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16 Attorneys for Plaintiff KEVIN TOBIN
17 individually and on behalf of all others similarly situated.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF PLACER**

20 KEVIN TOBIN, individually and on behalf of
21 all others similarly situated,

22 Plaintiff,

23 v.

24 ADVENTIST HEALTH SYSTEM/WEST, a
25 California Corporation; and DOES 1-50,
26 inclusive,

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
11/16/2022 at 05:01:11 PM
By: Jennifer Bunday
Deputy Clerk

CASE NO.: S-CV-0049484

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
3. Failure to Pay Timely Wages Required by Labor Code § 203
4. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
5. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
6. Violation of Business & Professions Code § 17200, et seq.
7. Private Attorney General Act of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff KEVIN TOBIN (“Plaintiff”), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby files this
3 Complaint against Defendants ADVENTIST HEALTH SYSTEM/WEST, a California
4 Corporation; and DOES 1-50, inclusive (collectively “Defendants”) and alleges on information
5 and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

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

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders, CCP, California Civil Code (“CC”)
24 and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or
27 omissions alleged herein took place in this County.

II. PARTIES

6. Plaintiff, KEVIN TOBIN, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in approximately August 2013 as a Non-Exempt Employee with the title of Network Analyst and worked during the liability period for Defendants until Plaintiff's separation from Defendants' employ in approximately November 2021. Plaintiff's duties included but were not limited to providing internet/network support for infrastructure cabling and desktop assistance.

7. Defendants ADVENTIST HEALTH SYSTEM/WEST operates as a hospital and medical center. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

8. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capacities are ascertained.

9. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

III. CLASS ACTION ALLEGATION

10. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

1 All persons who have been employed by Defendants as Non-Exempt Employees or
2 equivalent positions, however titled, in the state of California within four (4) years from
3 the filing of the Complaint in this action until its resolution. (collectively referred to as the
4 “Class” or “Plaintiff’s Class” or “Class Members”).

5 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as
6 follows:

7 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
8 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
9 permitted a rest period (hereinafter collectively referred to as the “Rest Period Subclass”).

10 **Sub-Class 2:** All Class Members who are or were employed by Defendants at any time
11 between November 2021 and the present and who received wage statements from
12 Defendant (hereinafter collectively referred to as the “Wage Statement Subclass”).

13 **Sub-Class 3:** All Class Members who have been employed by Defendants at any time
14 between November 2019 and the present and have separated their employment (hereinafter
15 collectively referred to as the “Waiting Time Penalty Subclass”).

16 **Sub-Class 4:** All Class Members who are or were employed by Defendants and subject to
17 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair
18 Business Practice Subclass”).

19 **Sub-Class 5:** All Class Members who are or were employed by Defendants and incurred
20 business expenses as a result of the discharge of their duties (hereinafter collectively
21 referred to as the “Reimbursement Subclass”).

22 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
23 applicable laws to amend or modify the class definition with respect to issues or in any other
24 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

25 13. The term “Class” includes Plaintiff and all members of the Class and each of the
26 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
27 this complaint.

28 14. There is a well-defined community of interest in the litigation and the proposed
Class is easily ascertainable through the records Defendants are required to keep.

15. Numerosity. The members of the Class are so numerous that individual joinder
of all of them as Plaintiff is impracticable. While the exact number of the Class members is
unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there

1 are at least 100 (one hundred) Class members.

2 16. Commonality. Common questions of law and fact exist as to all Class members
3 and predominate over any questions that affect only individual members of the Class. These
4 common questions include, but are not limited to:

5 i. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
6 Members;

7 ii. Whether Defendants failed to reimburse necessary business expense
8 pursuant to Labor Code § 2802;

9 iii. Whether Defendants violated Labor Code sections 226.7, 512, and
10 applicable IWC Wage Orders, by failing to authorize and permit daily rest periods to Plaintiff and
11 Class Members for every four hours or major fraction thereof worked and failing to compensate
12 said employees one hours wages in lieu of rest periods;

13 iv. Whether Defendants failed to maintain accurate time record including
14 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
15 the applicable IWC Wage Orders;

16 v. Whether Defendants provided accurate itemized wage statements pursuant
17 to Labor Code section 226;

18 vi. Whether Defendants violated Business and Professions Code and Labor
19 Code sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1,
20 and 1198, and applicable IWC Wage Orders which violation constitutes a violation of fundamental
21 public policy;

22 vii. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
23 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

24 17. Typicality. Plaintiff's claims herein alleged are typical of those claims which could
25 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief
26 which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff
27 and all members of the Class and or Subclass sustained injuries and damages arising out of and
28

1 caused by Defendants' common course of conduct in violation of California laws, regulations, and
2 statutes as alleged herein.

