and the Aggrieved Employees) were forced to enroll in Defendants' health insurance plan. The Aggrieved Employees were not permitted to enroll in another health insurance plan unless the Aggrieved Employees could enroll in a health insurance plan through their spouse. This requirement resulted in all co-pays and prescriptions to be fulfilled exclusively by Defendants, to Defendants' monetary benefit.

Failure to Reimburse Expenses (Labor Code § 2802)

As stated above, Plaintiff and the Aggrieved Employees were forced to use their personal phones, personal computers, as well as their own utilities to perform their duties while working on-call shifts. While working these shifts, Plaintiff and the Aggrieved Employees were not reimbursed for the use of their personal devices or utilities, in violation of Labor Code § 2802.

Failure to Comply with California Wage Theft Prevention Act (Labor Code § 2810.5)

The Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage. Defendants' failure to provide Plaintiff and the Aggrieved Employees with written notice of basic information regarding their employment with Defendants constitutes a violation of Labor Code section 2810.5.

Failure to Pay Timely Wages During Employment (Labor Code § 204)

Due to the violations discussed above, Kaiser failed to pay Ms. Russell and the Aggrieved Employees their wages owed during each and every pay period. Kaiser failed to pay earned wages, failed to pay overtime or double time, failed to pay the correct minimum wage for on-call shifts, failed to pay reporting time pay, failed to pay meal premiums, failed to pay rest break premiums, failed to pay

the correct differentials. On information and belief, Kaiser was incorrectly paying all of the employees in Ms. Russell's or similar positions. Therefore, Kaiser is in violation of Labor Code § 204.

Failure to Pay Earned Wages Upon Termination (Labor Code §§ 201, 202, 203, 1174)

Due to Kaiser's failure to properly calculate each employee's pay, including meal and rest break premiums, overtime, double time, minimum wage for on-call shifts, and differentials, Kaiser has not paid their employees correctly upon their termination.

V. CONCLUSION

The facts articulated above violate multiple provisions of the Labor Code identified in this correspondence. Plaintiff seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment, attorney fees, and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 221, 224, 226(a), 226(e), 226.7, 450, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5 and 2802. By virtue of this letter, we hereby notify the LWDA of Employer's violations and Plaintiff's intent to seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. In accordance with Labor Code § 2699.3(a)(2)(A), please notify us within 60 days, at our San Diego office address, whether you intend to investigate this matter. Please reach out if you have any additional questions, at kalyan@pokalalaw.com or by phone at (619) 326-8036.

Sincerely,
Pokala Law APC



Kalyan Pokala
Attorney for Plaintiff
Laura Russell