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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

SHARONE BLACKBURN, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

ACTRIV HEALTHCARE, INC., a corporation;
and DOES 1 through 100, Inclusive,

Defendants.

Case No. CVRI2205649

**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) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (8) FAILURE TO PAY VACATION
WAGES UPON TERMINATION
(LABOR CODE §§ 201-203, 227.3)**
- (9) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*)**
- (10) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Sharone Blackburn (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this Class and Representative Action Complaint against Actriv Healthcare,
3 Inc.; and Does 1 through 100, inclusive (collectively, “Defendants”), and on information and
4 belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
9 227.3, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and
10 Industrial Welfare Commission Wage Order No. 4 (“Wage Order 4”), in addition to seeking
11 declaratory relief and restitution. This class action is brought pursuant to California Code of Civil
12 Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California
13 Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code 201-
27 204, 226, 226.7, 227.3, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698
28 *et seq*; California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage

Order 4, which sets employment standards for employees in professional, technical, clerical, mechanical, and similar occupations, including nurses working through a staffing agency.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a healthcare staffing company, and that they employed Plaintiff and other similarly situated non-exempt employees within Riverside County and the state of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

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

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 18).

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10. During Plaintiff's employment with Defendants, Defendants required Plaintiff and other non-exempt employees to take on-call meal periods on their shifts. Specifically, Defendants required Plaintiff to notify her supervisor of her whereabouts during her break, remain within close proximity to her work site, and remain available and easily accessible throughout all of her meal breaks. Defendants' written policies state, "At no time do you take a break without notifying the nurse and other staff you are working with and the location of where will you will be during your breaks." As a result of these policies/practices, Plaintiff was unable to take uninterrupted, off-duty 30-minute meal periods, as her meal periods were always on-call/on-duty. Defendants and Plaintiff did not enter into a written on-duty meal period agreement and therefore, even assuming the nature of Plaintiff's work otherwise qualified for an on-duty meal period, the on-duty meal periods required by Defendants were unlawful. *See Wage Order 4, § 11(A)* ("An 'on duty' meal period shall be permitted only...when by written agreement between the parties an on-the-job paid meal period is agreed to.") Defendants also did not pay Plaintiff or other non-exempt employees for their on-call/on-duty meal periods, and instead deducted a half-hour each workday from their wages for a supposed off-duty meal period. This resulted in unpaid wages, including unpaid minimum wages and overtime wages.

11. In addition, Plaintiff's time records reflect consistently late meal periods (i.e., commencing after 5 hours), and reflect no second meal periods on shifts over 10.0 hours. Indeed, there was no space on Plaintiff's time sheets to indicate a second meal period, nor does Defendants' meal period policy make any mention of second meal periods or any mention of the timing of the meal period. The policy simply states that "All employees are required to take a lunch break of 30 minutes [w]hen working more than 5-hour shifts" (emphasis added).

12. Despite failing to provide Plaintiff and other non-exempt employees with all timely, off-duty meal periods to which they were entitled, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a

1 portion of the putative class period, Defendants maintained no payroll code or other mechanism
2 for paying meal period premiums when Defendants failed to provide a legally compliant meal
3 period.

4 13. Defendants have also failed to authorize and permit compliant rest periods to
5 Plaintiff and other non-exempt employees. Specifically, Defendants’ policies contain no mention
6 of 10-minute rest periods, and Plaintiff was not authorized and permitted the rest periods to which
7 she was entitled. Moreover, to the extent Plaintiff was ever able to take a break, she was required
8 to remain on-call so that the on-site client could reach her at all times, in the event of, for example,
9 a medical emergency Plaintiff was needed to attend to. The on-duty/on-call nature of Plaintiff’s
10 and other non-exempt employees’ breaks violates California law, as announced in *Augustus v.*
11 *ABM Security Services Inc.* 2 Cal.5th 257 (2016). In *Augustus*, the California Supreme Court held
12 that an “on call” rest period does not satisfy the requirement that employers provide off-duty rest
13 periods to their employees. Thus, Plaintiff and other non-exempt employees who are “on call”
14 during their rest periods have not received legally compliant rest periods under California law.
15 *Augustus*, 2 Cal.5th at 273. Despite failing to authorize and permit legally compliant rest periods
16 to Plaintiff and other non-exempt employees, Defendants failed to pay the rest period premiums
17 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
18 putative class period, Defendants maintained no payroll code or other mechanism for paying rest
19 period premiums when Defendants failed to authorize and permit a legally compliant rest period.

20 14. Defendants also failed to reimburse Plaintiff and other employees for expenses
21 they incurred in the course of their employment. Specifically, Defendants required Plaintiff to use
22 her personal cellular phone to submit her weekly timekeeping records to management, as well as
23 to communicate with her supervisors and co-workers. Indeed, Defendants’ policies state
24 unequivocally that “All employees are required to have...[a] phone or access to one,” and
25 Plaintiff’s timesheets required her to either fax her timesheet to a specified fax number or email
26 her timesheets to a specified email address. Thus, Plaintiff was required to utilize her personal
27 cell phone (or a personal fax machine) to submit her hours to Defendants (which in turn, on
28 information and belief, allowed Defendants to bill their clients for Plaintiff’s time). Despite

1 requiring Plaintiff to use her personal cellular phone for work-related purposes, Defendants failed
2 to reimburse Plaintiff for any portion of her personal cellular phone bill. As a result of the
3 foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code §
4 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

5 15. As a result of failing to pay all required minimum wages, overtime wages, meal
6 period premiums, and rest period premiums, Defendants failed to timely pay all final wages due
7 to Plaintiff and other former employees at the termination of their employment. In addition,
8 Plaintiff's final wages were not timely paid in that Defendants failed to provide Plaintiff with her
9 final paycheck on the date of separation of her employment. Specifically, Plaintiff was terminated
10 on March 10, 2022 but Defendants failed to provide her last paycheck until at least March 18,
11 2022. This violates Labor Code section 201, which requires employers to pay all final wages due
12 to employees who are discharged on the date of discharge.

13 16. Plaintiff's final paycheck also did not include payment for her accrued but unused
14 vacation wages, in violation of Labor Code § 227.3.

15 17. As a further result of Defendants' failure to pay meal and rest period premium
16 wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements
17 to Plaintiff and other non-exempt employees.

18 **CLASS ACTION ALLEGATIONS**

19 18. Class Definitions: Plaintiff bring this action on behalf of herself and the following
20 Classes pursuant to Section 382 of the Code of Civil Procedure:

21 a. The Minimum Wage Class consists of all of Defendants' current and former non-
22 exempt employees who were subject to Defendants' meal period policies/practices, at any
23 time from four years immediately preceding the filing of this action through the present.

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

1 c. The Meal Period Class consists of all of Defendants' current and former non-
2 exempt employees in California who were subject to Defendants' meal period
3 policies/practices and worked at least one shift in excess of 5.0 hours and/or one shift in
4 excess of 10.0 hours, at any time during the four years immediately preceding the filing of
5 this action through the present.

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

9 e. The Wage Statement Class consists of all members of the Minimum Wage Class,
10 Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage
11 statement at any time during the one year immediately preceding the filing of this action
12 through the present.

13 f. The Waiting Time Class consists of: (i) all members of the Minimum Wage Class,
14 Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed
15 by Defendants and who last worked for Defendants at any time from three years
16 immediately preceding the filing of this lawsuit through the present; and (ii) all of
17 Defendants' California employees whose employment with Defendants ended at any time
18 during the three years immediately preceding the filing of this action through the present,
19 and whose final paycheck was not provided to them until after the date of their termination
20 (in the case of employees who were discharged or who gave 72 hours' notice of quitting)
21 or more than 72 hours after quitting (for employees who quit without 72 hours' notice).

22 g. The Vacation Wage Class consists of all of Defendants' former employees who
23 were not paid all accrued but unused vacation wages at their termination of employment,
24 at any time from three years preceding the filing of this action through the present.

25 h. The Expense Reimbursement Class consists of all of Defendants' employees who
26 were required to submit their timesheets to Defendants via fax or email, or otherwise use
27 personal cell phones for work purposes, at any time from four years immediately preceding
28 the filing of this action through the present.

1 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
4 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
5 Defendants' employment records.

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

- 10 i. Whether Defendants paid at least the minimum wage for all hours worked
11 to members of the Minimum Wage Class;
- 12 ii. Whether Defendants' meal period, timekeeping, and payroll practices
13 violate the applicable Labor Code provisions including, but not limited to,
14 Sections 510 and 1194 by requiring overtime work and not paying the
15 Overtime Class for said work according to California's overtime laws;
- 16 iii. Whether Defendants provided legally compliant meal periods to members
17 of the Meal Period Class;
- 18 iv. Whether Defendants authorized and permitted legally compliant rest
19 periods to members of the Rest Period Class;
- 20 v. Whether Defendants furnished legally compliant wage statements to
21 members of the Wage Statement Class pursuant to Labor Code § 226;
- 22 vi. Whether Defendants paid all wages due to members of the Waiting Time
23 Class at the time of separation of employment;
- 24 vii. Whether Defendants paid all vacation wages at termination of employment
25 to members of the Vacation Wage Class; and
- 26 viii. Whether Defendants properly reimbursed expenses incurred by members
27 of the Expense Reimbursement Class.

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

9 22. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the
11 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
12 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum
13 wages and overtime wages, was subject to Defendants' uniform meal and rest period
14 policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages
15 upon her separation of employment from Defendants, and was not reimbursed for all expenses
16 she incurred in carrying out her job duties for Defendants.

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

23 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiff

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
4 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
5 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
6 an individual remedy would discourage the assertion of lawful claims by employees who would
7 be disinclined to file an action against their former and/or current employer for real and justifiable
8 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
9 prosecution of separate actions by individual class members would create a substantial risk of
10 inconsistent or varying verdicts or adjudications with respect to the individual class members
11 against Defendants herein; and which would establish potentially incompatible standards of
12 conduct for Defendants. Further, the claims of the individual members of the Classes are not
13 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
14 costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are
15 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **MINIMUM WAGE VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 26. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
21 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
22 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
23 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
24 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

25 27. At all relevant times, Defendants failed to conform their pay practices to the
26 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
27 actually worked including, but not limited to, all hours they were subject to Defendants' control
28 and/or suffered or permitted to work under the Labor Code and Wage Order 4.

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

6 29. As a direct and proximate result of Defendants' unlawful conduct as alleged
7 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
8 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
9 entitled to recover economic and statutory damages and penalties and other appropriate relief as
10 a result of Defendants' violations of the California Labor Code and Wage Order 4.

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

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES**

18 **(AGAINST ALL DEFENDANTS)**

19 31. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

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

24 33. At all times relevant herein, Defendants were required to properly compensate
25 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
26 Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an
27 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
28 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 4, § 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. 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.

34. 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 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California 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)

35. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

36. 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 4, for the reasons set forth herein.

37. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, 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)

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

39. Labor Code §§ 226.7 and 516, and Wage Order 4, § 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.

40. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also have 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.

41. 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.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

19 50. Defendants' failure to pay all final wages was willful within the meaning of Labor
20 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
21 Time Class their earned wages upon separation from employment results in a continued payment
22 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
23 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
24 attorneys' fees and costs of suit.

25 **SEVENTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

27 **(AGAINST ALL DEFENDANTS)**

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

52. At all relevant times, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

53. At all relevant times, Defendants were subject to Labor Code § 2804, which states, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

54. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal cellular phones for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

55. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered damages in sums, which will be shown according to proof.

56. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES UPON TERMINATION

(AGAINST ALL DEFENDANTS)

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

58. Defendants are required to pay all accrued but unused vacation wages to employees upon termination of employment, as required under Labor Code §§ 203 and 227.3. As alleged herein, Defendants have failed to pay Plaintiff and members of the Vacation Wage Class

all accrued but unused vacation wages at the termination of their employment, in violation of Labor Code §§ 203 and 227.3 and *Suastez v. Plastic Dress-Up Co.*, 31 Cal.3d 774 (1982).

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

60. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

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

62. 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.

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

64. 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.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

65. 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;

e. Failing to furnish Plaintiff and other aggrieved employees with accurate itemized wage statements, in violation Labor Code §§ 226 and 1198;

f. 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;

g. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198; and

h. Failing to pay vacation wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Cods §§ 201-203 and 227.3.

66. On or about December 20, 2022, Plaintiff notified Defendant Actriv Healthcare, Inc., 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 65 (a)-(h) 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.

67. 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, and 1197;
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 compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 203 and 227.3;
12. Upon the Ninth 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 Business and Professions Code § 17200, *et seq.*;

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1 13. Upon the Tenth 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 14. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 California Labor Code §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287; and Art.
16 XV, § 1 of the California Constitution;

17 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

19 16. For such other and further relief the Court may deem just and proper.
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21 Date: February 24, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

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23 By:



Tuvia Korobkin
Attorneys for Plaintiff

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Dated: February 24, 2023

By:

