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ATTACHMENT NAME: Answer: First Amended Complaint	
CASE NAME: Tamara Cox vs. Nurseloop USA	CASE NUMBER: CIVSB2225440
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

TAMARA COX, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NURSELOOP USA, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2225440
*[Assigned to Hon. Judge Joseph Ortiz, Dept
S17, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Willful Misclassification;
- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Bus. Expenses;
- (15) Failure to Timely Pay Wages (§ 204);
- (16) Failure to Timely Pay Final Wages;
- (17) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Tamara Cox (“Plaintiff”) on behalf of herself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her employer(s), NurseLoop USA and DOES 1
5 through 20, inclusive, (collectively, “Defendants”) on behalf of all persons that performed
6 medical services for Defendants in the State of California and who were classified by Defendants
7 as independent contractors within the last four years (the “Represented Employees”).

8 2. Plaintiff alleges that, at all relevant times herein, Defendants engaged in a practice
9 of willfully misclassifying Plaintiff and the Represented Employees as independent contractors.
10 Thus, Plaintiff alleges that she and the Represented Employees were subjected to violations of
11 the California Labor Code stemming from this willful misclassification, along with violations for
12 failure to pay all wages owed, including minimum, regular, and overtime wages, failure to
13 provide meal periods, failure to provide rest breaks, failure to reimburse business expenses,
14 failure to timely pay wages upon separation of employment, and failure to provide accurate
15 itemized wage statements.

16 3. Plaintiff was employed by Defendants from approximately October through
17 November 2022.

18 4. Plaintiff alleges on information and belief that the Represented Employees were
19 subjected to the same policies, working conditions, and corresponding wage and hour violations
20 to which Plaintiff was subjected during employment.

21 5. At all relevant times, Plaintiff and the Represented Employees performed various
22 duties for Defendants as employees that provided staffed medical services at various facilities in
23 California. However, Defendants have maintained policies and practices based on or including
24 the willful misclassification of Plaintiff and the Represented Employees as independent
25 contractors despite that, under applicable standards of law, Plaintiff and all Represented
26 Employees are, or were during their employment with Defendants, employees, and not
27 independent contractors.

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1 6. Defendants engaged in a practice of willfully misclassifying the Represented
2 Employees as independent contractors despite that the Represented Employees were employees
3 of Defendants because they (A) are/were subject to the control and direction of Defendants in
4 connection with the performance of their work, both under contract and in fact, (B) performed
5 work that was the core business of Defendants (e.g., staffed nursing and similar medical
6 services), and therefore the Represented Employees' tasks were not outside the usual course of
7 the Company's business, and (C) were not customarily engaged in an independently established
8 trade, occupation, or business of the same nature as the work performed by Defendants.

9 7. Also, Plaintiff and the Represented Employees were subject to the direction and
10 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
11 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
12 working conditions of Plaintiff and the Represented Employees. At all relevant times, the daily
13 schedule for Plaintiff and the Represented Employees was controlled solely by Defendants, and
14 Defendants told them the exact time and location for all daily appointments – and Defendants
15 had unilateral control and ability to cancel assignments if they chose to do so. Furthermore,
16 through the performance of their job duties, Plaintiff and the Represented Employees performed
17 an integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and the
18 Represented Employees were tasked to perform the one and only service that Defendants
19 provided: staffed nursing and similar medical services. Additionally, the customers (the medical
20 facilities) are and/or were Defendants' customers, not those of Plaintiff or the Represented
21 Employees. Plaintiff and the Represented Employees were also prohibited from performing
22 similar services for other companies and, thus, were not engaged in an independently established
23 trade, occupation or business of the same nature as the work performed by Defendants. And,
24 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the
25 Represented Employees' working relationship without cause and at its discretion.

26 8. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
27 Represented Employees as independent contractors rather than as employees, leading to
28 violations of the California Labor Code and IWC Wage Orders discussed below.

1 9. Plaintiff and the Represented Employees were not provided all minimum wages
2 due to Defendants' failure to accurately record and compensate for all hours worked. For
3 instance, at all relevant times, Plaintiff and the Represented Employees were subjected to
4 violations for: (1) instances when Claimant and the Aggrieved Employees did not receive
5 minimum or contract wages for all hours worked, and (2) instances when Claimant and the
6 Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week
7 yet were not paid proper overtime or doubletime compensation.

8 10. Plaintiff and the Represented Employees were also denied 30-minute off-duty
9 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
10 the Represented Employees were subjected to meal period violations when they were: (1) unable
11 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
12 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
13 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
14 in excess of 10 hours.

15 11. Defendants also failed to provide Plaintiff and the Represented Employees with
16 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
17 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
18 Represented Employees, the Represented Employees were not allowed freedom to be truly "off
19 duty" for rest breaks, and the Represented Employees were often not authorized and/or permitted
20 to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore,
21 on occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants
22 failed to authorize and/or permit mandated third rest breaks.

23 12. Also, Defendants required Plaintiff and the Represented Employees to incur
24 substantial business-related expenses and costs without reimbursement. For example,
25 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
26 carry out their duties for Defendants without reimbursement.

27 13. Plaintiff further alleges that she and the Represented Employees were not paid all
28 wages due and owing each pay period (Labor Code § 204) and upon separation of employment

1 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
2 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
3 Employees at the time their employment ended with Defendants, including, but not limited to
4 minimum, regular, and overtime wages, wage premiums, sick wages, among others.

5 14. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
6 statements that as required by and in compliance with the requirements of Labor Code § 226(a).

7 15. Plaintiff alleges that Defendants' violations of the wage and hour components of
8 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
9 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
10 its competitors.

11 16. At all material times, Defendants and DOES 1 through 20 were and/or are the
12 Represented Employees' employers or persons acting on behalf of the Represented Employees'
13 employer, within the meaning of California Labor Code § 558, who violated or caused to be
14 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
15 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
16 underpaid employee as set forth in Labor Code § 558 and under California law.

17 17. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
18 monetary relief against Defendants and each of them, on behalf of herself and the Represented
19 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
20 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
21 210, 218.6, 226, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
22 1199, 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right
23 to name additional representatives throughout the State of California.

24 **II. JURISDICTION**

25 18. This Court has jurisdiction over the claims for relief of Plaintiff and the
26 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

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1 **III. VENUE**

2 19. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
4 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
5 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
6 Employees in San Bernardino County.

7 **IV. PARTIES**

8 **Plaintiff**

9 20. Plaintiff and Class Representative Tamara Cox was employed by Defendants
10 from approximately October through November 2022 and performed work for Defendants in San
11 Bernardino County.

12 **Defendants**

13 21. Plaintiff is informed and believes and thereon alleges that Defendant NurseLoop
14 USA: (a) is a California corporation with its principal executive office in Sacramento, California,
15 (b) is authorized to and doing business in San Bernardino County, California, and (c) is and/or
16 was the legal employer of Plaintiff and the Represented Employees during the applicable
17 statutory periods.

18 22. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
19 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
20 inclusive, but on information and belief alleges that those Defendants are legally responsible for
21 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
22 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
23 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
24 Defendants when ascertained.

25 23. Plaintiff is informed and believes and thereon alleges that she and the Represented
26 Employees worked under the joint direction and control of Defendants and that Defendants, and
27 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
28 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of

1 each Defendant are legally attributable to the other Defendants. On information and belief, a
2 unity of interest and ownership between each Defendant exists such that all Defendants acted as
3 a single employer of Plaintiff and other Represented Employees.

4 24. Furthermore, Plaintiff is informed and believes and thereon alleges that
5 Defendants, and each of them, are an integrated enterprise and should be treated as a single
6 employer because these entities share an interrelation of operations, with common human
7 resources and personnel policies and shared common offices and facilities. Additionally,
8 Defendants also have a shared website, common management, a centralized control of labor
9 operations, and common ownership or financial control.

10 25. Plaintiff is informed and believes and thereon alleges that, in conducting
11 themselves in the manner described herein, Defendants, and each of them, were acting in active
12 concert with one another such that the acts of each were and are fully attributable to the others in
13 all material respects. Plaintiff is further informed and believes that at all relevant times
14 Defendants and each of them are now, and at all material times herein mentioned were, the
15 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
16 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
17 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
18 their remaining co-Defendants.