3 18. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
4 interests of each member of the Class and/or Subclass with whom she has a well defined
5 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
6 obligation to make known to the Court any relationships, conflicts, or differences with any
7 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
8 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
9 settlement and experienced in handling such matters. Other former and current employees of
10 Defendants may also serve as representatives of the Class and Subclass if needed.

11 19. Superiority. A class action is superior to other available means for the fair and
12 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
13 court. Class action treatment will allow a large number of similarly situated persons to prosecute
14 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
15 duplication of effort and expense that numerous individual actions would require. The damages
16 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
17 and the expense and burden of individual litigation would make it extremely difficult or
18 impossible for the individual Class Members to seek and obtain individual relief. A class action
19 will serve an important public interest by permitting such individuals to effectively pursue
20 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
21 or contradictory judgments raised by individual litigation.

22 20. Public Policy Considerations: Employers in the state of California violate
23 employment and labor laws everyday. Current employees are often afraid to assert their rights out
24 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
25 they believe their former employers may damage their future endeavors through negative
26 references and/or other means. The nature of this action allows for the protection of current and
27 former employees' rights without fear or retaliation or damage.

28

IV. FACTUAL ALLEGATIONS

21. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

22. Plaintiff are informed and believes Class Members have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

23. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties related to providing assistance and support to Defendants' hospital and medical center.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

25. Plaintiff alleges that all class members are citizens of the State of California.

26. On information and belief, during the relevant time frame, Plaintiff and Class Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work week.

27. During the relevant time frame, Defendants compensated Plaintiff and Class Members based upon an hourly rate.

28. During the relevant time frame, all Class Members are citizens of the state of California.

29. On information and belief, during the relevant time frame, Plaintiff and Class Members typically worked five (5) days a week.

30. Plaintiff is informed and believes that the Class Members were required to keep similar schedules.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to compensate Plaintiff and Class Members for all time worked resulting in an underpayment of minimum and overtime wages. For instance, Defendants failed to compensate Plaintiff and Class

1 Members for COVID screenings prior to clocking in for their shifts. Plaintiff and Class Members
2 would have to wait in line for approximately 6 minutes to begin their screenings. These screenings
3 included temperature checks and the completion of questionnaires. The screenings themselves
4 took approximately 3-5 minutes to complete. In total Plaintiff and Class Members spent
5 approximately 9-11 minutes prior to their shifts to complete these screenings. As these screenings
6 were performed off-the-clock, Plaintiff and Class Members were not uncompensated for this time.
7 Further, Plaintiff and Class Members were not compensated for on-call time. For instance, every
8 fourth week of the month, Plaintiff and Class Members were required to be on-call for the entire
9 week (i.e. seven (7) days) from Monday 6:00 a.m. to the following Monday at 5:00 a.m.
10 Defendants failed to accurately pay for such on-call time.

11 32. In addition, Plaintiff and Class Members would on occasion spend approximately
12 30-40 minutes driving off-the-clock to deliver computers to employees that were working from
13 home. Defendants failed to compensate Plaintiff and Class Members for this time.

14 33. Lastly, Plaintiff is informed and believes, and therefore alleges that Defendants
15 would round employee times to avoid having to pay overtime pay. For instance, Plaintiff and
16 Class Members were instructed to report to management when they worked longer than their
17 scheduled shifts. Plaintiff is informed and believes Defendants' management would then alter
18 time records to deduct the overtime hours, so their time sheets would only reflect the hours they
19 were scheduled to work for that particular shift.

20 34. As a result of the above practices, Plaintiff and Class Members were not
21 compensated correctly for minimum and overtime wages.

22 35. In addition, the Class Members frequently worked in excess of eight (8) hours a
23 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at the
24 employee's correct rate of pay per hour for overtime.

25 36. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
26 should know, knew, and/or should have known that Plaintiff and the other Class Members were
27 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
28 were not receiving such compensation.

37. During the relevant time frame, Plaintiff and the Non-Exempt Employees were

1 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
2 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
3 wage order.

4 38. Plaintiff and Class Members were required to stay on the premises during their
5 shifts and were not allowed to leave during rest breaks.

