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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SONOMA

ROGEL NOEL, individually and on behalf of
other individuals similarly situated,

Plaintiff,

vs.

AURORA BEHAVIORAL HEALTHCARE-
SANTA ROSA, LLC, a California Limited
Liability Company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 24CV01031

Assigned to: Hon. Patrick Broderic

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of *Labor Code* §§ 510 and 1198;**
- 2. Failure to Pay All Wages and Minimum Wages in Violation of *Labor Code* §§ 221, 223, 1182, 1194, 1197, and 1198**
- 3. Failure to Provide Compliant Meal Periods in Violation of *Labor Code* §§ 226.7, 512, 516, and 1198;**
- 4. Failure to Provide Compliant Rest Periods in Violation of *Labor Code* §§ 226.7, 516, 1198;**
- 5. Failure to Provide Sick Pay at the Regular Rate in Violation of *Labor Code* § 246;**
- 6. Failure to Furnish Accurate, Itemized Wage Statements in Violation of *Labor Code* § 226(a) and Failure to Maintain Accurate Records in Violation of *Labor Code* § 1174;**

7. **Failure to Timely Pay Wages During Employment in Violation of *Labor Code* § 204; 210**
8. **Failure to Pay All Wages Owed at Termination in Violation of *Labor Code* §§ 201-203;**
9. **Failure to Reimburse Business Expenses in Violation of *Labor Code* § 2802;**
10. **Violations of California *Business & Professions Code* §§ 17200, *et seq.*; and**
11. **Civil Penalties Pursuant to PAGA Labor Code §§ 2698, *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff ROGEL NOEL, (hereinafter referred to as “Plaintiff”), hereby submits his First
2 Amended Class and Representative Action Complaint against Defendants AURORA BEHAVIORAL
3 HEALTHCARE-SANTA ROSA, LLC, a California Limited Liability Company; and DOES 1-100
4 (hereinafter collectively referred to as “Defendants”) on behalf of himself and the class of all other
5 similarly situated current and former employees of Defendants. Plaintiff brings this action upon
6 information and belief, except as to his own actions, the investigation of his counsel, and the facts that
7 are a matter of public record, as follows:

8 **NATURE OF THE CASE**

9 1. This is a class and representative action brought pursuant to Private Attorneys General
10 Act (“PAGA”), Labor Code §§ 2698, *et seq.*, and California *Code of Civil Procedure* § 382,
11 challenging Defendants’ systemic illegal employment practices resulting in violations of California
12 Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 246, 510, 512, 516, 1174, 1182, 1194, 1197,
13 1198, 2802; California *Business and Professions Code* § 17200, *et seq.* (“Unfair Competition Law”);
14 and the applicable Industrial Welfare Commission Wage Order.

15 2. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a
16 result of employment policies, practices and procedures more specifically described below, which
17 violate the California *Labor Code*, and the orders and standards promulgated by the California
18 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards,
19 and which have resulted in the failure of Defendants to pay Plaintiff and members of the Plaintiff
20 Class all wages due to them, and to provide lawful working conditions. Said employment policies,
21 practices and procedures are generally described as follows:

- 22 a. Failure to compensate Plaintiff and members of the Plaintiff Class for all hours
23 worked and overtime;
 - 24 b. Failure to provide Plaintiff and members of the Plaintiff Class with compliant
25 meal breaks, rest breaks, and/or recovery periods;
 - 26 c. Failure to provide accurate itemized wage statements;
 - 27 d. Failure to provide proper sick pay;
- 28

- 1 e. Failure to timely pay all wages due to Plaintiff and members of the Plaintiff
2 Class upon termination or within 72 hours of resignation; and
3 f. Failure to reimburse Plaintiff and members of the Plaintiff Class for all
4 business expenses.

5 3. At all times relevant herein, on information and belief, Defendants have operated in
6 California as medical services providers.

7 4. At all relevant times, Defendants issued and maintained uniform, standardized
8 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in
9 California, including Plaintiff and others similarly situated, regardless of their location or position.

10 5. Defendants have maintained practices across its locations which have failed and
11 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendants
12 have a company-wide policy of subjecting Plaintiff and other non-exempt employees to work off-the-
13 clock before and after every shift; and of rounding time to Defendants' benefit.

14 6. Moreover, Defendants have a company-wide policy of failing to provide compliant
15 meal periods, rest periods, and/or recovery periods.

16 7. Additionally, Defendants have a company-wide policy of paying overtime, meal
17 premiums and sick pay at the base rate of pay, as opposed to the regular rate of pay required under
18 California law.

19 8. Moreover, Defendants failed to adequately reimburse Plaintiff and other non-exempt
20 employees for business expenses, such as, for example, costs of required clothing and/or protective
21 equipment.

22 9. In light of the foregoing, as well as additional factors, Defendants failed to provide
23 Plaintiff and other non-exempt employees with compliant wage statements and failed to timely pay
24 final wages upon termination or separation from employment.

25 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
26 engaged in, among other things a system of willful violations of the Labor Code and the applicable
27 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
28 employees the above stated rights and benefits.

1 11. The policies, practices and customs of Defendants described above and below have
2 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
3 routinely adhere to the structures of the California *Labor Code*, and California *Business and*
4 *Professions Code*.

5 12. This matter is brought as a class action pursuant to California *Code of Civil Procedure*
6 § 382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically below, but
7 which is comprised, generally, of all former and current employees of Defendants
8 who hold or held the job positions which Defendants classified as “non-exempt” at any of Defendants’
9 facilities in California.

10 13. The California Plaintiff “Class Period” is defined as the period from four years prior to
11 the filing of this action through and including the date judgment is rendered in this matter. Plaintiff
12 herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in
13 this matter proceeds.

14 14. This matter is also brought as a representative action pursuant to the Private Attorneys
15 General Act (“PAGA”). PAGA provides that any civil penalty assessed and collected by the Labor
16 and Workforce Development Agency (LWDA) for violations of applicable provisions of the
17 California Labor Code may, as an alternative, be recovered through a civil action brought by an
18 aggrieved employee on behalf of Plaintiff and other current or former employees pursuant to
19 procedures outlined in California *Labor Code* § 2699.3. PAGA also provides that an aggrieved
20 employee can bring a civil action on behalf of other aggrieved employees for violation of any other
21 Labor Code provision that does not itself contain a civil penalty, in which case the civil penalties are
22 assessed at \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
23 each aggrieved employee per pay period for each subsequent violation.

24 15. On February 5, 2024, Plaintiff provided written notice to the LWDA and by certified
25 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
26 violated, including the facts and theories to support the alleged violations. More than sixty-five (65)
27 calendar days have passed since the date notice was provided to the LWDA and Defendants.

28 16. Accordingly, Plaintiff has satisfied the administrative prerequisites under California

1 *Labor Code* § 2699.3(a) to recover civil penalties against Defendants for violations of California
2 *Labor Code* identified in this Complaint.

3 **JURISDICTION AND VENUE**

4 17. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the
5 California Constitution and Code of Civil Procedure section 410.10.

6 18. Additionally, this Court has jurisdiction over Plaintiff's and the Classes' claims for
7 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
8 under Business & Professions Code §§ 17203 and 17204. The Court also has jurisdiction over
9 Plaintiff's and the Classes' claims pursuant to the applicable provisions.

10 19. Additionally, the Court has jurisdiction over Plaintiff and other aggrieved employees'
11 claims for penalties sought pursuant to the Private Attorneys General Act of 2004, Labor Code Section
12 2698, *et seq.*, as well as pursuant to the applicable provisions.

13 20. On information and belief, Defendants are either citizens of California, have sufficient
14 minimum contacts in California, or otherwise intentionally avail themselves of the California market
15 so as to render the exercise of jurisdiction over them by the California courts consistent with traditional
16 notions of fair play and substantial justice.

17 21. Venue is proper in Sonoma County because the acts which give rise to this litigation
18 occurred in this county and Defendants do business in Sonoma County.

19 **THE PARTIES**

20 22. The plaintiff is a resident of Sacramento, California. He was employed by Defendants
21 from approximately March, 2022 until approximately November, 2023, at Defendants' hospital
22 located at 1287 Fulton Road, Santa Rosa, CA 95401. From approximately March 2022 through
23 approximately April 2023, Plaintiff worked for Defendants as a Mental Health Technician. From
24 approximately April, 2023 until approximately November, 2023, Plaintiff worked for Defendants as
25 a Case Manager.

26 23. AURORA BEHAVIORAL HEALTHCARE-SANTA ROSA, LLC, is a California
27 Limited Liability Company, authorized to do business in the state of California.

28 24. At all times relevant herein, on information and belief, Defendants have operated in

1 California as healthcare services providers.

2 25. Plaintiff does not know the true names or capacities, whether individual, partner or
3 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
5 when the true names and capacities are known. Plaintiff is informed and believes, and based thereon
6 alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged
7 herein and proximately caused Plaintiff and members of the general public and class to be subject to
8 the illegal employment practices, wrongs and injuries complained of herein.

9 26. At all times herein mentioned, Defendants participated in the doing of the acts
10 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and
11 each of them, were the agents, servants and employees of each of the other Defendants, as well as the
12 agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
13 of said agency and employment.

14 27. Plaintiff is informed and believes, and based thereon alleges, that at all times material
15 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer
16 of, or working in concert with each of the other co-Defendants and were acting within the course and
17 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
18 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
19 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

20 28. At all times herein mentioned, Defendants, and each of them, were members of, and
21 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
22 of, and in pursuance of, said joint venture, partnership and common enterprise.

23 29. At all times herein mentioned, the acts and omissions of various Defendants, and each
24 of them, concurred and contributed to the various acts and omissions of each and all of the other
25 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
26 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
27 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
28 and omissions of each and all of the other Defendants in proximately causing the damages as herein

1 alleged.

2 30. The members of the Plaintiff Class, including the representative Plaintiff named herein,
3 have been employed during the Class Period in California. The practices and policies which are
4 complained of by way of this Complaint are enforced throughout the State of California.

5 **FACTUAL ALLEGATIONS**

6 31. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7 32. Plaintiff and the members of the Plaintiff Class seek compensation from Defendants
8 for the relevant time period because Defendants:

- 9 a. Failed to compensate Plaintiff and the Plaintiff Class for overtime wages due;
10 b. Failed to compensate Plaintiff and the Plaintiff Class for all hours worked;
11 c. Failed to provide Plaintiff and the Plaintiff Class with compliant meal breaks, rest
12 breaks, and/or recovery periods, or premium payments in lieu thereof;
13 d. Failed to provide accurate itemized wage statements;
14 e. Failed to timely pay wages during employment;
15 f. Failed to provide proper sick pay;
16 g. Failed to timely pay all wages due upon termination or within 72 hours of
17 resignation; and
18 h. Failed to reimburse business expenses.

19 33. Defendants have engaged in, and continue to engage in, unfair business practices in
20 California by practicing, employing and utilizing the employment practices and policies outlined
21 above.

22 34. Defendants' utilization of such unfair business practices deprives Plaintiff and Class
23 members of the general minimum working standards and entitlements due to them under California
24 law and the Industrial Welfare Commission wage orders as described herein.

25 35. As a direct result of the wage and hour violations herein alleged, Plaintiff and members
26 of the Plaintiff Class have suffered and have incurred expenses and attorneys' fees in seeking to
27 compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage
28 in amounts according to proof at the time of trial.

1 ***Time Spent “Off-the-Clock”***

2 36. Defendants did not compensate their hourly non-exempt employees for all minutes that
3 they worked as described above, including but not limited to the time that the employees were subject
4 to the control and direction of Defendants; and/or the time that the employees were suffered or
5 permitted to work.

6 37. Specifically, Defendants require Plaintiff and other non-exempt employees to work
7 off-the-clock before and after every shift, including but not limited to walking to and from time clocks
8 in order to punch in and out.

9 38. This resulted in, *inter alia*, Defendants’ underpayment of minimum and overtime
10 wages, and failure to provide complaint meal breaks, rest breaks, and/or recovery periods and/or
11 premiums in lieu thereof.

12 ***Defendants’ Failure to Pay Overtime Wages***

13 39. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or
14 more or forty (40) hours a week or more, some of their time, including their time spent working off-
15 the-clock described above, as well as time rounded to Defendants’ benefit, qualified for overtime
16 premium pay.

17 40. Defendants did not compensate their hourly non-exempt employees for overtime
18 premium pay that accrued, as a result of off-the-clock work and Defendants’ rounding policies.

19 ***Defendants’ Failure to Calculate Certain Pay at the Regular Rate***

20 41. Additionally, Defendants failed to include all remuneration for employment paid to, or
21 on behalf of, Plaintiff and the Plaintiff Class, including, *inter alia*, nondiscretionary bonuses and
22 incentive pay, in Defendants’ calculations of overtime pay, meal period premiums, and sick pay.

23 42. For example, Plaintiff received compensation in addition to hourly wages, including
24 but not limited to incentive pay, but those additional amounts were not included when calculating
25 overtime pay, meal period premiums, and sick pay wages.

26 43. Accordingly, Defendants failed to compensate their hourly non-exempt employees for
27 the correct overtime, meal premiums, and sick pay owed to Plaintiff and the Plaintiff Class.

28 ///

1 ***Failure to Pay all Wages and Minimum Wages***

2 44. As stated above, during the relevant time period, as a result of Defendants' policy and
3 practice of rounding time entries, Defendants shaved time off of employees' actual time worked;
4 additionally, as a result of Defendants' policies and practices requiring off-the-clock work, whereby
5 Defendants maintained control over employees before and/or after their scheduled shift times, Plaintiff
6 and the Plaintiff Class were forced to work off-the-clock.

7 45. Thus, Defendants did not pay their hourly non-exempt employees for all the minutes
8 that they worked as described above, including but not limited to the time that the employees were
9 subject to the control and direction of Defendants; and/or the time that the employees were suffered
10 or permitted to work. Defendants also owe each of their hourly employees for the unpaid "shaved"
11 and/or illegally "rounded" minutes.

12 ***Failure to Provide Compliant Meal Periods***

13 46. As stated above, during the relevant time period, Defendants failed to provide Plaintiff
14 and other non-exempt employees with compliant meal breaks, as the result of, *inter alia*, Defendants'
15 time rounding policies; as well as policies and/or practices which caused meal periods to frequently
16 be provided after the fifth hour of work, interrupted, and/or missed altogether.

17 47. As a result, Plaintiff and the Plaintiff Class were not provided the opportunity to take
18 timely, completely, and uninterrupted meal periods as required by law.

19 ***Defendants' Failure to Provide Compliant Rest Breaks***

20 48. During the relevant time period, Defendants regularly failed to authorize and permit
21 Plaintiff and the Plaintiff Class to take a full ten (10) minute rest period per each four (4) hour period
22 worked or major fraction thereof.

23 ***Defendants' Failure to Provide Compliant Wage Statements***

24 49. During the relevant time period, Defendants have knowingly and intentionally
25 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
26 statements. For example, Defendants issued uniform wage statements to Plaintiff and the Plaintiff
27 Class that fail to correctly list: the name of the employer; gross wages earned; total hours worked; net
28 wages earned; and all applicable hourly rates in effect during the pay period, including regular rates

1 of pay for overtime wages and/or meal and rest period premiums, sick time, and the corresponding
2 number of hours worked at each hourly rate.

3 50. Because Defendants rounded employees' time, and did not record the time Plaintiff
4 and the Plaintiff Class spent working off-the-clock, Defendants did not list the correct amount of gross
5 wages and net wages earned by Plaintiff and members of the Classes in compliance with Labor Code
6 sections 226(a)(1) and 226(a)(5), respectively.

7 51. For the same reasons, Defendants failed to accurately list the total number of hours
8 worked by Plaintiff and the Plaintiff Class and failed to list the applicable hourly rates of pay in effect
9 during the pay period and the corresponding accurate number of hours worked at each hourly rate.

10 52. As a result of the above, Plaintiff and the Plaintiff Class have been prevented from
11 verifying, solely from information on the wage statements themselves, that they were paid correctly
12 and in full. Instead, Plaintiff and the Plaintiff Class have had to look to sources outside of the wage
13 statements themselves and reconstruct time records to determine whether in fact they were paid
14 correctly and the extent of underpayment, thereby causing them injury.

15 ***Defendants' Failure to Timely Pay all Wages During Employment***

16 53. Labor Code section 204 requires that all wages earned by any person in any
17 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
18 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
19 of the month during which the labor was performed, and that all wages earned by any person in any
20 employment between the 16th and the last day, inclusive, of any calendar month, other than those
21 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
22 the following month.

23 54. Labor Code section 204 also requires that all wages earned for labor in excess of the
24 normal work period shall be paid no later than the payday for the next regular payroll period.
25 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
26 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
27 not more than seven (7) calendar days following the close of the payroll period.

28 55. At all times relevant hereto, Defendants willfully failed to pay Plaintiff and the Plaintiff

1 Class all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and
2 rest period premiums, including compensation required for time spent “off-the-clock,” and illegally
3 rounded time, within the time periods specified by Labor Code section 204.

4 ***Defendants’ Failure to Pay All Wages Due at Termination of Employment***

5 56. At all times relevant hereto, California *Labor Code* § 201 required an employer that
6 discharges an employee to pay compensation due and owing to said employee immediately upon
7 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
8 compensation due and owing to said employee within seventy-two (72) hours of an employee’s
9 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
10 compensation promptly upon discharge or resignation, as required under §§ 201 and 202, then the
11 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
12 (30) work days.

13 57. Defendants willfully and knowingly failed to pay Plaintiff and the Plaintiff Class upon
14 termination of employment all accrued compensation, as described above, including, but not limited
15 to, compensation required for time spent “off the clock,” and time illegally rounded to Defendants’
16 benefit.

17 ***Facts Regarding Willfulness***

18 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and
19 were advised by skilled lawyers, other professionals, employees with human resources background
20 and advisors with knowledge of the requirements of California wage and hour laws.

21 59. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
22 Defendants knew or should have known that the Plaintiff Class Members, including Plaintiff, were
23 entitled to, *inter alia*: complete, proper, and timely compensation for all hours and overtime worked;
24 complete and compliant meal, rest, and recovery periods, or premiums in lieu thereof; accurate,
25 itemized wage statements; reimbursed business expenses; and final pay in a timely manner.

26 ***Defendants’ Failure to Reimburse Business Expenses***

27 60. At all times relevant hereto, Defendants had company-wide policies and/or practices
28 whereby non-exempt employees were required to undertake expenses on Defendants’ behalf. These

1 expenses include, but are not limited to, the following: costs of required clothing and/or protective
2 equipment.

3 61. Defendants failed to adequately reimburse Plaintiff and the other non-exempt
4 employees for these costs, instead passing these operating costs off onto Plaintiff and the other
5 members of the Class.

6 ***Unfair Business Practices***

7 62. Defendants have engaged in, and continue to engage in, unfair business practices in
8 California by practicing, employing and utilizing the employment practices and policies outlined
9 above.

10 63. Defendants' utilization of such unfair business practices constitutes unfair competition
11 and provides an unfair advantage over Defendants' competitors.

12 64. Defendants' utilization of such unfair business practices deprives Plaintiff and the
13 Plaintiff Class of the general minimum working standards and entitlements due them under California
14 law and the Industrial Welfare Commission wage orders as described herein.

15 65. As a direct result of the wage and hour violations herein alleged, Plaintiff and the
16 Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment
17 of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
18 Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage in
19 amounts according to proof at the time of trial.

20 ***Plaintiff's Exhaustion of Administrative Remedies***

21 66. Plaintiff has complied with the procedures for bringing suit for civil penalties under
22 the Private Attorneys General Act ("PAGA") codified in Labor Code §§ 2698 *et seq.*

23 67. Pursuant to the requirements for bringing suit under PAGA enumerated in Labor Code
24 § 2699.3, Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA") and
25 Defendants, by letter dated February 5, 2024, of the specific provisions of the *Labor Code* alleged to
26 have been violated, including the facts and theories to support the alleged violations.

27 68. More than sixty-five (65) days have passed since the date the notice was mailed to
28 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it

plans to investigate.

69. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this complaint

CLASS ACTION ALLEGATIONS

70. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

71. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to California *Code of Civil Procedure* § 382. The classes which Plaintiff seeks to represent are composed of, and defined as follows:

Plaintiff Class

All persons who have been, or currently are, employed by Defendants in the State of California, and who held, or hold, job positions which Defendants have classified as “non-exempt,” during the Class Period (“Class Period” is defined as the period from four years prior to the filing of this action, through and including the date judgment is rendered in this matter).

Terminated Sub Class

All members of the Plaintiff Class whose employment ended during the Class Period.

(Collectively “Plaintiff Class” or “Class Members”)

72. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the class period, potentially hundreds of class members have been employed by Defendants as non-exempt employees in the State of California. Because so many persons have been employed by Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or impracticable.

73. Common Questions of Law and/or Fact: Common questions of law and fact exist as to all Class Members, and predominate over any questions affecting solely individual members of the class. Among the questions of law and fact that are relevant to the adjudication of class members

claims, are as follows:

- a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- d. Whether Defendants had a standard policy of not providing compliant meal breaks and premiums to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendants had a standard policy of not providing compliant rest breaks and premiums to Plaintiff and members of the Plaintiff Class;
- f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- g. Whether Defendants maintained accurate records of the hours worked by employees;
- h. Whether Defendants failed to timely pay wages to Plaintiff and members of the Plaintiff Class during their employment;
- i. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- j. Whether Defendants provided compliant recovery periods;
- k. Whether Defendants reimbursed Plaintiff and members of the Plaintiff Class for all business expenses;
- l. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and
- m. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

74. Typicality: The claims of the named Plaintiff are typical of the claims of the members

1 of the Plaintiff Class. Defendants' common course of conduct, including, but not limited to, their
2 failure to provide their non-exempt employees with compliant meal and rest periods and all wages in
3 compliance with the applicable wage order, or premium compensation at the regular rate in lieu thereof,
4 failure to provide them with proper wages and overtime, failure to timely pay wages and pay all wages
5 upon termination, failure to provide employees with complaint wage statements, and failure to
6 reimburse business expenses, has caused Plaintiff and the proposed Class to sustain the same or similar
7 injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims
8 of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and
9 damages arising from Defendants' common policies, practices, procedures, protocols, routines, and
10 rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the
11 same type of losses, injuries, and damages as were suffered by other members of the proposed class.

12 75. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
13 classes because he is a member of the class, and her interests do not conflict with the interests of the
14 members he seeks to represent. Plaintiff has retained competent counsel, experienced in the
15 prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this
16 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
17 adequately be protected by Plaintiff and his attorneys.

18 76. Superiority of Class Action: A class action is superior to other available methods for
19 the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class
20 Members is impracticable. It would be unduly burdensome to the courts if these matters were to
21 proceed on an individual basis, because this would potentially result in hundreds of individual,
22 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
23 contradictory judgments, a "race to the courthouse," and an inequitable allocation of recovery among
24 those with equally meritorious claims. By contrast, the class action device presents far fewer
25 management difficulties, and provides the benefit of a single adjudication, economics of scale, and
26 comprehensive supervision by a single court.

27 77. The various claims asserted in this action are additionally or alternatively certifiable
28 under the provisions of the Code of Civil Procedure § 382 because:

1 a. The prosecution of separate actions by hundreds of individual class members would
2 create a risk of varying adjudications with respect to individual class members, thus
3 establishing incompatible standards of conduct for Defendants; and

4 b. The prosecution of separate actions by individual class members would also create the
5 risk of adjudications with respect to them that, as a practical matter, would be dispositive
6 of the interest of the other class members who are not a party to such adjudications and
7 would substantially impair or impede the ability of such non-party class members to protect
8 their interests.

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages**

11 **California Labor Code §§ 510, 1198, and Applicable IWC Wage Orders**

12 **(By Plaintiff and Members of the Putative Class Against Defendants)**

13 78. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 79. At all times relevant herein, which comprise of the time period not less than four (4)
16 years preceding the filing of this action, Defendants were required to compensate their hourly
17 employees for all overtime hours worked.

18 80. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
19 Commission (“IWC”) wage order require employers to pay employees working more than eight (8)
20 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times
21 the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty
22 (40) hours in a workweek. The applicable IWC wage order further provides that employers are
23 required to pay employees working more than twelve (12) hours in a day overtime compensation at a
24 rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all
25 remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary
26 bonuses and incentive pay.

27 81. Defendants willfully failed to pay all overtime wages owed to Plaintiff and the Plaintiff
28 Class. During the relevant time period, Plaintiff and members of the Classes were not paid overtime

1 premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve
2 (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked
3 were not recorded, and the hours recorded were rounded to Defendants' benefit.

4 82. Defendants knew or should have known that as a result of company-wide practices
5 and/or policies, Plaintiff and members of the Classes were working off-the-clock before and after their
6 shifts, and were suffered or permitted to perform work for which they were not paid; and that their
7 time worked was being rounded and/or shaved. Because Plaintiff and members of the Classes worked
8 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock
9 work and/or rounded time qualified for overtime premium pay. Therefore, Plaintiff and members of
10 the Classes were not paid overtime wages for all of the overtime hours they actually worked.

11 83. Moreover, even when overtime was paid for other time worked, Defendants failed to
12 calculate the overtime owed to Plaintiff and members of the Classes by using their regular rate of pay,
13 including, *inter alia*, nondiscretionary bonuses and incentive pay.

14 84. Defendants' failure to pay Plaintiff and members of the Classes the balance of overtime
15 compensation, as required by California law, violates the provisions of Labor Code sections 510 and
16 1198. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees, costs,
17 and interest thereon.

18 **SECOND CAUSE OF ACTION**

19 **Failure To Pay All Wages and Minimum Wages**

20 **Labor Code §§ 221, 223, 1182, 1194, 1197, 1198, and Applicable IWC Wage Orders**

21 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

22 85. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
23 forth herein.

24 86. At all times relevant herein, which comprise the time period not less than four (4) years
25 preceding the filing of this action, Defendants were required to compensate their hourly employees
26 for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant
27 to the Industrial Welfare Commission Orders and California *Labor Code* §§ 221, 223, 1182, 1194,
28 1197, and 1198.

1 87. For at least the four (4) years preceding the filing of this action, Defendants failed to
2 compensate employees for all hours worked. Defendants implemented policies that actively prevented
3 employees from being compensated for all time worked by “rounding” and/or “shaving” time, and
4 subjecting Plaintiff and members of the Classes to off-the-clock work as described above.

5 88. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff Class
6 are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding
7 the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with
8 Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and 206.

9 89. The applicable IWC wage order section 2(G) defines “hours worked” to mean “the
10 time during which an employee is subject to the control of an employer and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so.”

12 90. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any agreement
13 to work for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled to
14 recover in a civil action the unpaid balance of the full amount of this minimum wage ... including
15 interest thereon, reasonable attorney’s fees, and costs of suit.”

16 91. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
17 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
18 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
19 in an amount equal to the wages unlawfully unpaid and interest thereon.”

20 92. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
22 minimum so fixed is unlawful.”

23 93. Plaintiff is informed and believes, and therefore alleges, that Defendants’
24 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours spent
25 performing their job duties.

26 94. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
27 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194, 1194.2,
28 and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

1 95. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class for
2 each and every hour worked violates Labor Code section 221 and 223; the applicable IWC wage order
3 section 3; and Business & Professions Code.

4 96. During the applicable time period, Defendants have maintained a pattern and practice
5 of not providing its employees all wages, by failing to include all compensable time, including time
6 worked off-the-clock.

7 97. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
8 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Provide Compliant Meal Breaks or Premiums in Lieu Thereof**

11 **Labor Code §§ 226.7, 512, 516, 1198 and Applicable IWC Wage Orders**

12 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

13 98. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 99. For at least the four (4) years preceding the filing of this action, Defendants failed to
16 provide meal breaks as required by law.

17 100. California *Labor Code* § 226.7(a) provides that: “No employer shall require any
18 employee to work during any meal or rest period mandated by an applicable order of the Industrial
19 Welfare Commission.”

20 101. California *Labor Code* § 512 provides that: “An employer may not employ an
21 employee for a work period of more than five hours per day without providing the employee with a
22 meal period of not less than 30 minutes, except that if the total work period per day of the employee
23 is no more than six hours, the meal period may be waived by mutual consent of both the employer and
24 employee.”

25 102. The applicable Wage Order Section 11(D) states “If an employer fails to provide an
26 employee a meal period in the applicable provisions of this order, the employer shall pay the employee
27 one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is
28 not provided.”

1 103. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class
2 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period
3 of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

4 104. Defendants failed to provide Plaintiff and members of the Plaintiff Class with timely
5 and uninterrupted meal breaks.

6 105. Defendants failed to pay Plaintiff and the Class members the full statutory penalty for
7 all non-complaint meal breaks.

8 106. At all times relevant to this Complaint, each Defendant failed, and has continued to
9 fail, to provide Plaintiff and the members of the Plaintiff Class with complete and uninterrupted meal
10 periods.

11 107. Thus, throughout the Class Period, Defendants regularly:

- 12 a. Failed to provide timely, 30-minute uninterrupted meal periods during which
13 Plaintiff and the members of the Plaintiff Class were relieved of all duty for each
14 five (5) hours of work;
- 15 b. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at
16 their regular rate of compensation for each workday that a meal period was not
17 permitted;
- 18 c. Failed to provide Plaintiff and the members of the Plaintiff Class with a second
19 meal period of not less than thirty (30) minutes during which they are relieved of
20 all duty before working more than ten (10) hours per day; and
- 21 d. Failed to accurately record all meal periods.

22 108. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
23 and the members of the Plaintiff Class have been deprived of meal period wages due in amounts to be
24 determined at trial.

25 109. Defendants' conduct described herein violates the Industrial Welfare Commission
26 Order and California *Labor Code* §§ 226, 226.7, 512, 516, and 1198.

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28 ///

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Compliant Rest Periods or Premiums in Lieu Thereof**

3 **Labor Code §§ 226.7, 516, 1198 and Applicable IWC Wage Orders**

4 **(By Plaintiff and Members of the Putative Class Against Defendants)**

5 110. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 111. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require
8 employers to provide rest periods and to pay an employee one (1) additional hour of pay at the
9 employee's regular rate for each workday that a meal or rest period is not provided. Labor Code
10 section 226.7 provides that no employer shall require an employee to work during any rest period
11 mandated by an applicable order of the IWC. The applicable IWC wage order provides that "[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
13 shall be in the middle of each work period" and that the "rest period time shall be based on the total
14 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
15 thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

16 112. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
17 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
18 and every four (4) hours or major fraction thereof worked during the workday.

19 113. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants
20 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods at all,
21 and if such periods were provided, they were not provided without duty, notwithstanding the fact that
22 Plaintiff and the members of the Classes had not waived their right to the same. Thus, Defendants
23 failed to provide Plaintiff and Class Members with rest periods required by Labor Code sections 226.7,
24 512, and 516, the applicable IWC wage order section 11 and categorically failed to pay any and all
25 rest period wages due.

26 114. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the
27 applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular
28 rate for each work day that the rest period is/was not provided or provided late to Plaintiff and any

1 member of the Classes, the cumulative sum of which is to be determined at trial.

2 115. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for
3 Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit
4 pursuant to Labor Code section 226.7(b) and the applicable wage order.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Provide Sick Pay at the Regular Rate**

7 **Labor Code § 246 and Applicable IWC Wage Orders**

8 **(By Plaintiff and Members of the Putative Class Against Defendants)**

9 116. Plaintiff re-alleges and incorporates all preceding paragraphs a though fully set forth
10 herein.

11 117. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
12 in which the paid leave was taken, or at a rate determined by dividing total wages, excluding overtime
13 premium pay, by the employee's total hours in pay periods of the prior 90 days of employment. (*Labor*
14 *Code § 246(1)(1-2).*)

15 118. Defendants failed to pay Plaintiff and members of the Class sick pay at the correct rate.
16 Plaintiff received compensation in addition to hourly wages, including but not limited to incentive pay,
17 but those additional amounts were not included when calculating sick pay wages. By failing to pay
18 Plaintiff and Class Members for sick pay at the regular rate of pay, Defendants willfully violated Labor
19 Code §246.

20 119. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff and
21 members of the Classes seek damages for sick pay in amounts to be determined at trial, and are entitled
22 to recover these amounts with interest, attorneys' fees, and costs.

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

25 **Labor Code §§ 226, 1174.5 and Applicable IWC Wage Orders**

26 **(By Plaintiff and Members of the Putative Class Against Defendants)**

27 120. Plaintiff hereby incorporates by reference each and every one of the allegations
28 contained in the preceding paragraphs as if the same were fully set forth herein.

1 121. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires
2 employers to furnish each employee with a statement itemizing, among other things, the total hours
3 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

4 122. Labor Code section 226(e) provides that if an employer fails to comply with providing
5 an employee with properly itemized wage statements as set forth in section 226(a), then the employee
6 is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a
7 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed
8 \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a)
9 shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
10 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to
11 provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

12 123. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of
13 the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and the
14 applicable IWC Wage order section 6(B).

15 124. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly and
16 intentionally failed to furnish Plaintiff and members of the Classes with timely, accurate, itemized
17 statements showing (a) employer's name; (b) total hours, (c) gross wages earned, (c) all deductions,
18 and/or (e) all applicable hourly rates in effect during each respective pay period and the corresponding
19 number of hours worked at each hourly rate by each respective individual.

20 125. Plaintiff is informed and believes, and thereon alleges, that Defendants did not maintain
21 accurate business records pertaining to the total hours worked for Defendants by Plaintiff and the
22 members of the Classes as required under Labor Code section 1174.5. This is a result of missing hours
23 worked, and missed and/or incorrect overtime, meal and rest-break premiums, as illustrated above.

24 126. As a result of not having kept accurate records, Plaintiff and the Class Members
25 suffered injuries in the form of confusion over whether they received all wages owed to them, and
26 difficulty and expense in reconstructing pay records in addition to other injuries which may come to
27 light during the discovery process.

28 127. Labor Code section 1198 provides that the maximum hours of work and the standard

1 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
2 IWC wage order. Section 1198 further provides that “[t]he employment of any employees for longer
3 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
4 Pursuant to the applicable IWC Wage order, employers are required to keep accurate time records
5 showing when the employee begins and ends each work period and meal period.

6 128. During the relevant time period, Defendants failed, on a company-wide basis, to keep
7 accurate records of work and meal period start and stop times for Plaintiff and members of the Classes,
8 in violation of Labor Code section 1198.

9 129. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
10 to Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

11 130. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and
12 an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Timely Pay Wages During Employment**

15 **Labor Code § 204 and Applicable IWC Wage Orders**

16 **(By Plaintiff and Members of the Putative Class Against Defendants)**

17 131. Plaintiff hereby incorporates by reference each and every one of the allegations
18 contained in the preceding paragraphs as if the same were fully set forth herein.

19 132. Labor Code section 204 requires that all wages earned by any person in any
20 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
21 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
22 of the month during which the labor was performed, and that all wages earned by any person in any
23 employment between the 16th and the last day, inclusive, of any calendar month, other than those
24 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
25 the following month.

26 133. Labor Code section 204 also requires that all wages earned for labor in excess of the
27 normal work period shall be paid no later than the payday for the next regular payroll period.
28 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed

1 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
2 not more than seven (7) calendar days following the close of the payroll period.

3 134. During the class period, Defendants willfully failed to pay Plaintiff and members of
4 the Classes all wages due including, but not limited to, all wages, sick pay wages, and/or meal and
5 rest period premiums, within the time periods specified by Labor Code section 204.

6 135. Labor Code section 210 provides:

7 210. (a) In addition to, and entirely independent and apart from, any other penalty
8 provided in this article, every person who fails to pay the wages of each employee as
9 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
10 shall be subject to a penalty as follows:

11 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
12 employee.

13 (2) For each subsequent violation, or any willful or intentional violation, two hundred
14 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
15 unlawfully withheld.

16 136. As a proximate result of the above-mentioned violations, Plaintiff and the Plaintiff
17 Class have been damaged in an amount according to proof at time of trial. Plaintiff and the members
18 of the Classes herein seek damages and penalties pursuant to Labor Code section 210.

19 **EIGHTH CAUSE OF ACTION**

20 **Failure to Pay Wages at Time of Termination (Waiting Time Penalties)**

21 **Labor Code §§ 201-203 and Applicable IWC Wage Orders**

22 **(By Plaintiff and Members of the Terminated Sub Class Against Defendants)**

23 137. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
24 herein.

25 138. At all times, relevant herein, Defendants were required to pay their employees all
26 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
27 section 201-203.

28 139. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members

1 of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203, and
2 accordingly owe waiting time penalties pursuant to Labor Code section 203.

3 140. Labor Code sections 201 and 202 provide that if an employer discharges an employee,
4 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
5 employee voluntarily leaves his or her employment, his or her wages shall become due and payable
6 not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours
7 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
8 wages at the time of quitting.

9 141. On information and belief, Defendants have a company-wide practice or policy of
10 paying departing employees their final wages late, instead of adhering to the time requirements set
11 forth in Labor Code sections 201 and 202.

12 142. Specifically, Defendants willfully failed to pay Plaintiff and members of the
13 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
14 accurate overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
15 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

16 143. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
17 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

18 **NINTH CAUSE OF ACTION**

19 **Failure to Reimburse Business Expenses**

20 **Labor Code § 2802 and Applicable Wage Orders**

21 **(By Plaintiff and the Members of the Plaintiff Class, Against Defendants)**

22 144. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
23 herein.

24 145. California Labor Code § 2802 requires employers to pay for all necessary expenditures
25 and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code
26 § 2802 is to prevent employers from passing off their cost of doing business and operating expenses
27 on to their employees. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.)
28 At all times relevant hereto, Defendants had company-wide policies and/or practices whereby non-

1 exempt employees were required to undertake expenses on Defendants' behalf. These expenses
2 include, but are not limited to, the following: costs of required clothing and/or protective equipment.

3 146. Defendants failed to reimburse Plaintiff and the other non-exempt employees for
4 these costs; instead, Defendants passed these operating costs off onto Plaintiff and the other
5 members of the Class. Thus, Defendants had, and continues to have, a company-wide policy and/or
6 practice of not reimbursing employees for expenses necessarily incurred in violation of Labor Code
7 § 2802.

8 147. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's
9 fees, costs, and interest thereon.

10 **TENTH CAUSE OF ACTION**

11 **Business and Professions Code § 17200, et seq.**

12 **(By Plaintiff and the Members of the Plaintiff Class, Against Defendants)**

13 148. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 149. Section 17200 of the California *Business and Professions Code* prohibits any unlawful,
16 unfair or fraudulent business act or practice.

17 150. Plaintiff brings this cause of action in a representative capacity on behalf of the general
18 public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and
19 members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary
20 damages because of Defendants' actions.

21 151. The actions by Defendants as herein alleged amount to conduct which is unlawful and
22 a violation of law. As such, said conduct amounts to unfair business practices in violation of California
23 *Business and Professions Code* § 17200, et seq.

24 152. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the
25 Plaintiff Class by denying them wages due and payable, and by failing to pay all wages due in a timely
26 manner at the time of termination (for the Terminated Sub Class). Defendants' actions are thus
27 substantially injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in fact
28 and loss of money.

1 153. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
2 due to the Plaintiff and the members of the Plaintiff Class.

3 154. All members of the Plaintiff Class can be identified by reference to payroll and related
4 records in the possession of the Defendant. The amount of wages due to Plaintiff and members of the
5 Plaintiff Class can be readily determined from Defendants' records. The Class Members are entitled
6 to restitution of monies due and obtained by Defendants during the Class Period as a result of
7 Defendants' unlawful and unfair conduct.

8 155. During the Class Period, Defendants committed, and continue to commit, acts of unfair
9 competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other
10 things, engaging in the acts and practices described above.

11 156. Defendants' course of conduct, acts, and practices in violation of the California law as
12 mentioned in each paragraph above constitutes a separate and independent violation of § 17200, etc.,
13 of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

14 157. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied
15 lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices
16 and therefore, Defendants' actions described herein constitute an unfair business practice or act within
17 the meaning of *Business and Professions Code* § 17200.

18 158. Defendants' conduct described herein threatens an incipient violation of California's
19 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
20 threatens or harms competition.

21 159. Defendants' course of conduct described herein further violates California *Business*
22 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

23 160. The unlawful, unfair, and fraudulent business practices and acts of Defendants as
24 described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were
25 wrongfully denied the timely and full payment of wages due to them.

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ELEVENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(By Plaintiff and all Aggrieved Employees, Against Defendants)

161. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

162. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California *Labor Code* §§ 2698-99) applied to Defendants' employment of Plaintiff and the proposed Class Members.

163. At all times set forth herein, California *Labor Code* § 2699(a) has provided that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California *Labor Code* § 2699.3.

164. At all times set forth herein, PAGA has also provided that for the violation of any Labor Code provision that does not itself contain a civil penalty, there are established civil penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

165. A civil action under PAGA may be brought by an "aggrieved employee," any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

166. Defendants have been committing, and continue to commit, violations of the California Labor Code, including, but not limited to:

- a. California *Labor Code* §§ 510, 1198;
- b. California *Labor Code* §§ 221, 223, 1182, 1194, 1197, 1198;
- c. California *Labor Code* §§ 226.7, 512, 516, 1198;
- d. California *Labor Code* §§ 226.7, 516, 1198;
- e. California *Labor Code* § 246

- f. California *Labor Code* §§ 226(a) and 1174;
- g. California *Labor Code* §§ 204 and 210;
- h. California *Labor Code* §§ 201, 202, 203; and,
- i. California *Labor Code* § 2802.

167. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California *Labor Code* §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

168. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

169. On February 5, 2024, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

170. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendants. Accordingly, Plaintiff has satisfied the administrative prerequisites under

California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Complaint.

171. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to recover civil penalties for Defendants' violation of the Labor Code during the applicable limitations period.

172. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Aggrieved Employees, and Class Members pray for judgment as follows:

1. For an order certifying this class action on behalf of the proposed Plaintiff Class and Terminated Sub-Class;
2. For an order that Plaintiff's counsel be appointed class counsel;
3. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub-Class;
4. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
5. For compensatory damages;
6. For penalties pursuant to the applicable wage order, and *Labor Code* §§ 200, 203, 210, 226, 226.3, and 226.7;
7. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
8. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226, and 1194 and *Civil Procedure* §1021.5, and/or other applicable law;
9. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - a. *Labor Code* §§ 510, 1198 and the applicable Wage Orders for failing to pay overtime;

- 1 b. *Labor Code* §§ 221, 223, 1182, 1194, 1197, 1198 and the applicable Wage
2 Orders for failing to pay all wages;
3 c. *Labor Code* §§ 226.7, 512, 516, 1198 and the applicable Wage Orders for failing
4 to provide complaint meal and rest breaks, and/or premiums in lieu thereof;
5 d. *Labor Code* § 226 and the applicable Wage Orders by failing to provide
6 compliant wage statements;
7 e. *Labor Code* § 1174.5 and the applicable Wage Orders for failing to maintain
8 accurate records;
9 f. *Labor Code* § 204 and the applicable Wage Orders for failing to pay wages
10 timely during employment;
11 g. *Labor Code* §§ 201-203 and the applicable Wage Orders for failing to timely
12 pay all wages due at termination;
13 h. *Labor Code* § 2802 for failure to reimburse business expenses;
14 i. *California Business & Professions Code* §§ 17200, *et seq.*, by violating the
15 provisions set forth herein above.

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

17
18 DATED: May 21, 2024

BRADLEY/GROMBACHER, LLP

19
20 By: _____


21 Marcus J. Bradley, Esq.
22 Kiley Lynn Grombacher, Esq.
23 Corey S. Smith, Esq.
24 Attorneys for Plaintiff
25
26
27
28

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: May 21, 2024

BRADLEY/GROMBACHER, LLP

By: _____



Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Corey S. Smith, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On May 21, 2024, I served the foregoing documents described as

1) FIRST AMENDED COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☐ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day.

☒ **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is mvalle@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed May 21, 2024, at Westlake Village, California.

Maria Valle

Maria Valle

Martin v. Aurora Behavioral Healthcare
Santa Rosa Superior Court Case No. 24CV01031
Service List

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