19 26. Plaintiff is further informed and believes that at all relevant times, Defendants
20 have been inadequately capitalized to conduct business, have failed to follow appropriate
21 corporate formalities, and have simply been a shell and instrumentality through which
22 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
23 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
24 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
25 separate existence of these corporate entities would permit abuse of the corporate privilege,
26 thereby sanctioning fraud and promoting injustice.

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1 **V. CLASS ACTION ALLEGATIONS**

2 27. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
3 as if fully alleged herein.

4 28. Plaintiff brings this action on behalf of herself and all others similarly situated as
5 a class action, pursuant to Code of Civil Procedure § 382.

6 29. The relevant time period for this class action is defined as the period beginning
7 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

8 30. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
9 represent is defined as follows:

10 All persons that performed medical services for Defendants
11 in the State of California and who were classified by
12 Defendants as independent contractors during the Relevant
13 Time Period.

14 31. Plaintiff also seeks to represent the following subclasses:

15 **Meal Break Subclass**

16 All Represented Employees who worked a shift in excess of
17 5 hours during the Relevant Time Period.

18 **Rest Break Subclass**

19 All Represented Employees who worked a shift of at least
20 3.5 hours during the Relevant Time Period.

21 **Unreimbursed Expense Subclass**

22 All Represented Employees who were required to incur
23 expenses to discharge their duties for Defendants without
24 reimbursement during the Relevant Time Period.

25 **Waiting Time Penalties Subclass**

26 All Represented Employees who separated from their
27 employment with Defendants during the period three years
28 before the filing of this action and ending when final

1 judgment is entered.

2 **Wage Statement Penalties Subclass**

3 All Represented Employees during the period one year
4 before the filing of this action and ending when final
5 judgment is entered.

6 32. Plaintiff reserves the right to amend or modify the class description with greater
7 specificity or further division into subclasses or limitation to particular issues as appropriate.

8 33. Plaintiff, as Class Representative, is a member of the class and subclasses that she
9 seeks to represent.

10 34. This action has been brought and may properly be maintained as a class action
11 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
12 litigation and the proposed class is easily ascertainable from Defendants' records.

13 35. **Numerosity:** The potential members of the Class as defined are so numerous that
14 a joinder of all Represented Employees is impracticable. Although the exact number is currently
15 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

16 36. **Commonality:** There are questions of law and fact common to the class which
17 predominate over any questions affecting only individual members of the class, including
18 without limitation:

19 i. Whether Defendants violated the Labor Code and IWC Wage Order by
20 failing to pay wages to Plaintiff and the Represented Employees for all minimum, regular, and
21 contract wages owed;

22 ii. Whether Defendants violated the Labor Code and IWC Wage Order by
23 failing to pay proper overtime to Plaintiff and the Represented Employees for hours above 8
24 and/or 12 per day and/or 40 per week worked;

25 iii. Whether Defendants violated the Labor Code and IWC Wage Order by
26 failing to provide compliant meal periods to Plaintiff and the Meal Break Subclass and whether
27 Defendants failed to compensate Plaintiff and the Meal Break Subclass with one additional hour
28 of wages at the regular rate of pay for each instance when a compliant meal period was not

provided;

iv. Whether Defendants violated the Labor Code and IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass with one additional hour of wages at the regular rate of pay for each instance when a paid rest break was not provided;

v. Whether Defendants violated the Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business expenses incurred discharging their duties or in obedience to the directions of their employer;

vi. Whether Defendants violated the Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vii. Whether Defendants violated the Labor Code by failing to provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all minimum wages, failure to pay all overtime wages, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

37. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

38. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in

1 conflict with those of the Class. Class Representative's counsel are competent and experienced in
2 litigating large employment class actions and other complex litigation matters, including cases
3 like this case.

4 39. **Superiority of Class Action.** Class certification is appropriate because a class
5 action is superior to other available means for the fair and efficient adjudication of this
6 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
7 law and fact common to the Class predominate over any questions affecting only individual
8 members of the Class. Each Represented Employee has been damaged and is entitled to
9 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
10 treatment will allow those similarly situated persons to litigate their claims in the manner that is
11 most efficient and economical for the parties and the judicial system.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

15 *Plaintiff and the Represented Employees Against All Defendants*

16 40. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 41. Plaintiff and the Represented Employees were not exempt from the requirement
19 to be paid at least the applicable California minimum wage throughout the statutory period for
20 each hour worked.

21 42. Plaintiff and the Represented Employees were not provided proper minimum
22 wages due to Defendants' failure to accurately record and compensate for all hours worked.

23 43. As a result of this policy and practice, Plaintiff and the Represented Employees
24 were required to perform off-the-clock work that Defendants either knew or should have known
25 they were performing.

26 44. Consequently, Defendants violated California Labor Code laws and minimum
27 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
28 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

1 45. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay minimum wages the Represented
3 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

4 46. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
5 Represented Employees were entitled to be paid minimum wages throughout the statutory period
6 for each hour worked, yet Defendants chose not to pay them in accordance thereto.

7 47. At all material times, Defendants DOES 1 through 20 were and/or are the
8 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
9 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
10 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
11 Labor Code regulating hours and days of work respectively.

12 48. During employment of Plaintiff and the Represented Employees, Defendants
13 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

14 49. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
15 Employees have been damaged in amounts to be proven at trial.

16 50. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
17 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs,
18 pursuant to Lab.Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES**

21 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

22 *Plaintiff and the Represented Employees Against All Defendants*

23 51. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 52. Plaintiff and the Represented Employees were employees of Defendants who did
26 not receive proper protections and benefits of the laws governing payment of overtime wages.

27 53. Labor Code § 204 requires that the employer timely pay all overtime wages to its
28 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any

1 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
2 any one workweek shall be compensated at the rate of no less than one and one-half times the
3 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
4 in one workday shall be compensated at twice the regular rate of pay for an employee.

5 54. At all relevant times, Plaintiff and the Represented Employees were required by
6 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
7 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
8 Represented Employees did not receive proper overtime compensation.

9 55. Additionally, Defendants frequently required Plaintiff and the Represented
10 Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek
11 without paying proper overtime and doubletime compensation.

12 56. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
13 Represented Employees for all overtime hours worked.

14 57. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
15 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
16 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
17 week without proper overtime compensation.

18 58. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
20 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

21 59. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
22 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
23 period, yet Defendants chose not to pay them in accordance thereto.

24 60. At all material times, Defendants DOES 1 through 20 were and/or are the
25 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
26 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
27 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
28 Labor Code regulating hours and days of work respectively.

61. During the employment of Plaintiff and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

62. As a result of Defendants' wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be proven at trial.

63. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Meal Break Subclass Against All Defendants

64. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

65. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

66. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

67. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

68. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of pay for each meal period that is missed.

1 69. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
2 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
3 practices, Plaintiff and the Represented Employees were subjected to meal period violations
4 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
5 meal period while under the control of the Company, (3) forced to take a shortened meal period,
6 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
7 second meal periods for shifts in excess of 10 hours.

8 70. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
9 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
10 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
11 additional hour of compensation at the regular rate of pay in lieu thereof.

12 71. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
13 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
14 meal or rest periods, thereby receiving an economic benefit.

15 72. On information and belief, Plaintiff and the Meal Break Subclass did not
16 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
17 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
18 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
19 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
20 to take meal periods in accordance with California law.

21 73. By their failure to provide Plaintiff and the Meal Break Subclass with meal
22 periods as required by California law, and failing to pay one hour of additional wages in lieu of
23 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
24 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
25 the employee's regular rate of compensation for each work day that a meal period was not
26 lawfully provided in an amount to be proven at time of trial.

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1 74. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
2 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
3 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REST BREAKS**

6 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

7 *Plaintiff and the Rest Break Subclass Against All Defendants*

8 75. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 76. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

12 77. Labor Code § 226.7 requires employers, including Defendants, to provide rest
13 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

14 78. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. Employees shall receive a 10-minute rest period every four hours or major
17 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
18 hours worked, for which there shall be no deduction from wages.

19 79. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
20 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
21 at his regular rate of compensation for each day that the rest period is not provided.

22 80. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
23 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
25 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
26 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
27 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
28 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated

1 third rest breaks.

2 81. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
3 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
4 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
5 one additional hour of compensation in lieu thereof.

6 82. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
7 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
8 rest periods, thereby receiving an economic benefit.

9 83. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
10 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
11 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
12 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
13 employee's regular rate of compensation for each workday that a paid rest break was not
14 lawfully provided in an amount to be proven at time of trial.

15 84. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
16 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
17 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 (Labor Code § 2802)

21 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

22 85. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

24 86. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
25 Defendants who did not receive proper protections and benefits of the laws governing
26 reimbursement of business expenses.

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1 87. Labor Code § 2802(a) requires that the employer indemnify its employees for
2 expenses and losses incurred while discharging their duties or in obedience to the directions of
3 their employer.

4 88. At all relevant times herein mentioned, as a condition of employment, Defendants
5 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
6 expenses and costs without reimbursement, including, but not limited to, acquiring and
7 maintaining a smart phone and related monthly data plan to communicate with Defendants via
8 phone and text message.

9 89. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
10 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
11 direct consequence of employment with Defendants and/or under the direction of Defendants.

12 90. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
13 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
14 Defendants, thereby receiving an economic benefit.

15 91. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
16 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
17 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
18 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
19 to be proved at time of trial.

20 92. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
21 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
22 civil actions, and said interest will accrue from the date on which the employee incurred the
23 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
24 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
25 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

26 93. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
27 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
28 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this

1 section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
2 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees
3 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
4 attorney’s fees will be in an amount to be proved at the time of trial.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO TIMELY PAY FINAL WAGES**

7 (Labor Code §§ 201 – 203)

8 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

9 94. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

11 95. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
12 Defendants who did not receive proper protections and benefits of the laws governing the timing
13 and payment of wages.

14 96. Labor Code § 201 requires that the employer immediately pay any wages, without
15 abatement or reduction, to any employee who is discharged.

16 97. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
17 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
18 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

19 98. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
20 penalty from the due date thereof at the same rate until paid or until an action therefore is
21 commenced, but the wages shall not continue for more than thirty (30) days.

22 99. At all relevant times, Defendants employed a policy and practice whereby
23 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
24 separation of employment within the time required by Labor Code §§ 201 and 202.

25 100. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
26 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
27 employment, including, but not limited to, minimum wages, overtime wages, meal and rest
28 period premiums, and sick wages.

1 101. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
3 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
4 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
5 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
6 according to proof at trial and within the jurisdiction of this Court.

7 **SEVENTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

10 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

11 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 103. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
14 Defendants who did not receive proper protections and benefits of the laws governing the
15 provision of accurate itemized wage statements.

16 104. Labor Code § 226(a) requires an employer to provide its employees with itemized
17 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
18 inclusive dates of the pay period, the employee's name and the last four digits of his or her
19 Social Security number (or employee identification number), the name and address of the legal
20 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.

22 105. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
23 and the Wage Statement Penalties Subclass because Defendants failed to provide any document
24 that could constitute a wage statement within the meaning of Labor Code § 226.

25 106. Furthermore, Defendants violate Labor Code § 226(a) every pay period with
26 respect to Plaintiff and the Wage Statement Penalties Subclass due to violations including:
27 failure to accurately state total hours worked (for example, the wage statements failed to
28 accurately reflect total compensable hours); failure to accurately state gross wages earned, all

1 deductions, and net wages earned (due to, for example, the failure to pay all required minimum
2 and overtime wages); failure to state the start and end dates of the pay period; failure to state the
3 applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive
4 dates of the pay period; failure to accurately state the name and address of the legal entity of the
5 employer; and failure to accurately state the corresponding number of hours worked at each
6 hourly rate.

7 107. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
8 each period due to the failure to pay and report premium wages for denied meal periods and rest
9 breaks under § 226.7.

10 108. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
11 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
12 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
13 requirements of Labor Code § 226(a).

14 109. Defendants' failure to provide the required writing deprived Plaintiff and the
15 Wage Statement Penalties Subclass of the ability to know, understand, and question the
16 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
17 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
18 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
19 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
20 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
21 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
22 perform its obligation under state law, all in amounts according to proof at trial.

23 110. As a result of Defendants' knowing and intentional failure to comply with Labor
24 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
25 that each was prevented from knowing, understanding and disputing the wage payments paid to
26 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
27 injury in that the failure to show all wages earned on the itemized wage statements resulted in
28 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and

1 withholdings owed by the employer, including, but not limited to, the failure to make all
2 necessary contributions for unemployment benefits, social security benefits, proper payment of
3 taxes and withholdings, and other mandated state and federal benefits.

4 111. Plaintiff has also been injured as a result of having to bring this action to attempt
5 to obtain correct wage information following Defendants' refusal to comply with many of the
6 mandates of California's Labor Code and related laws and regulations.

7 112. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
8 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
9 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
10 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
11 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
12 applicable penalty is all in an amount to be shown according to proof at trial.

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR AND UNLAWFUL COMPETITION**

15 (Business and Professions Code § 17200 *et seq.*)

16 *Plaintiff and the Represented Employees against All Defendants*

17 113. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 114. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
20 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
21 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
22 due to the unfair and unlawful business practices of Defendants as alleged herein.

23 115. Defendants, and each of them, are "persons" as defined under Business &
24 Professions Code § 17021.

25 116. As alleged herein, Defendants engaged in conduct that violated California's wage
26 and hour laws, including failure to pay all wages owed, including minimum wages, overtime
27 wages, sick wages, failure to provide mandated meal periods and rest breaks, failure to reimburse
28 business expenses, and failure to timely pay wages upon separation of employment, all to

1 decrease their costs and increase profits.

2 117. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
3 Employees wages and monies and other financial obligations to which they were entitled.

4 118. As a result of Defendants' failure to comply with the Labor Code and IWC
5 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
6 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
7 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

8 119. Defendants' violations of the California Labor Code and IWC Wage Orders and
9 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
10 practices because it was done in a systematic manner over a period of time to the detriment of the
11 Plaintiff and all others similarly situated.

12 120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
13 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
14 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
15 Code of Civil Procedure § 1021.5.

16 121. A violation of California Business & Professions Code § 17200, *et seq.* may be
17 predicated on the violation of any state or federal law. All of the acts described herein as
18 violations of, among other things, the California Labor Code and IWC Wage Orders, are
19 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
20 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
21 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

22 122. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
23 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
24 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
25 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
26 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
27 harm unless Defendants, and each of them, are restrained from continuing to engage in said
28 unfair, unlawful and/or fraudulent business practices.

1 123. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
2 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
3 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
4 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
5 Represented Employees are not obligated to establish individual knowledge of the unfair
6 practices of Defendants in order to recover restitution.

7 124. Plaintiff, individually, and on behalf of the Represented Employees, is further
8 entitled to and do seek a declaration that the above described business practices are unfair,
9 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
10 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
11 the future.

12 125. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
13 Represented Employees are entitled to restitution of the wages withheld and retained by
14 Defendants during a period that commences four years prior to the filing of this complaint; a
15 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
16 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
17 Procedure § 1021.5 and other applicable laws; and an award of costs.

18 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code §§ 2698 – 2699.5)**

19 126. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
20 Defendants during the applicable statutory period and suffered one or more of the Labor Code
21 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
22 action filed on behalf of himself and all other similarly situated current and former aggrieved
23 employees in California against whom one or more of the alleged violations was committed
24 (hereinafter the “Aggrieved Employees”).

25 127. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
26 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
27 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
28 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor

1 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

2 128. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
3 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
4 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
5 the facts and theories to support the alleged violations. More than sixty-five (65) days have
6 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
7 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
8 satisfied the administrative prerequisites to suit under the PAGA.

9 **NINTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION**

11 (Labor Code § 226.8)

12 *Plaintiff and the Aggrieved Employees Against All Defendants*

13 129. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 130. At all relevant times, Plaintiff and the Aggrieved Employees performed various
16 duties for Defendants as employees that provided staffed medical services at various facilities in
17 California. However, Defendants have maintained policies and practices based on or including
18 the willful misclassification of Plaintiff and the Aggrieved Employees as independent contractors
19 despite that, under applicable standards of law, Plaintiff and all Aggrieved Employees are, or
20 were during their employment with Defendants, employees, and not independent contractors.

21 131. Defendants engaged in a practice of willfully misclassifying the Aggrieved
22 Employees as independent contractors despite that the Aggrieved Employees were employees of
23 Defendants because they (A) are/were subject to the control and direction of Defendants in
24 connection with the performance of their work, both under contract and in fact, (B) performed
25 work that was the core business of Defendants (e.g., staffed nursing and similar medical
26 services), and therefore the Aggrieved Employees’ tasks were not outside the usual course of
27 Defendants’ business, and (C) were not customarily engaged in an independently established
28 trade, occupation, or business of the same nature as the work performed by Defendants.

1 132. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
2 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
3 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
4 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
5 schedule for Plaintiff and the Represented Employees was controlled solely by Defendants, and
6 Defendants told them the exact time and location for all daily appointments – and Defendants
7 had unilateral control and ability to cancel assignments if they chose to do so. Furthermore,
8 through the performance of their job duties, Plaintiff and the Aggrieved Employees performed an
9 integral and entirely essential aspect of Defendants’ business. In fact, Plaintiff and the
10 Represented Employees were tasked to perform the one and only service that Defendants
11 provided: staffed nursing and similar medical services. Additionally, the customers (the medical
12 facilities) are and/or were Defendants’ customers, not those of Plaintiff or the Aggrieved
13 Employees. Plaintiff and the Aggrieved Employees were also prohibited from performing
14 similar services for other companies and, thus, were not engaged in an independently established
15 trade, occupation or business of the same nature as the work performed by Defendants. And,
16 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved
17 Employees’ working relationship without cause and at its discretion.

18 133. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
19 Aggrieved Employees as independent contractors.

20 134. Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage
21 in any of the following activities: (1) Willful misclassification of an individual as an independent
22 contractor.”

23 135. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of
24 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
25 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
26 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

27 136. Labor Code § 226.8(c) further states that if “a person or employer has engaged in
28 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or

1 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
2 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
3 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
4 permitted by law.

5 137. At all relevant times herein, Defendants engaged in a pattern and practice of
6 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent
7 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
8 penalties as set forth in Labor Code § 226.8(c).

9 138. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

12 **TENTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

14 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

15 *Plaintiff and the Aggrieved Employees Against All Defendants*

16 139. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 140. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
19 be paid at least the applicable California minimum wage throughout the statutory period for each
20 hour worked.

21 141. Plaintiff and the Aggrieved Employees were not provided proper minimum wages
22 due to Defendants' failure to accurately record and compensate for all hours worked.

23 142. As a result of this policy and practice, Plaintiff and the Aggrieved Employees
24 were required to perform off-the-clock work that Defendants either knew or should have known
25 they were performing.

26 143. Consequently, Defendants violated California Labor Code laws and minimum
27 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
28 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

1 144. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay minimum wages the Aggrieved Employees
3 for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

4 145. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **ELEVENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

9 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

10 *Plaintiff and the Aggrieved Employees Against All Defendants*

11 146. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 147. Plaintiff and the Aggrieved Employees were employees of Defendants who did
14 not receive proper protections and benefits of the laws governing payment of overtime wages.

15 148. Labor Code § 204 requires that the employer timely pay all overtime wages to its
16 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
17 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
18 any one workweek shall be compensated at the rate of no less than one and one-half times the
19 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
20 in one workday shall be compensated at twice the regular rate of pay for an employee.

21 149. At all relevant times, Plaintiff and the Aggrieved Employees were required by
22 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
23 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
24 Aggrieved Employees did not receive proper overtime compensation.

25 150. Additionally, Defendants frequently required Plaintiff and the Aggrieved
26 Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek
27 without paying proper overtime and doubletime compensation.

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151. As a result of this policy and practice, Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked.

152. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

153. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

154. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Aggrieved Employees Against All Defendants

155. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of laws governing mandatory meal periods.

157. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

158. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

2 159. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
3 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
4 pay for each meal period that is missed.

5 160. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
6 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
7 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
8 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
9 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
10 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
11 meal periods for shifts in excess of 10 hours.

12 161. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
14 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
15 one additional hour of compensation at the regular rate of pay in lieu thereof.

16 162. On information and belief, Plaintiff and the Aggrieved Employees did not
17 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
18 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
19 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
20 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
21 Employees to take meal periods in accordance with California law.

22 163. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

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1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 164. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 165. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 166. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 167. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 168. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
18 their regular rate of compensation for each day that the rest period is not provided.

19 169. At all relevant times, Defendants also failed to provide Plaintiff and the
20 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
22 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
23 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
24 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
25 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
26 mandated third and/or fourth rest breaks.

27 170. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
28 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with

1 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
2 one additional hour of compensation in lieu thereof.

3 171. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **FOURTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 *Plaintiff and the Aggrieved Employees Against All Defendants*

10 172. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 173. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing reimbursement of
14 business expenses.

15 174. Labor Code § 2802(a) requires that the employer indemnify its employees for
16 expenses incurred while discharging their duties or in obedience to directions of their employer.

17 175. At all relevant times herein mentioned, as a condition of employment, Defendants
18 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
19 costs without reimbursement, including, but not limited to, acquiring and maintaining a smart
20 phone and related monthly data plan to communicate with Defendants via phone and text
21 message.

22 176. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
23 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
24 consequence of Plaintiff's employment with Defendants and/or under the direction of
25 Defendants.

26 177. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **FIFTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 178. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 179. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws regarding the
9 timing of payment of wages each period.

10 180. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 181. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 182. At all relevant times herein, Defendants did not provide Plaintiff and the
19 Aggrieved Employees with all wages due and owing each pay period, including, but not limited
20 to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
21 time specified by Labor Code § 204

22 183. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 184. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 185. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of wages.

10 186. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 187. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 188. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 189. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation
20 of employment within the time required by Labor Code §§ 201 and 202.

21 190. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
22 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
23 including, but not limited to, minimum, regular, and overtime wages, meal and rest period
24 premiums, among other compensation.

25 191. Additionally, at all relevant times, Defendants failed to pay all mandated sick
26 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(l).

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1 192. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due
3 and owing upon separation of employment as required by Labor Code §§ 201 and 202.

4 193. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **SEVENTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR**

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

10 (Labor Code § 226)

11 *Plaintiff and the Aggrieved Employees Against All Defendants*

12 194. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 195. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing the provision of
16 accurate itemized wage statements.

17 196. Labor Code § 226(a) requires an employer to provide its employees with itemized
18 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
19 inclusive dates of the pay period, the employee's name and the last four digits of his or her
20 Social Security number (or employee identification number), the name and address of the legal
21 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee.

23 197. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Aggrieved Employees because Defendants failed to provide any document that could
25 constitute a wage statement within the meaning of Labor Code § 226.

26 198. Furthermore, Defendants violate Labor Code § 226(a) every pay period with
27 respect to Plaintiff and the Aggrieved Employees due to violations including: failure to
28 accurately state total hours worked (for example, the wage statements failed to accurately reflect

total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the start and end dates of the pay period; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the name and address of the legal entity of the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate.

199. Additionally, Defendants' wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal periods and rest breaks under § 226.7.

200. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that complied with the requirements of § 226(a).

201. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Ninth through Seventeenth Causes of Action, the assessment of all remedies and/or penalties available under PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;

7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;

8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;

9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1194, 1197, 1198, 1199, 2802, among other sections inadvertently omitted;

10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest;

11. For pre- and post-judgment interest; and

12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial as to the First through Seventh Causes of Action pled herein.

Dated: March 20, 2023

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.
 Peter J. Carlson, Esq.
 Attorneys for Plaintiff