6 39. Defendants maintained and enforced scheduling practices, policies, and imposed
7 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
8 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
9 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
10 provide relief for Plaintiff and Class Members to take their lawfully required breaks.

11 40. Despite the above-mentioned rest period violations, Defendants did not compensate
12 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
13 their regular rate as required by California law, including Labor Code section 226.7 and the
14 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
15 permitted.

16 41. Defendants also failed to reimburse Plaintiff and Class Members for business
17 expenses incurred pursuant to Labor Code section 2802. For instance, Plaintiff and Class Members
18 were required to use their personal vehicles during work hours for work related purposes,
19 including, but not limited to, driving between Defendants' work sites. Plaintiff and Class Members
20 would use their personal vehicles to drop off computers for employees who were working from
21 home. Defendants did not reimburse Plaintiff or Class Members for mileage.

22 42. In addition, Defendants did not reimburse Plaintiff and Class Members for home
23 internet usage when Plaintiff and Class Members worked from home. Despite the realities of their
24 duties, Defendants failed to reimburse for these business related expenses.

25 43. Defendants also failed to provide accurate, lawful itemized wage statements to
26 Plaintiff and the Class Members in part because of the above specified violations. In addition,
27 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
28 including premiums due and owing for rest period violations, gross pay and net pay figures from

1 Plaintiff and the Class Members ' wage statements.

2 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
4 thereof for resignations without prior notice as the case may be) they had a duty to accurately
5 compensate Plaintiff and Class Members for all wages owed including overtime wages, rest period
6 premiums, and that Defendants had the financial ability to pay such compensation, but willfully,
7 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
8 violations. Plaintiff's own final paycheck was not given to him until 5 days after his departure
9 from Defendant's employ.

10 45. Upon information and belief, Defendants knew and or should have known that it is
11 improper to implement policies and commit unlawful acts such as:

12 (a) requiring employees to work four (4) hours or a major fraction thereof without
13 being provided a minimum ten (10) minute rest period and without compensating the employees
14 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
15 rest period was not provided;

16 (b) failing to pay overtime wages;

17 (c) failing to provide accurate itemized wage statements;

18 (d) failing to timely pay Plaintiff and Class Members;

19 (e) failure to reimburse business expenses; and

20 (f) conducting and engaging in unfair business practices.

21 45. In addition to the violations above, and on information and belief, Defendants knew
22 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein, and
23 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
24 recklessly, and/or intentionally failed to do so.

25 46. In addition to the violations above, and on information and belief, Defendants knew
26 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein, and
27 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
28 recklessly, and/or intentionally failed to do so.

47. Plaintiff and Class Members they seek to represent are covered by, and Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES INCLUDING OVERTIME

(Against All Defendants)

48. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

49. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class require employers to pay its employees for each hour worked at least minimum wage. "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked.

50. At all relevant times, Labor Code §1197 provides that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour worked, and cannot be averaged. At all times relevant, the IWC wage orders applicable to Plaintiff and Class Members' employment by Defendants provided that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

51. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or

1 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
2 damages payable to the employee, and any applicable penalties pursuant to Section 203.

3 52. Labor Code §510 codifies the right to overtime compensation at the rate of one and
4 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
6 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
7 seventh day of work in a particular work week.

8 53. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
9 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
10 et. seq. and the Labor Code.

11 54. At all times relevant, Plaintiff and Class Members consistently worked in excess of
12 eight (8) hours in a day and/or forty (40) hours in a week and Defendant's failed to accurately
13 calculate overtime pay to Plaintiff and Class Members.

14 55. At all times relevant, Defendants have failed to accurately pay minimum and
15 overtime owed to Plaintiff and Class Members.

16 56. Accordingly, Defendants owe Plaintiff and Class Members minimum and overtime
17 wages, and have failed to pay Plaintiff and Class Members their wages owed.

18 57. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
19 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
20 attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

23 **(Against All Defendants)**

24 58. Plaintiff incorporates and re-alleges each and every allegation contained above as
25 though fully set forth herein.

26 59. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
27 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
28 periods, which insofar as practicable shall be in the middle of each work period.... [The]

1 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
2 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period
3 time shall be counted as hours worked, for which there shall be no deduction from wages.” Labor
4 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
5 mandated by an applicable order of the IWC.

6 60. Defendants were required to authorize and permit employees such as Plaintiff and
7 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
8 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.
9 Despite said requirements of the IWC wage orders applicable to Plaintiff’s and Class Members’
10 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
11 Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major
12 fraction thereof.

13 61. On information and belief Defendants created a working environment in which
14 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
15 and/or work related demands placed upon them by Defendants to meet the needs of Defendants’
16 business as discussed above. On information and belief, Defendants implemented a policy and
17 practice which resulted in systematic and class-wide violations of the Labor Code. On
18 information and belief, Defendants’ violations have been widespread throughout the liability
19 period.

20 62. As a proximate result of the aforementioned violations, Plaintiff and Class
21 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
22 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
23 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
24 interest and penalties thereon, attorneys' fees, and costs.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY TIMELY PAY WAGES**

27 **(Against All Defendants)**

28 63. Plaintiff incorporates and re-alleges each and every allegation contained above as

1 though fully set forth herein.

2 64. Labor Code §§201-202 requires an employer who discharges an employee to pay
3 compensation due and owing to said employee immediately upon discharge and that if an
4 employee voluntarily leaves his or her employment, his or her wages shall become due and
5 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
6 two (72) hours previous notice of his or her intention to quit, in which case the employee is
7 entitled to his or her wages on their last day of work.

8 65. Labor Code §203 provides that if an employer willfully fails to pay compensation
9 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting
10 time penalties in the form of continued compensation for up to thirty (30) work days.

11 66. During the relevant time period, Defendants willfully failed and refused, and
12 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
13 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
14 leaving Defendants' employ. These wages include regular and overtime.

15 67. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt
16 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
17 according to proof at the time of trial.

18 **FOURTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

21 68. Plaintiff incorporates and re-alleges each and every allegation contained above as
22 though fully set forth herein.

23 69. Section 226(a) states that An employer, semimonthly or at the time of each
24 payment of wages, shall furnish to his or her employee, either as a detachable part of the check,
25 draft, or voucher paying the employee's wages, or separately if wages are paid by personal check
26 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
27 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units
28 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

1 deductions, provided that all deductions made on written orders of the employee may be
2 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
3 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
4 social security number or an employee identification number other than a social security number,
5 (8) the name and address of the legal entity that is the employer.

6 70. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
7 statements all deductions from payment of wages and to accurately report total hours worked by
8 Plaintiff and the Class including applicable hourly rates among other things. Defendants have
9 knowingly and intentionally failed to comply with Labor Code section 226 and 204 on wage
10 statements that have been provided to Plaintiff and the Class.

11 71. IWC Wage Orders require Defendants to maintain time records showing, among
12 others, when the employee begins and ends each work period, meal periods, split shift intervals
13 and total daily hours worked in an itemized wage statement, and must show all deductions and
14 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
15 the Class. On information and belief, Defendants have failed to record all or some of the items
16 delineated in Industrial Wage Orders and Labor Code §226.

17 72. Defendants have failed to accurately record all time worked.

18 73. Defendants have also failed to accurately record the rest period premiums owed and
19 all wages owed per pay period.

20 74. Plaintiff and the Class have been injured as they were unable to determine whether
21 they had been paid correctly for all hours worked per pay period among other things.

22 75. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a
23 maximum of \$4,000 each for record keeping violations.

24 76. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
25 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
26 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
27 for each violation in a subsequent citation, for which the employer fails to provide the employee a
28 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

4 **(Against All Defendants)**

5 77. Plaintiff incorporates and re-alleges each and every allegation contained above as
6 though fully set forth herein.

7 78. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
8 for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As
9 a necessary part of employment, Plaintiff and on information and belief Class Members, were not
10 adequately reimbursed by Defendants for expenses incurred as a result of their having to use their
11 personal vehicles as described above, which was incurred as a direct consequence of the discharge
12 of duties by Plaintiff and Class Members or for business expenses incurred while they were
13 working from home as discussed above. Despite these realities of the job, Defendants failed to
14 provide reimbursements.

15 79. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
16 implied, made by any employee to waive the benefits of this article or any part thereof is null and
17 void, and this article shall not deprive any employee or his or her personal representative of any
18 right or remedy to which he is entitled under the laws of this State.

19 80. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
20 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
21 the recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
22 pursuant to Labor Code § 2802.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

25 **(Against All Defendants)**

26 81. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 82. Defendants’ conduct, as alleged in this complaint, has been, and continues to be,

1 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
2 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of the California Code of Civil Procedure §1021.5.

4 83. Defendants' policies, activities, and actions as alleged herein, are violations of
5 California law and constitute unlawful business acts and practices in violation of California
6 Business and Professions Code §§17200, et seq.

