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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

NANCY M. JOHNSON-MOULTON, on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

EMPRES HEALTHCARE MANAGEMENT,
LLC; EVERGREEN AT SALINAS, LLC dba
KATHERINE HEALTHCARE; and DOES 1
through 100, Inclusive,

Defendants.

Case No. 22CV004043

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- (2) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198)**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Nancy M. Johnson-Moulton (“Plaintiff”), on behalf of herself and all others
2 similarly situated, hereby brings this Class and Representative Action Complaint against EmPres
3 Healthcare Management, LLC; Evergreen At Salinas, LLC dba Katherine Healthcare; and Does
4 1 through 100, inclusive (collectively, “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 class and representative action for recovery of unpaid wages and penalties under California
9 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
10 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*; and Industrial Welfare
11 Commission Wage Order No. 5 (“Wage Order 5”), in addition to seeking declaratory relief and
12 restitution. This class action is brought pursuant to California Code of Civil Procedure section
13 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
14 the amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Monterey County. Defendants own, maintain offices, transact business, have an agent
19 or agents within Monterey County, and/or otherwise are found within Monterey County, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and is, a California resident. During the four years immediately preceding the filing
24 of this action and within the statute of limitations periods applicable to each cause of action pled
25 herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a
26 victim of Defendants’ policies and/or practices complained of herein, lost money and/or property,
27 and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 510, 512,
28 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*; Business & Professions Code § 17200,

1 *et seq.* (Unfair Competition), and Wage Order 5, which sets employment standards for the public
2 housekeeping industry, including skilled nursing facilities and convalescent care institutions.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a healthcare and health service management company that operates multiple skilled
6 nursing facilities and/or convalescent care institutions, and that they employed Plaintiff and other
7 similarly situated non-exempt employees within Monterey County and the state of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 16).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants as a non-exempt employee from approximately February 2022 to May 2022.

10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system which resulted in Plaintiff not being compensated for all hours worked. Specifically, Plaintiff and other non-exempt employees were required to clock in and out for their shifts, and although Defendants recorded Plaintiff's clock-in and clock-out times to the minute, Defendants only paid Plaintiff in quarter-hour increments. Defendants' rounding of time to the quarter-hour was not even-handed and has resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. On information and belief, this timekeeping system was implemented and maintained by EmPres Healthcare Management, LLC, and as such it applied to employees at all of EmPres' California locations. As a result of these policies/practices, Plaintiff and other non-exempt employees have been underpaid for wages due, including overtime wages and minimum wages.

11. In addition, the excessive workload placed on Plaintiff and other non-exempt employees coupled with chronic understaffing often made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work and/or a second meal period prior to the end of the tenth hour of work, and as a result Plaintiff's meal periods were often short (less than 30 minutes), late (commencing after five hours of work), or missed. Indeed, Plaintiff's time records are replete with late, short, and missed meal periods. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

12. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Plaintiff and other non-exempt employees were frequently unable to take rest periods to which they were entitled as a result of the workload

1 imposed by Defendants, as described above. In those instances that Defendants failed to authorize
2 and permit Plaintiff and other non-exempt employees to take a legally compliant rest period,
3 Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon
4 information and belief, during at least a portion of the putative class period, Defendants
5 maintained no payroll code or other mechanism for paying rest period premiums when
6 Defendants failed to authorize and permit a legally compliant rest period.

7 13. As a result of Defendants' failure to pay all minimum wages and overtime wages,
8 as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to
9 pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation
10 of their employment.

11 14. As a further result of Defendants' failure to pay all minimum wages and overtime
12 wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants
13 maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff.

14 15. In addition, the wage statements issued by Defendants are facially deficient, in that
15 they count certain hours on the wage statement as "hours worked" that are not, in fact, hours
16 worked, in violation of Labor Code § 226(a)(2). For example, Plaintiff's wage statement dated
17 March 25, 2022, which was for the pay period of March 1-15, 2022, contained a line item titled
18 "BHOL," which on information and belief refers to 8 hours of pay that Plaintiff received for
19 March 4, 2022, a date on which her time records reflect she did not work but that she was paid
20 for as a personal holiday. That same wage statement counts those 8 hours among Plaintiff's
21 "Hours Worked," causing the "hours worked" reported on Plaintiff's wage statement to be
22 reported inaccurately by Defendants.

23 **CLASS ACTION ALLEGATIONS**

24 16. Class Definitions: Plaintiff bring this action on behalf of herself and the following
25 Classes pursuant to Section 382 of the Code of Civil Procedure:

26 a. The Minimum Wage Class consists of all of the Defendants' current and former
27 non-exempt employees in California who were subject to Defendants' timekeeping
28 practices, at any time from four years prior to the filing of this action through the present.

b. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and were subject to Defendants' timekeeping practices, at any time from four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who (i) worked at least one shift in excess of 5.0 hours without a 30-minute meal period commencing prior to the end of the fifth hour of work, as reflected in their timekeeping records; and/or (ii) worked at least one shift of more than 10.0 hours without a second 30-minute meal period commencing prior to the end of the tenth hour of work, as reflected in their timekeeping records, at any time from four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of (i) all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this lawsuit through the present; and/or (ii) all of Defendants' current and former employees in California who received a wage statement that counted "BHOL" or any other form of hours that do not reflect actual hours worked among "Hours Worked," at any time from one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately preceding the filing of this lawsuit through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than

fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation, to:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- ii. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period, rest period, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
4 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum
5 wages and overtime wages, was subject to Defendants' uniform meal and rest period
6 policies/practices, was furnished with inaccurate wage statements, and was deprived of all final
7 wages upon her separation of employment from Defendants.

8 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
9 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
10 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the
11 members of the Classes. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
12 actions in state and federal courts in the past and are committed to vigorously prosecuting this
13 action on behalf of the members of the Classes.

14 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
15 an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who have the responsibility to follow the laws and who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment. The nature of this action and the format of laws available to Plaintiff
20 and members of the Classes make the class action format a particularly efficient and appropriate
21 procedure to redress the violations alleged herein. If each employee were required to file an
22 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
23 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
24 superior financial and legal resources. Moreover, requiring each Class member to pursue an
25 individual remedy would discourage the assertion of lawful claims by employees who would be
26 disinclined to file an action against a former or current employer for real and justifiable fear of
27 retaliation and permanent damages to their careers at subsequent employment. Further, the
28 prosecution of separate actions by individual Class members would create a risk of inconsistent

1 or varying adjudications with respect to the individual Class members against Defendants; and
2 which would establish potentially incompatible standards of conduct for Defendants. Further, the
3 claims of individual Class members are not large enough to warrant individual prosecution
4 considering all of the concomitant costs and expenses attending thereto. As such, the Classes
5 identified in Paragraph 16 are maintainable under Section 382 of the Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**

7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 24. Wage Order 5, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
11 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
12 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
13 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
14 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

15 25. At all relevant times, Defendants failed to conform their pay practices to the
16 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
17 actually worked including, but not limited to, all hours they were subject to Defendants' control
18 and/or suffered or permitted to work under the Labor Code and Wage Order 5.

19 26. California Labor Code § 1198 makes unlawful the employment of an employee
20 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
21 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
22 those employees the balance of the unpaid wages as well as liquidated damages in an amount
23 equal to the wages due and interest thereon.

24 27. As a direct and proximate result of Defendants' unlawful conduct as alleged
25 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
26 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
27 entitled to recover economic and statutory damages and penalties and other appropriate relief as
28 a result of Defendants' violations of the California Labor Code and Wage Order 5.

28. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

32. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime owing, interest thereon, statutory penalties, and attorneys' fees and costs of suit according to Cal. Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, for the reasons set forth in this Complaint.

35. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 5, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Labor Code §§ 226.7 and 516, and Wage Order 5, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

38. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

39. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and the Wage Statement Class with accurate and complete itemized wage statements that
8 included, among other requirements, all hours worked, all wages earned, as well as all meal and
9 rest period premium wages earned, in violation of Labor Code § 226.

10 42. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
11 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
12 among other things, the non-payment of all their minimum and overtime wages and meal and rest
13 period premium wages, and deprived them of the information necessary to identify and reconcile
14 the discrepancies in Defendants' reported data.

15 43. Defendants' failures create an entitlement to recovery by Plaintiff and members of
16 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
17 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
18 of suit, pursuant to Labor Code §§ 226 and 226.3.

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

22 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 45. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
24 an employer to pay all wages immediately at the time of separation of employment in the event
25 the employer discharges the employee, or the employee provides at least 72 hours of notice of
26 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
27 to quit, said employee's wages become due and payable not later than 72 hours upon said
28 employee's last date of employment.

1 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including (but not limited to) unpaid minimum wages,
4 unpaid overtime wages, and unpaid meal and rest period premium wages.

5 47. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
7 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
8 to the requirements of Labor Code §§ 201-203.

9 48. Defendants' failure to pay all final wages was willful within the meaning of Labor
10 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
11 Time Class their earned wages upon separation from employment results in a continued payment
12 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
13 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
14 attorneys' fees and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

18 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 50. Defendants have engaged, and continue to engage, in unfair and/or unlawful
20 business practices in violation of Business & Professions Code § 17200, *et seq.*, by, *inter alia*,
21 failing to pay Plaintiff and the Classes all minimum and overtime wages due, failing to provide
22 meal periods, failing to authorize and permit rest periods, failing to furnish accurate and complete
23 itemized wage statements, and failing to pay all earned wages at separation of employment.

24 51. Defendants' utilization of these unfair and/or unlawful business practices has
25 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
26 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
27 Defendants' competitors who have been and/or are currently employing workers and attempting
28 to do so in honest compliance with applicable wage and hour laws.

52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

53. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period;

and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- g. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203

56. On or about December 22, 2022, Plaintiff notified Defendants EmPres Healthcare Management, LLC, and Evergreen at Salinas, LLC dba Katherine Healthcare, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 55 (a)-(g) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has

exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

1 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
2 employees, and the State of California according to proof pursuant to Labor Code § 2699,
3 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
4 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
5 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
7 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
8 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
9 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
10 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
12 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
13 Labor Code § 2699(f);

14 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 Cal. Labor Code §§ 218.6, 1194(a), 1194.2(a); Civil Code § 3287; and Art. XV, § 1 of the
16 California Constitution;

17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5; and

19 14. For such other and further relief the Court may deem just and proper.
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21 Date: February 27, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

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23 By:



Tuvia Korobkin
Attorney for Plaintiff

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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4 Dated: February 27, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

5
6 By: _____



Tuvia Korobkin
Attorney for Plaintiff