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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

KAITLIN TALLEY, on behalf of herself and all
others similarly situated and the general public,

Plaintiff,

v.

TRAVEL NURSE ACROSS AMERICA, LLC
an Arkansas limited liability company; and
DOES 1 to 100,

Defendants.

) Case No. 22CV403416
) Hon. Patricia M. Lucas
) Dept. 3
)
) CLASS ACTION
)
) FIRST AMENDED COMPLAINT
)
) 1. Violation of B&PC §17200, et seq.;
) 2. Failure to Pay All Wages (Labor Code §§
) 200, et seq., 218, 226, 510, 511, 1194 and
) 1198, and 2802);
) 3. Failure to Pay Sick Pay at the Correct
) Regular Rate;
) 4. Failure to Pay Minimum wage
) 5. Inaccurate Wage Statements (LC §226);
) 6. Failure to Pay Wages of Terminated or
) Resigned Employees (LC §§201-203);
) 7. Penalties Under PAGA Labor Code §2698,
et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff, Kaitlin Talley, on behalf of herself and all other persons similarly situated, and the
2 general public, hereby complain against Travel Nurse Across America, LLC, an Arkansas limited
3 liability company; (hereinafter collectively referred to as “TNAA” or “Defendant”), and DOES 1 to
4 100, inclusive, and on information and belief allege as follows:

5 **GENERAL ALLEGATIONS**

6 **JURISDICTION**

7 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
8 §§ 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, and 2698, et seq.. The Plaintiff for herself and
9 on behalf of the general public, and all others similarly situated, bring an action for monetary
10 damages for failure to pay wages as well as for injunctive relief, declaratory relief and restitution
11 for Defendant’s violations of Business and Professions Code (B&PC) §17200, et seq., including
12 full restitution of all compensation retained by Defendant, as a result of its unlawful, fraudulent and
13 unfair business practices. Plaintiff seeks all available relief, including full damages, full restitution
14 and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by
15 Defendant as a result of its unlawful, unfair business practices. Further, Plaintiff seeks injunctive
16 relief under B&PC §17200, et seq.

17 **VENUE**

18 2. Venue as to the Defendant is proper in this judicial district pursuant to California
19 Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of
20 herein occurred in the County of Santa Clara. Defendant either owns or maintains offices, transacts
21 business, has an agent or agents within the County of Santa Clara, or otherwise is found within the
22 County of Santa Clara, and Defendant is within the jurisdiction of this Court for purposes of
23 service of process.

24 **PARTIES**

25 3. Kaitlin Talley is an individual over the age of eighteen (18). At all relevant times
26 herein, Plaintiff Talley was and currently is a resident of the County of Los Angeles, State of
27 California.

28 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
herein, Defendant, Travel Nurse Across America (hereinafter referred to as “Defendant” or
“TNAA”), is and was an Arkansas limited liability company.

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and Does 1-100, are professional entities licensed to do business in California.

3 6. Plaintiff is informed and believes and thereon alleges that at all relevant times
4 Defendant was licensed to do business in the State of California, County of Santa Clara, with its
5 principal place of business in Santa Clara, California.

6 7. Plaintiff is informed and believes, and based thereon alleges, that TNAA is an entity
7 licensed in the state of California, is an Arkansas limited liability company, that owns, operates
8 and/or controls all other Defendants and are and were the employer of the Plaintiff and Plaintiff
9 Class during the Class Period. During the liability period, Defendant collectively employed
10 Plaintiff and similarly situated persons and due to its failure to schedule Plaintiff and Plaintiff Class
11 in such a manner that allowed for Plaintiff and Plaintiff Class to receive and/or take their meal
12 and/or rest breaks, Plaintiff and Plaintiff Class were not provided and/or denied work free meal and
13 rest breaks. Plaintiff worked closely and in conjunction with other Class Members such that she
14 has personal knowledge that Class Members suffered under the same policies, practices and
15 procedures. Defendant also failed to pay Plaintiff and Plaintiff Class for all time worked due to its
16 rounding practice, which systematically results in losses to Plaintiff and the class, failed to pay
17 overtime for hours worked at the correct rate of pay, failed to include certain remuneration that
18 must be included in employees' regular rate, including without limitation, nondiscretionary
19 bonuses, charge nurse premium, in-house registry payments, shift differentials, on call pay,
20 housing, stipends, and call back pay into the employees' regular rate, and failed to pay due and
21 owing wages upon ending of employment employees within California. On information and belief
22 and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in
23 California.

24 8. Plaintiff is informed and believes and thereon alleges, that Defendant and DOES 1
25 to 100, control and operate business and establishments in locations within the State of California,
26 including, but not limited to, the County of Santa Clara, for the purposes of providing traveler
27 nurses and other medical professionals to California hospitals. Thus, each named Defendant and
28 DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code
as hereinafter alleged.

 9. Plaintiff does not know the true names or capacities, whether individual, partner, or

1 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said
2 Defendants are sued under such fictitious names, and Plaintiff will seek from this Court leave to
3 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
4 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
5 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
6 herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged and the
7 general public to be subjected to the unlawful employment practices, wrongs, injuries and damages
8 complained of herein.

9 10. At all times herein mentioned, each of said Defendants participated in the doing of
10 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
11 Defendants, and each of them, were the agents, servants, and employees of each and every one of
12 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
13 were acting within the course and scope of said agency and employment. Plaintiff herein alleges
14 that Defendant and each of them are the joint employer of Plaintiff and the classes.

15 11. At all times mentioned herein, Defendant, and each of them, were members of and
16 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
17 scope of and in pursuance of said joint venture, partnership, and common enterprise.

18 12. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and every one of
20 the other Defendants in proximately causing the complaints, injuries and damages alleged herein.

21 13. At all times herein mentioned, Defendant, and each of them, approved of, condoned,
22 and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all
23 times herein mentioned, Defendant, and each of them, aided and abetted the acts and omissions of
24 each and every one of the other Defendants, thereby proximately causing the damages, as herein
25 alleged.

26 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

27 14. Plaintiff on behalf of herself and all others similarly situated, filed this cause of
28 action acting as a private attorney general on behalf of the general public to challenge and remedy
the business practices of Defendant alleged herein.

15. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits

1 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
2 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
3 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
4 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
5 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
6 general public as remedies for any violations of B&PC §17200.

7 16. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
8 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

9 a. A successful outcome in this action will result in the enforcement of
10 important rights affecting the public interest by maintaining the integrity of entities that employ
11 employees;

12 b. This action will result in a significant benefit to the general public by ceasing
13 unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by
14 Defendant through its failure to properly pay its employees;

15 c. Unless this action is prosecuted, members of the general public will not
16 recover monies wrongfully taken from them, and many employees and consumers would not be
17 aware that they were victimized by Defendant's wrongful acts and practices; and unless attorneys'
18 fees and costs are awarded against Defendant, the general public will not be made whole.

18 PLAINTIFF CLASSES

19 17. The class representative Plaintiff who worked in the position of an hourly traveler
20 nurse, while employed by Defendant within the State of California, is Kaitlin Talley.

21 CLASS ACTION ALLEGATIONS

22 18. Plaintiff brings this action on behalf of herself and all others similarly situated as a
23 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of
24 and defined as follows:

25 **Class 1:**

26 All non-exempt hourly employees of Defendant who worked at least one (1) day of more
27 than eight (8) hours in a day or more than forty (40) hours in a week during the time period from
28 four (4) years preceding the filing of this Complaint through the date of class certification order in
California, without proper premium pay calculated at the correct regular rate, including overtime,

1 meal and rest period penalty payments. ("Regular Rate/Overtime Class");

2 **Class 2:**

3 All California resident non-exempt hourly employees of Defendant who worked at any time
4 in California during the time period from four (4) years preceding the filing of this Complaint
5 through the date of the class certification order, who were not paid straight time wages at the
6 correct rate of pay. ("LC § 2810.5 Class")

7 **Class 3:**

8 All California resident non-exempt hourly employees of Defendant who worked at any time
9 during the time period from four (4) years preceding the filing of this Complaint through the date
10 of class certification order, who were provided a paystub (a.k.a. wage statement) from Defendant
11 ("Pay Stub Class")(derivative and standalone)

12 **Class 4:**

13 All hourly non-exempt employees of Defendant who worked at any time in California
14 during the time period from four (4) years preceding the filing of this Complaint through the date
15 of the class certification order, and who were not paid at least minimum wage for
16 standby/controlled time. ("Minimum Wage Class")

17 **Class 5:**

18 All California resident non-exempt hourly employees of Defendant who worked in
19 California at any time during the time period from four (4) years preceding the filing of this
20 Complaint through the date of the class certification order, who are no longer employed by
21 Defendant and were not paid all their earned wages. ("Waiting Time Penalty Class").

22 The members of the classes are so numerous that joinder of all members would be
23 unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time;
24 however, it is estimated that the classes number greater than 100 individuals. The identity of such
25 membership is readily ascertainable via inspection of Defendant's employment records.

26 19. There are common questions of law and fact as to Plaintiff and all others similarly
27 situated which predominate over questions affecting only individual members including, without
28 limitation to:

- i. Whether Defendant violated the applicable Labor Code provisions including §510 and 1194 by requiring substantial overtime work and not paying for

- 1 said work according to the overtime laws of the State of California;
- 2 ii. Whether Defendant failed to pay the appropriate straight time minimum
- 3 wages, and premium overtime compensation to the non-exempt hourly
- 4 employees;
- 5 iii. Whether Defendant improperly retained, appropriated or deprived Plaintiff
- 6 of the use of monies or sums to which Plaintiff was legally entitled;
- 7 iv. Whether Defendant engaged in unfair business practices;
- 8 v. Whether Defendant, and each of them, were participants in the alleged
- 9 unlawful conduct;
- 10 vi. Whether Defendant's conduct was willful or reckless;
- 11 vii. The effect upon and the extent of injuries suffered by Plaintiff and all others
- 12 similarly situated and the appropriate amount of compensation;
- 13 viii. The appropriate amount of monetary penalties allowed by Labor Code
- 14 §§201, et. seq. and 226;
- 15 ix. Whether Defendant failed to pay for meal break violations and/or rest break
- 16 violations at the correct regular rate of pay;
- 17 x. Whether Defendant violated Labor Code §226 and relevant IWC Wage
- 18 Orders by failing to, among other violations, accurately report total hours
- 19 worked by Plaintiff and the members of the Plaintiff class;
- 20 xi. Whether Defendant knowingly and intentionally failed to maintain records
- 21 for Plaintiff and members of the Plaintiff class as required by Labor Code §
- 22 1174 and §7 of the IWC Order 5-2001 and its successors;
- 23 xii. Whether Defendant willfully violated provisions of the California Labor
- 24 Code;
- 25 xiii. Whether Defendant failed to pay sick time at the correct regular rate of pay;
- 26 xiv. Whether Defendant fails to provide accurate notice of wages as required by
- 27 Labor Code §2810.5 and/or fails to comply with a notice they do provide;
- 28 xv. Whether Defendant paid its hourly non-exempt employees less than
- minimum wage for standby shifts; and
- xvi. Whether Defendant is subject to civil penalties pursuant to Labor Code

1 §§2699, et seq.

2 20. Plaintiff's claims are typical of the claims of all members of the classes and
3 subclasses mentioned herein. Plaintiff, as a representative party, will fairly and adequately protect
4 the interest of the classes by vigorously pursuing this suit through their attorneys who are skilled
5 and experienced in handling matters of this type. Plaintiff has no claim or interests that are
6 antagonistic to any class member.

7 21. The nature of this action and the nature of laws available to the members of the
8 classes and subclasses identified herein make use of the class action format a particularly efficient
9 and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this
10 claim involves a large corporate employer, Defendant, and a large number of individual employees
11 (Plaintiff and all others similarly situated) with many relatively small claims with common issues
12 of law and fact. If each employee were required to file an individual lawsuit, the corporate
13 Defendant would necessarily gain an unconscionable advantage since it would be able to exploit
14 and overwhelm the limited resources of each individual Plaintiff with their vastly superior financial
15 and legal resources. Requiring each class member to pursue an individual remedy would also
16 discourage the assertion of lawful claims by employees who would be disinclined to pursue an
17 action against their present and/or former employer for an appreciable and justifiable fear of
18 retaliation and permanent damage to their careers at present and/or subsequent employment. Proof
19 of a common business practice or factual pattern, of which the named Plaintiff experienced, is
20 representative of the class mentioned herein and will establish the right of each of the members of
the named class to recovery on the causes of action alleged herein.

21 22. The prosecution of separate actions by the individual class members, even if
22 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
23 respect to the individual class members against Defendant herein; and which would establish
24 potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with
25 respect to individual class members which would, as a practical matter, be dispositive of the
26 interest of the other class members not parties to adjudications or which would substantially impair
27 or impede the ability of the class members to protect their interests. Further, the claims of the
28 individual members of the class are not sufficiently large to warrant vigorous individual
prosecution considering all of the concomitant costs and expenses attending thereto.

23. Plaintiff and all others similarly situated are entitled to the wages and other monies unlawfully withheld. This action is brought for the benefit of the public.

FIRST CAUSE OF ACTION

Violation of B&PC §17200, et seq.

(Against All Defendants)

24. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

25. 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, Defendant has engaged in a pattern and practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged herein.

FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION

26. Plaintiff is informed and believes and thereon alleges that as part of Defendant's ongoing unfair business practice, Defendant's employees were and are employed and scheduled as a matter of established company policy to work, and in fact, worked twelve (12) hour shifts. The hours worked by Defendant's employees is in excess of eight (8) hours per day, and in excess of forty (40) hours per week without receiving the proper overtime premium. The Defendant is in violation of Labor Code §§ 510 and 1194, and the relevant California Industrial Welfare Commission Orders 5-2001, et seq.

27. Under Labor Code §1194, an employee is not fully compensated for the unpaid balance of their overtime compensation unless the employee is paid all unpaid compensation for the regular hours and overtime hours worked during an overtime shift.

28. While Defendant's policy is to pay time-and-a-half for all hours worked in excess of eight (8) hours per day, Defendant fails to pay members of the class proper premium overtime due to Defendant's failure to properly calculate the regular rate. The mathematical result of these practices is that employees are underpaid their earned wages. Defendant's employees are not paid proper straight time or overtime compensation.

29. Defendant, and each of them, consistently administered a corporate policy regarding, both staffing levels, duties and responsibilities of Defendant's employees, which required that the entirety of the employees work overtime without proper premium overtime pay.

1 Further, the Plaintiff and the class are entitled to restitution of these wages obtained by Defendant,
2 and each of them.

3 30. This corporate policy and pattern of conduct is accomplished with the advance
4 knowledge and designed intent not to pay the employees at a premium rate for all overtime hours.
5 Further, the Plaintiff and the members of the class are entitled to restitution of these wages obtained
6 by Defendant, and each of them.

7 31. Further, the Plaintiff and the members of the classes are entitled to restitution of all
8 unpaid wages obtained by Defendant, and each of them. Plaintiff, and the class, may seek
9 restitution for unpaid straight time wages under California Business & Professions Code §17200, *et*
10 *seq.* (“Section 17200”). Any business act or practice that violates the Labor Code through a failure
11 to pay wages is by definition an unfair business practice under §17200. Section 17200 provides an
12 action to recover wages as restitution, even if such recovery might be barred if brought pursuant to
13 the Labor Code, if the failure to pay constitutes a business practice. Defendant’s failure to properly
14 pay all wages, including straight time and the overtime premium at the correct regular rate,
15 constitutes an unfair business practice because it is a failure to timely pay wages pursuant to Labor
16 Code §204; Unpaid straight time wages and unpaid overtime wages are recoverable as restitution
under Section 17200.

17 ON-CALL OR STANDBY

18 32. Defendant then require Plaintiff and the class to work on-call time and/or standby
19 time. Defendant’s on-call time is controlled as they require employees to report to work within
20 one-half hour (30 minutes) to forty-five (45) minutes from call. Despite the controlled on-call
21 time, Defendant fails to pay Plaintiffs their regular rate of pay or at the very least, minimum wage
22 for said time.

23 33. Plaintiff seeks restitution and injunctive relief for all the aforementioned violations.

24 34. Plaintiff is informed and believes and thereon alleges that as part of Defendant’s
25 ongoing unfair business practice, Defendant’s hourly employees, including but not limited to, all
26 patient care employees as well as other hourly employees were and are employed and schedule as a
27 matter of established company policy to work, and in fact, worked over eight (8) hours and twelve
28 (12) hour shifts. The hours worked by Defendant’s hourly employees is in excess of eight (8) hours
per day, and in excess of forty (40) hours per pay period without receiving the proper straight time

1 or overtime compensation for such excess hours worked in violation of Labor Code §§ 203, 510
2 and 1194, and the relevant California Industrial Welfare Commission orders without any valid
3 exemption.

4 35. Defendant, and each of them, consistently administered a corporate policy regarding
5 both staffing levels, duties and responsibilities of Defendant's employees, including nurses which
6 required that the entirety of the employees to work overtime without proper premium overtime pay
7 and one (1) regular rate of pay. Accordingly, said employees are entitled to one (1) regular rate of
8 pay and overtime compensation under California law. Further, the general public is entitled to the
9 disgorged profits obtained by Defendant, and each of them. Furthermore, the Defendant has failed
10 to properly include items of remuneration when determining the employees' regular rate, this
11 includes but is not limited to the failure to include Housing and M&I pay, bonuses and other non-
12 discretionary pay.

13 36. Plaintiff and all others similarly situated identified herein were and are employed
14 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
15 hourly employees in excess of eight (8) hours per day. Defendant employed and scheduled all
16 employees without providing overtime compensation for such excess daily overtime hours worked
17 in violation of Labor Code §§ 510, 1194, 1198 and the relevant California Industrial Welfare
18 Commission (IWC) orders, including daily and weekly overtime premiums, including the seventh
19 day premium. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
20 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
21 Wage Order No. 5, as amended, applies to Plaintiff.

22 37. Plaintiff seeks restitution and injunctive relief for all the aforementioned violations.

23 38. Defendant, have engaged in unfair business practices in California by practicing,
24 employing and utilizing the employment practices complained of herein. Defendant's use of such
25 practices constitutes an unfair business practice, unfair competition, and provides an unfair
26 advantage over Defendant's competitors. Plaintiff and the putative class seek full restitution of
27 said monies, as necessary and according to proof, to restore any and all monies withheld and/or
28 acquired by Defendant by means of the unfair business practices complained of herein. Plaintiff
seeks, on behalf of all current and former employees of Defendant, restitution of said monies.
Plaintiff further seeks on behalf of the Plaintiff and the putative class, the appointment of a

1 receiver, as necessary, to establish the total restitutionary relief from Defendant. The restitution
2 includes all wages withheld by Defendant as a result of the unfair business practices, including
3 interest thereon. Absent a statutory provision specifically governing the type of claim at issue, the
4 prejudgment interest rate is 10 percent. The acts complained of herein occurred, at least in part,
5 within the last four (4) years preceding the filing of the Complaint.

6 39. Plaintiff is informed and believes and thereon alleges that at all times herein
7 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
8 by California B&PC §17200, thereby depriving its employees and the putative class the minimum
9 working condition, standards and conditions due to them under the California labor laws and
10 Industrial Welfare Commission wage orders as specifically described herein. Plaintiff seeks an
11 injunction preventing Defendant from continuing its unfair business practice of improperly
12 depriving its employees' overtime pay. Plaintiff further seeks an order requiring Defendant to
13 identify by full name, telephone number, and last known address employees who worked or still
14 work for Defendant from four (4) years preceding the filing of the original Complaint through the
15 date of judgment; Plaintiff further seeks an order requiring Defendant to timely pay restitution to
16 all current and former employees, including back wages, and interest. The acts complained of
17 herein occurred, at least in part, within the last four (4) years preceding the filing of the original
18 Complaint.

19 40. By and through its unfair, unlawful, and/or fraudulent business practices and acts
20 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
21 situated and, has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
22 guaranteed by law, all to their detriment.

23 41. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to
24 and do seek such relief as may be necessary to restore to them the money and property which
25 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
26 the herein described unfair, unlawful, and/or fraudulent business practices.

27 42. Plaintiff, and all persons similarly situated, and all persons in interest, are further
28 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful,
and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein

1 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

2 43. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
3 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

4 **SECOND CAUSE OF ACTION**

5 **RECOVERY OF UNPAID WAGES & PENALTIES**

6 **Violation of Labor Code §§, 226, 510, 1194 and 1198**

7 (Against All Defendants)

8 44. Plaintiff re-alleges and incorporates by reference herein the allegations of all
9 preceding paragraphs as though fully set forth herein.

10 45. Plaintiff and all others similarly situated identified herein were and are employed
11 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
12 hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per
13 week. Defendant employed and scheduled all employees without providing overtime
14 compensation for such excess hours worked in violation of Labor Code §§ 510, and 1194 and the
15 relevant Industrial Welfare Commission (IWC) orders, including but not limited to, daily, weekly,
16 and seventh day premium overtime payments. Labor Code § 204 establishes the fundamental right
17 of all employees in the state of California to be paid the proper amount of wages in a timely fashion
18 for their work, including overtime. The California overtime requirement and wage requirement are
19 non-waivable rights pursuant to LC §219. Defendant and each of them always had a written and
20 verbal agreement to pay overtime at time and one half for all hours worked in excess of eight (8)
per day and/or eighty (80) hours per pay period.

21 46. Pursuant to Labor Code § 1194(a), Plaintiff may bring a civil action for overtime
22 wages directly against the employer without first filing a claim with the Division of Labor
23 Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with interest
24 thereon, penalties, attorneys' fees and costs.

25 47. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons
26 similarly situated wages when due as required by Labor Code § 204.

27 48. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
28 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC

1 Wage Order No. 5, as amended, applies to Plaintiff.

2 49. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
3 that Defendant has treated Plaintiff and all persons similarly situated, as hourly non-exempt
4 employees. Despite this classification, Defendant has willfully violated the Labor Code with
5 respect to meeting the requirements of paying all wages earned, including minimum wages, straight
6 time pay, overtime, and remuneration when calculating the hourly non-exempt employees regular
7 rate of pay, as herein before alleged.

8 50. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
9 class was never paid any premium compensation or paid significantly less premium compensation
10 for work accomplished in excess of forty (40) hours per pay period, and/or eight (8) hours per day,
11 without any valid alternative workweek schedule or other exemption.

12 51. Defendant failed to pay Plaintiff and its employees at the rate provided in the notice
13 given to its hourly employees in California, pursuant to LC § 2810.5. Instead, Defendant would
14 widely vary the rates Plaintiff and the Classes were paid. As a result of Defendant's unlawful wage
15 practices as alleged herein, Plaintiff and the Class have been denied the appropriate straight time
16 and overtime premiums for all overtime hours worked by them.

17 52. Labor Code §204 establishes the fundamental right of all employees in the State of
18 California to be paid wages in a timely fashion for their work.

19 53. Plaintiff is informed and believes and thereon alleges that Defendant consistently
20 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
21 members of the class which required the members of the class to work overtime without proper
22 premium pay. This included a uniform corporate policy and practice of requiring the members of
23 the class to work in excess of eight (8) hours a day without paying premium overtime. This
24 corporate policy and pattern of conduct was/is accomplished with the advance knowledge and
25 design of all Defendant herein. Thus, Plaintiff and the members of the class, regularly and
26 customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated are
27 entitled to overtime compensation under California law. Further, Defendant disseminated false
28 information throughout Defendant's facilities and among the employees reciting that all hourly
non-exempt employees would receive premium overtime pay.

54. Plaintiff is informed and believes and thereon alleges that the obligations and

1 responsibilities of the class employees are irrelevant because Plaintiff and all others similarly
2 situated merely allege wrongdoing with Defendant's pay plans. Further, the duties of Plaintiff and
3 all others similarly situated are not relevant in certifying any of the classes. Defendant's hourly
4 non-exempt employees work routinely included work in excess of eight (8) hours per day, forty
5 (40) hours per pay period and/or and they were not, and have never been, paid the proper regular
6 rate of compensation nor the proper premium compensation for their overtime work.

7 55. Defendant, and each of them, in violation of Labor Code §§ 201 and 202, et seq.,
8 respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay
9 the earned and unpaid wages of all such former employees. Defendant has willfully failed to pay
10 the earned and unpaid wages of such individuals, including, but not limited to, regular pay, straight
11 time pay (pursuant to Labor Code §1194), premium pay, and other wages earned and remaining
12 uncompensated according to amendment, or proof.

13 56. Plaintiff and all others similarly situated identified herein were and are employed
14 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
15 hourly employees in excess of eight (8) hours per day without overtime. Defendant employed and
16 scheduled members of the class without providing proper overtime compensation for such excess
17 daily overtime hours worked in violation of Labor Code §§ 510, 1194, 1198 and the relevant
18 California Industrial Welfare Commission (IWC) orders. Pursuant to Labor Code § 1198, it is
19 unlawful to employ persons for longer than the hours set by the IWC or under conditions prohibited
20 by the applicable IWC Wage Orders. IWC Wage Order No. 5, as amended, applies to Plaintiff.

21 57. Likewise, Defendant has a pattern, practice and uniform administration of corporate
22 policy regarding failure to comply with the required provisions of Labor Code § 226.7, in failing to
23 pay Plaintiff and the members of the class for missed rest and meal periods at the employee's
24 regular rate of pay. Accordingly, Plaintiff seeks all underpaid wages, wages that Defendant has
25 failed to pay, which are owing, including interest thereon, willful penalties, attorneys' fees, and
26 costs of suit according to the mandate of LC §1194, et seq. Further, overtime work was not paid at
27 the correct regular rate of pay, since the overtime wages did not include the Meals and Incidental
28 Expenditure pay that was included on Plaintiff's and the class members' wage statements.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY SICK PAY AT THE CORRECT REGULAR RATE**

3 **(Against All Defendants)**

4 58. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
5 paragraphs above.

6 59. Plaintiff and all others similarly situated identified herein were and are employed
7 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
8 hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per
9 week. Defendants provide sick leave to its employees pursuant to Labor Code § 246, yet pay
10 Plaintiff and the employees sick pay at the employees base rate of pay instead of the correct regular
11 rate as is required by Labor Code § 246, which states in relevant part: “(1) Paid sick time for
12 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
13 workweek in which the employee uses paid sick time, whether or not the employee actually works
overtime in that workweek.”

14 60. Pursuant to Labor Code § 246, Plaintiff may bring a civil action for sick pay directly
15 against the employer without first filing a claim with the Division of Labor Standards Enforcement
16 (hereinafter “DLSE”) and may recover such unpaid sick pay at the correct regular rate of pay.

17 61. At all times relevant hereto, Defendants have failed to pay to Plaintiff and all
18 persons similarly situated their earned and accrued sick pay at the correct regular rate as
19 Defendants and each of them fail to include all remuneration when calculating said paid as herein
20 before stated with respect to the payment of overtime premiums.

21 62. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
22 that Defendants have treated Plaintiff and all persons similarly situated, as hourly non-exempt
23 employees. Despite this classification, Defendants have willfully violated the Labor Code with
24 respect to meeting the requirements of paying all sick pay at the correct regular rate, including all
25 remuneration when calculating the hourly non-exempt employees’ regular rate of pay, as
26 hereinbefore alleged.

27 /////

28 /////

FOURTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Against All Defendants)

63. Plaintiff and the Class incorporate by reference all the aforementioned paragraphs of the amended complaint.

64. Labor Code section 1194(a) provides that “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.”

65. At all times relevant, Defendant required Plaintiff and the Class to work both regular straight time and overtime, for which Defendants failed to pay them at the appropriate rates of pay.

66. Defendant failed to pay Plaintiff and its employees at the rate provided in the notice pursuant to LC § 2810.5. Instead, Defendant would widely vary the rates Plaintiff and the Classes were paid. As a result of Defendant’s unlawful wage practices as alleged herein, Plaintiff and the Class have been denied the appropriate overtime premiums for all overtime hours worked by them. Further, Defendant would require its employees in California to work standby, but pay them a rate of pay that was under the minimum wage of the State of California, despite significant control over the employees while on standby.

67. As a result of Defendant’s acts and omissions as alleged herein, Plaintiff requests that the Court find Defendants to have willfully failed to pay all minimum wages, overtime wages and/or straight time wages, to Plaintiff and the Class; award all actual losses and damages; award prejudgment interest on any unpaid minimum wages and/or straight time wages from the date such amounts were due; all legally authorized penalties; and reasonable attorney’s fees and costs.

68. Plaintiff and all others similarly situated identified herein were and are employed and scheduled as a matter of established company policy to work and in fact worked as non-exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per week. Defendant employed and scheduled all employees without providing the proper overtime compensation for such excess hours worked in violation of Labor Code §§ 510, 511 and 1194 and the relevant California Industrial Welfare Commission (IWC) orders, including but not limited to,

1 daily, weekly, and seventh day premium overtime payments. Labor Code § 204 establishes the
2 fundamental right of all employees in the state of California to be paid the proper amount of wages
3 in a timely fashion for their work, including overtime. The California overtime requirement and
4 wage requirement are non-waivable rights pursuant to LC §219.

5 69. Pursuant to Labor Code §1194(a), Plaintiff may bring a civil action for overtime
6 wages directly against the employer without first filing a claim with the Division of Labor
7 Standards Enforcement (hereinafter “DLSE”) and may recover such wages, together with interest
8 thereon, penalties, attorneys’ fees and costs.

9 70. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons
10 similarly situated wages when due as required by Labor Code § 204.

11 71. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
12 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
13 Wage Order No. 5, as amended, applies to Plaintiff.

14 72. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
15 that Defendants have treated Plaintiff and all persons similarly situated, as hourly non-exempt
16 employees. Despite this classification, Defendant has willfully violated the Labor Code with
17 respect to meeting the requirements of paying all wages earned, including overtime, and all
18 remuneration when calculating the hourly non-exempt employees’ regular rate of pay, as
19 hereinbefore alleged.

20 73. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
21 class paid significantly less premium compensation for work accomplished in excess of forty (40)
22 hours per pay period, and/or eight (8) hours per day, without any valid exemption.

23 74. Labor Code §204 establishes the fundamental right of all employees in the State of
24 California to be paid wages in a timely fashion for their work.

25 75. Plaintiff is informed and believes and thereon alleges that Defendant consistently
26 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
27 members of the class which required the members of the class to work overtime without proper
28 premium pay. This included a uniform corporate policy and practice of requiring the members of

1 the class to work in excess of eight (8) hours a day without paying premium overtime. This
2 corporate policy and pattern of conduct was/is accomplished with the advance knowledge and
3 design of all Defendant herein. Thus, Plaintiff and the members of the class, regularly and
4 customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated are
5 entitled to minimum wage rates and overtime compensation when working in California under
6 California law.

7 76. Plaintiff is informed and believes and thereon alleges that the obligations and
8 responsibilities of the class employees are irrelevant because Plaintiff and all others similarly
9 situated merely allege wrongdoing with Defendants' pay plans. Further, the duties of Plaintiff and
10 all others similarly situated are not relevant in certifying any of the classes. Defendants' hourly
11 non-exempt employees work routinely included work in excess of eight (8) hours per day, forty
12 (40) hours per pay period and/or and they were not, and have never been, paid the proper regular
13 rate of compensation nor the proper premium compensation for their overtime work.

14 77. Defendants, in violation of Labor Code §§ 201 and 202, et seq., respectively, had a
15 consistent and uniform policy, practice and procedure of willfully failing to pay the earned and
16 unpaid wages of all such former employees. Defendant has willfully failed to pay the earned and
17 unpaid wages of such individuals, including, but not limited to, regular pay, straight time pay
18 (pursuant to Labor Code §1194), premium pay, and other wages earned and remaining
19 uncompensated according to amendment, or proof.

20 78. Further, as a result of Defendant's failure to properly calculate the regular rate,
21 Defendant also underpays meal and rest period premiums at the regular rate, as required by the
22 Wage Order. Further, Plaintiffs allege that Defendant failed to pay missed meal premiums at the
23 proper regular rate, by failing to include all remuneration into the regular rate, including but not
24 limited to flat sum bonuses, piece rate pay, spiffs, various rates, bonus and any other remuneration
25 paid in pay period and required to be included in the regular rate and thus, underpaid premiums it
26 did pay, pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Pursuant to
27 Labor Code §226.7, Plaintiffs are entitled to damages in an amount equal to one (1) hour of wages
28 per missed meal and/or rest break, in a sum to be proven at trial.

1 79. Plaintiff and all others similarly situated identified herein were and are employed
2 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
3 hourly employees in excess of eight (8) hours per day without proper overtime premium.
4 Defendant employed and scheduled members of the class without providing proper overtime
5 compensation for such excess daily overtime hours worked in violation of Labor Code §§ 510,
6 1194, 1198 and the relevant California Industrial Welfare Commission (IWC) orders. Pursuant to
7 Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or
8 under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 4, as
9 amended, applies to Plaintiff.

10 **FIFTH CAUSE OF ACTION**

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

12 **PURSUANT TO LABOR CODE §226**

13 **(Against All Defendants)**

14 80. Plaintiff re-allege and incorporates by reference herein the allegations of all
15 preceding paragraphs as though fully set forth herein.

16 81. The applicable Wage Order provides:

17 Every employer shall semimonthly or at the time of each payment of wages furnish
18 each employee, either as a detachable part of the check, draft, or voucher paying
19 the employee's wages, or separately, an itemized statement in writing showing: (1)
20 all deductions; (2) the inclusive dates of the period for which the employee is paid;
21 (3) the name of the employee or the employee's social security number; and (4) the
22 name of the employer, provided all deductions made on written orders of the
23 employee may be aggregated and shown as one item. Subsection (e) provides:
24 "Any employee suffering injury as a result of a knowing and intentional failure by
25 an employer to comply with subdivision (a) shall be entitled to recover the greater
26 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
27 violation occurs and one hundred dollars (\$100) per employee for each violation in
28 a subsequent pay period, not exceeding an aggregate penalty of four thousand
dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's
fees."

25 82. During the Class Period, Defendant knowingly and intentionally failed to provide
26 Plaintiff and the class members, including Plaintiff, with timely and accurate wage statements
27 showing gross wages earned, total hours worked, all deductions made, net wages earned, and all
28 applicable hourly rates in effect during each pay period and the corresponding number of hours

1 worked at each hourly rate by that Class Member. The wage statements provided to Plaintiff and
2 other California resident employees failed to state the words “total hours worked” as required by
3 California Labor Code §226.

4 83. Defendant thus required the Class Members, including Plaintiff, to work under
5 conditions prohibited by order of the Industrial Welfare Commission, in violation of those orders.

6 84. The Class Members, including Plaintiff, suffered injury as a result of Defendant’s
7 knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
8 statements required by law.

9 85. Based on Defendant’s conduct as alleged herein, Defendant is liable for actual
10 damages, statutory damages and/or statutory penalties pursuant to California Labor Code §226,
11 including attorney’s fees and costs.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

14 **(Against all Defendant)**

15 86. The Plaintiff on behalf of herself and all others similarly situated California resident
16 employees, re-allege and incorporate by reference herein, the allegations of all preceding
17 paragraphs as though fully set forth herein.

18 87. Plaintiff and/or the members of the Plaintiff Class who are California resident
19 employees who ended their employment with the Defendant during the Class Period, were entitled
20 to be promptly paid lawful overtime compensation and other premiums, as required by Labor Code
21 §§ 201-203. Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff Class
22 wages owed as a result of their failure to provide meal and/or rest periods as well as pay proper
23 premium overtime compensation or all wages due to illegal rounding. Pursuant to Labor Code §
24 203, such Plaintiff and Plaintiff Class members seek the payment of penalties pursuant to Labor
25 Code § 203, according to proof.

26 88. Accordingly, Plaintiff and Plaintiff Class members are entitled to attorneys’ fees,
27 and costs, pursuant to Labor Code § 203 and prejudgment interest.

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1 SEVENTH CAUSE OF ACTION

2 CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699

3 89. Plaintiff re-alleges and incorporates each and every one of the allegations of all
4 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
5 herein.

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

12 91. Whenever the LWDA, or any of its departments, divisions, commissions, boards
13 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized
14 to exercise the same discretion, subject to the same limitations and conditions to assess a civil
15 penalty.

16 92. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
17 employees" as defined by Labor Code §2699, in that they are all current or former employees of
18 Defendants, and one or more of the alleged violations was committed against them

19 93. Prior to filing this First Amended Complaint, Plaintiff gave written notice to the
20 LWDA on or about September 2, 2022, via mandatory online filing through the State of California
21 LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail,
22 of the specific provisions of this code alleged to have been violated, including listing some facts
23 and some theories to support the alleged violations as required by Labor Code §2699.3; A true and
24 correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that she has exhausted all
25 administrative remedies and filed the herein complaint 65 days after mailing said notice. At the
26 date of filing this Complaint, the LWDA has not responded with any intention to investigate. As
27 such, Plaintiff has exhausted her administrative requirements pursuant to LC §2699.3(a)(1) and (2)
28 (A-C).

1 94. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
2 behalf of themselves and other current or former employees, to bring a civil action to recover civil
3 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

4 95. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
5 employees are entitled to recover civil penalties for each of the Defendant's violations of California
6 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the
7 applicable limitations period in the following amounts:

- 8 a. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
9 each aggrieved employee for each initial violation and two hundred dollars
10 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the
11 amount unlawfully withheld from each aggrieved employee for each subsequent,
12 willful or intentional violation (penalty amounts established by California Labor
13 Code § 210).
- 14 b. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
16 per employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).
- 18 c. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each
19 aggrieved employee for each initial violation for pay period for which the employee
20 was underpaid in addition to an amount sufficient to recover unpaid wages and one
21 hundred dollars (\$100.00) for each underpaid employee for each pay period for
22 which the employee was underpaid (penalty amounts established by California
23 Labor Code § 558).
- 24 d. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for
25 each aggrieved employee for each initial and intentional violation per pay period
26 (regardless of whether the initial violations were intentionally committed) and two
27 hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent
28 violation per pay period (regardless of whether the initial violations were

intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to California Labor Code § 1194.2, and applicable penalties imposed pursuant to California Labor Code § 203.

- e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).
- f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of Regulations in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation;
- g. Penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, 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, plus 25% of the wage wrongly withheld;
- h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;
- i. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee for

each pay period for which the employee was underpaid pursuant to Labor Code §558 provided to the affected employees;

j. Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

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

l. Penalties under Labor Code section 210 for the weekly pay violations.

96. Pursuant to California Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That the Court determine this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order preliminarily and permanently enjoining Defendant from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendant by means of the unfair practice complained of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200, et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

4. For an order finding and declaring that Defendant's acts and practices as challenged herein are unlawful, and unfair and/or fraudulent;

5. For an accounting, under administration of Plaintiff and subject to Court Review, to determine the amount to be returned by Defendant and the amounts to be refunded to members who are or were not paid all their wages due to Defendant's unfair business practices;

1 6. For the creation of an administrative process wherein each injured current and
2 former employee receives his or her back wages in the form of overtime pay or alternatively that
3 each current or former eligible employee may submit a claim in order to receive his/her money;

4 7. For an order requiring Defendant to make full restitution and payment pursuant to
5 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
6 510, and 1194;

7 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
8 appropriate declaratory and equitable relief;

9 9. For pre-judgment interest to the extent permitted by law;

10 10. For pre-judgment interest to the extent permitted by law and the California
11 Constitution;

12 11. For an order requiring Defendant to identify, by name, address and telephone
13 number of each person who worked as an hourly non-exempt employee for Defendant from four
14 (4) years before filing of the original complaint in this action through the time of judgment;

15 **As to the Second Cause of Action:**

16 12. For damages according to proof, as set forth in Labor Codes §§ 204, 218, 226, 510,
17 1194, and 1198 et seq., (and the applicable California Industrial Welfare Commission wage orders)
18 regarding wages due and owing;

19 13. For unpaid straight time wages pursuant to Labor Code §1194 and overtime wages
20 at the correct regular rate of pay.

21 14. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil
22 Code § 3287(b), and for reasonable attorneys' fees;

23 **As to the Third Cause of Action:**

24 15. For payment of sick pay at the employees' regular rate of pay during the statutory
25 time period.

26 **As to the Fourth Cause of Action:**

27 16. That the Court grant to Plaintiff and the Class an award of unpaid minimum wages
28 or straight time wages; liquidated damages as allowed by statute; prejudgment interest on any
unpaid wages from the date such amounts were due; and for all legally authorized penalties.

1 17. For damages according to proof, as set forth in Labor Codes §§ 204, 218, 226, 510,
2 1194, and 1198 et seq., (and the applicable California Industrial Welfare Commission wage orders)
3 regarding wages due and owing;

4 18. For unpaid straight time wages pursuant to Labor Code §1194;

5 19. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
6 and CC §3287;

7 **As to the Fifth Cause of Action:**

8 20. For recovery as authorized by Labor Code §226(e);

9 21. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
10 §226(e) and/or §226(g);

11 **As to the Sixth Cause of Action:**

12 22. For waiting time penalties for all former employees not timely paid their last pay
13 check, including vacation pay;

14 23. For reasonable attorneys' fees and costs;

15 **As to the Ninth Cause of Action:**

16 24. On behalf of all current and former employees, for all civil penalties authorized by
17 Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558 plus
18 Labor Code §1197.1 for former or current employees who are due wage payments;

19 25. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
20 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
21 period for each subsequent violation;

22 26. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
23 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
24 payment was/is made, up to a maximum of thirty (30) days;

25 27. For civil penalties, pursuant to Labor Code § 558 as follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
27 each pay period for which the employee was underpaid;

28 (2) For each subsequent violation, one hundred dollars (\$100) for each
underpaid employee for each pay period for which the employee was underpaid;

1 28. For civil penalties under Labor Code §210, in addition to and entirely independent
2 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
3 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
4 for each subsequent violation, plus 25% of the wage wrongly withheld;

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

10 **As to All Causes of Action:**

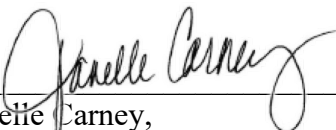
11 30. For reasonable attorneys' fees and costs incurred;

12 31. For such other and further relief as this Court may deem just and proper.

13
14
15 Date: November 8, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

16
17 By:



Janelle Carney,
Attorney for Plaintiff
Kaitlin Talley

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Date: November 8, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:



Janelle Carney,
Attorney for Plaintiff
Kaitlin Talley

Exhibit 1



September 2, 2022

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

Travel Nurse Across America, LLC
5020 Northshore Drive, Suite 2
North Little Rock, AR 72118

Subject: *Kaitlin Talley v. Travel Nurse Across America, LLC*

Dear Representative:

This office and Janelle Carney-Attorney at Law, APC represents Kaitlin Talley in connection with Labor Code violation claims related to her employment with Travel Nurse Across America, LLC ("Employer"). Employer can be contacted at:

Travel Nurse Across America, LLC
5020 Northshore Drive, Suite 2
North Little Rock, AR 72118

During Kaitlin Talley's employment with Travel Nurse Across America, LLC, she was subjected to at least one of the Labor Code violations alleged in this letter. As such, Kaitlin Talley intends to seek PAGA penalties on behalf of herself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

Minimum Wage Violations

Labor Code section 1197 and the applicable Wage Order requires an employer to pay an employee no less than the minimum wage for all hours worked.

Off the Clock Work

Employer failed to pay the Aggrieved Employees the minimum wage for all hours worked because the Aggrieved Employees were required to perform work while off the clock. Specifically, Ms. Talley and the Aggrieved Employees were required to participate in the new employee onboarding process at the beginning of their employment but were not paid for this

time. This onboarding process took several hours, and consisted of a physical / medical examination and completing training and evaluation modules.

Applicable Civil Penalties

As a result of the above minimum wage violations, Employer is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699.

Overtime Violations

Labor Code section 510 and the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

Unpaid Overtime Due to Off the Clock Work

The Aggrieved Employees regularly worked in excess of eight hours in a day and 40 hours in a workweek. Since the Aggrieved Employees were required to perform work off the clock, it follows that this time was often overtime. Thus, the Aggrieved Employees were not paid all overtime wages owed.

Overtime Paid at the Wrong Regular Rate

Overtime must be paid based off an employee's regular rate of pay. Here, Employer failed to incorporate all remunerations, including Housing and M&I pay, and other non-discretionary pay, into the calculation of the regular rate of pay for purposes of calculating the Aggrieved Employees overtime rates. This resulted in the underpayment of overtime to the Aggrieved Employees.

Clarke v. AMN Servs., LLC, 987 F.3d 848 (9th Cir. 2021) issued a unanimous decision holding per diem payments made to nurses and technicians that varied depending on how much they worked were part of the workers' regular rate of pay under the Federal Labor Standards Act and California law.

The defendant, a travel nurse staffing company, had a practice of deducting a portion of the per diems paid to employees when they missed shifts. The defendant also paid per diems to employees who did not travel. The Ninth Circuit held that the defendant's per diems actually functioned as compensation, similar to bonuses for good attendance, as opposed to reimbursement to employees for travel expenses. As such, these payments should have been included in employees' regular rate of pay for determination of overtime rate of pay. The Court considered the following factors: (1) "the tie of the per diem deductions to shifts not worked regardless of the reason for not working"; (2) "a 'banking hours' system"; (3) "the default payment of per diem on a weekly basis, including for days not worked away from home, without regard to whether any expenses were actually incurred on a given day"; (4) "and the payment of

per diem in the same amount, but as acknowledged wages, to local clinicians who did not travel.”

Applicable Civil Penalties

As a result of the above overtime violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Meal Break Premium Pay Violations

Labor Code section 226.7 provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal or rest period was not provided.

Premium pay for missed breaks must be paid at the employees’ regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including all forms of non-discretionary pay. Here, the Aggrieved Employees received non-discretionary pay that increased their regular rate of pay, however, this pay was not included in the calculation of premium pay paid for missed breaks.

Applicable Civil Penalties

As a result of the above premium pay violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which includes, among other things, gross and net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Employer failed to provide wage statements which accurately reflected this information.

Applicable Civil Penalties

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee’s resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day’s wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so.

Applicable Civil Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Sick Pay Violation

Labor Code section 246 requires that employers pay sick pay at an employee's regular rate of pay. The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses.

Here, the Aggrieved Employees received non-discretionary pay, however, this pay was not included in the calculation of their sick pay in violation of Labor Code section 246. Furthermore, since the Aggrieved Employees did not receive all sick pay during their employment, it follows that they also did not receive these wages at the conclusion of their employment in violation of Labor Code sections 201 and 202.

Applicable Civil Penalties

As a result of the sick pay violations detailed above, Employer is subject to the civil penalties listed in Labor Code section 2699.

Violation of California Minimum Wage

Defendant pays Plaintiff and the hourly employees in California below California's minimum wage for controlled standby time. Defendants fail to properly pay minimum wage to employees working standby shifts as required by Labor Code §1194. Plaintiff alleges that Defendant standby shifts are restrictive and prevent employees from using said time for personal time.

Applicable Civil Penalties

As a result of the sick pay violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Violation of Labor Code § 2810.5

Defendant fails to provide accurate notice of wages as required by Labor Code §2810.5 and/or fails to comply with a notice they do provide. Plaintiff was told she would be earning an hourly rate of \$48.74 an hour but subsequent pay periods Plaintiff was paid an hourly rate less than was provided in the notice without notice or change of status. Accordingly, Plaintiff and the

aggrieved employees are entitled to penalties for Defendant's failure to provide and maintain accurate notice of wages.

Applicable Civil Penalties

As a result of the sick pay violations detailed above, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Kaitlin Talley becomes aware of additional facts or theories of liability, Kaitlin Talley expressly reserves the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Manny Starr

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Avenue, Suite E, Second Floor, Chino Hills, CA 91709-6025.

On November 8, 2022, I served the foregoing document described as:

FIRST AMENDED COMPLAINT

on INTERESTED PARTIES in this action by placing a copy thereof enclosed in a sealed envelope addressed as stated below:

AKERMAN LLP

SARAH KROLL-ROSENBAUM

sarah.kroll-rosenbaum@akerman.com

carol.corder@akerman.com

ANTHONY D. SBARDELLATI

anthony.sbardellati@akerman.com

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601 West Fifth Street, Suite 300

Los Angeles, California 90071

XX BY E-MAIL: I served the above-mentioned document by serving electronically to each of the above recipients at their respective e-mail addresses and simultaneously sending for electronic filing. My e-address is: Janelle@JanelleCarneyLaw.com.

Executed on November 8, 2022 at Chino Hills, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Janelle Carney