7 84. A violation of California Business and Professions Code §§17200, et seq., may be
8 predicated on the violation of any state or federal law. Defendants' policy of failing to accurately
9 pay overtime, failing to pay minimum wages, failing to reimburse expenses, failing to provide
10 accurate itemized wage statements and failing to provide Plaintiff and the Class with rest breaks or
11 the one (1) hour of premium pay when a rest break period was not provided or provided outside of
12 the required time frames, violates Labor Code § 226, §512, §226.7, § 1194, § 2802 and applicable
13 IWC Wage Orders and California Code of Regulations.

14 85. Plaintiff and Class Members have been personally aggrieved by Defendants'
15 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
16 property.

17 86. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
18 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
19 during a period that commences four (4) years prior to the filing of this complaint; an award of
20 attorneys' fees, interest; and an award of costs.

21 **EIGHTH CAUSE OF ACTION**

22 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

23 **(Against All Defendants)**

24 87. Plaintiff incorporates and re-alleges each and every allegation contained above as
25 though fully set forth herein.

26 88. On September 1, 2022, Plaintiff complied with notice requirements pursuant to
27 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
28 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and

1 that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
2 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
3 representative capacity. The substance and violations set forth in this Complaint of which the
4 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
5 Action Complaint to the LWDA.

6 89. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
7 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
8 Employees of Defendants.

9 90. Defendants knew and or should have known that it is improper to implement
10 policies and commit unlawful acts such as:

- 11 (a) requiring employees to work four (4) hours or a major fraction thereof without being
12 provided a minimum ten (10) minute rest period and without compensating the
13 employees with one (1) hour of pay at the employees' regular rate of compensation
14 for each workday that a rest period was not provided;
- 15 (b) failing to pay all wages including overtime wages;
- 16 (c) failing to provide accurate itemized wage statements;
- 17 (d) failing to timely pay Plaintiff and Class Members; and
- 18 (e) failure to reimburse business expenses.

19 91. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
20 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
21 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
22 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and
23 California Code of Regulations, Title 8, section 11000 *et seq.*

24 92. Additionally, Defendants have no accurate records relating to Class Members'
25 work periods, rest periods, total daily hours worked, total hours worked per payroll period and
26 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate
27 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

28 93. As a result of Defendants' unlawful conduct, Plaintiff and Class Members are

1 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
2 worked.

3 94. Plaintiff and the Representative Class Members are entitled to recover Penalties
4 and attorneys' fees and costs under Labor Code section 2698, et seq

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

7 Class Certification

- 8 1. That this action be certified as a class action;
9 2. That Plaintiff be appointed as the representative of the Class;
10 3. That Plaintiff be appointed as the representative of the Subclass; and
11 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

12 On the First Cause of Action

- 13 1. For compensatory damages equal to the unpaid balance of minimum wage
14 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
15 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
16 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
17 interest thereon pursuant to Labor Code §§ 1194.2, 558;
18 4. For such other and further relief as the Court deems proper.

19 On the Second Cause of Action

- 20 1. For one (1) hour of premium pay for each day in which a required rest period was
21 not authorized or permitted; and
22 2. For such other and further relief as the Court deems proper.

23 On the Third Cause of Action

- 24 1. For statutory penalties pursuant to Labor Code §203;
25 2. For interest for wages untimely paid; and
26 3. For such other and further relief as the Court deems proper.

27 On the Fourth Cause of Action

- 28 1. For statutory penalties pursuant to Labor Code §226;

2. For interest for wages untimely paid;
3. For penalties pursuant to Labor Code §226.3; and
4. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For statutory penalties pursuant to Labor Code §2802;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and Class Members for their past failure to accurately pay overtime and sick pay, failing to pay minimum wages, failing to reimburse expenses, failing to provide accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not provided or provided outside of the required time frames as described herein to Plaintiff and Class Members over the last four (4) years in an amount according to proof;

2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

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Dated: November 7, 2022

By: 

Attorneys for Plaintiff KEVIN TOBIN
individually and on behalf of all others
similarly situated.

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 1, 2022

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

ADVENTIST HEALTH SYSTEM/WEST
Agent for Service of Process: Corporation Service Company Which Will Do Business in
California as CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No.: 7021 0950 0000 7376 7334

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff KEVIN TOBIN individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and ADVENTIST HEALTH SYSTEM/WEST through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Placer County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint