

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

2 JENICA LEONARD (SBN 245366)
jenica@spivaklaw.com

3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl., PMB 42554
5 West Hollywood, CA 90069
6 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

7 Attorneys for Plaintiff,
8 TINA A. WITMAN, and all others similarly situated
(Additional attorneys for Plaintiff(s) on next page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN MATEO**
11 **(UNLIMITED JURISDICTION)**

12 TINA A. WITMAN, on behalf of herself and all
13 others similarly situated, and the general public,
14 and as an “aggrieved employee” on behalf of other
15 “aggrieved employees” and the State of California
under the Labor Code Private Attorneys General
16 Act of 2004,

17 *Plaintiff,*

18 vs.

19 NORTH PENINSULA VETERINARY
20 SURGICAL GROUP VETERINARY
CORPORATION, a California corporation and
21 DOES 1–50, inclusive,

22 *Defendant(s).*

Case No. 22-CIV-05289

CLASS ACTION

**~~PROPOSED~~ FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave.
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 Plaintiff, Tina A. Witman (hereafter “Plaintiff” or “Witman”), on behalf of herself and
2 all others similarly situated, the general public, and as an “aggrieved employee” on behalf of
3 other “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants North Peninsula
9 Veterinary Surgical Group Veterinary Corporation, a California corporation, and Does 1 through
10 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
12 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
13 relief. These claims are based on Defendants’ failures to:

14 (A) Pay all wages, including minimum, regular, and overtime wages earned for
15 all hours worked at the correct rates of pay;

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

18 (D) Pay premium wages for unprovided meal periods;

19 (E) Pay premium wages for unprovided rest breaks;

20 (F) Indemnify for necessary work-related expenditures;

21 (G) Issue only accurate and complete itemized wage statements; and

22 (H) Timely pay wages upon termination of employment;

23 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
24 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
25 action.

26 **II. THE PARTIES**

27 3. Plaintiff Tina A. Witman is a resident of California. At all relevant times, Plaintiff
28 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
“aggrieved employee” within the meaning of Labor Code § 2699(c).

4. Defendant North Peninsula Veterinary Surgical Group Veterinary Corporation is
a corporation organized and existing under the laws of California and a citizen of California based



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on Plaintiff's information and belief.

5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

6. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters, or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

7. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

III. CLASS ALLEGATIONS

9. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

10. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly, non-exempt employees, including registered veterinary technicians/technologists, veterinary assistants, laboratory animal caretakers, and individuals performing work comparable to the aforementioned, compensated comparably to the



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Mail:
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PMB 42554
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1 aforementioned, and individuals in similar positions at any time during the period beginning four
2 years prior to the filing of this action and ending on the date that final judgment is entered in this
3 action (“Class” or “Class Members”).

4 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the class definition with greater specificity by further division into
6 subclasses and/or by limitation to particular issues.

7 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 13. **Commonality and Predominance:** Common questions of law and fact exist as to
12 all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to pay all wages earned to Class Members for
15 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
16 premium, and rest period premium wages;

17 B. Whether Defendants failed to provide the Class Members with all meal
18 periods in compliance with California law;

19 C. Whether Defendants failed to authorize and permit the Class Members to
20 take all rest periods in compliance with California law;

21 D. Whether Defendants failed to indemnify the Class Members for the
22 reasonable expenses they incurred during the course of performing their duties;

23 E. Whether Defendants knowingly and intentionally failed to provide the
24 class with accurate and complete itemized wage statements;

25 F. Whether Defendants willfully failed to provide the class with timely final
26 wages;

27 G. Whether Defendants engaged in unfair competition within the meaning of
28 Business and Professions Code sections 17200, et seq., with respect to the Class; and

 H. Whether Class Members are entitled to restitution of money or property
 that Defendants may have acquired from them through alleged Labor Code violations.

 14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.



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1 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
2 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
3 Code, the Wage Order, and the Business and Professions Code.

4 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
5 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
6 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
7 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
8 Members.

9 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
10 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
11 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
12 Plaintiff and absent Class Members.

13 17. **Superiority:** A class action is vastly superior to other available means for fair and
14 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
15 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
16 and efficiently prosecute their common claims in a single forum without the unnecessary
17 duplication of effort and expense that numerous individual actions would entail. In addition, the
18 monetary amounts due to many individual Class Members are likely to be relatively small and
19 would thus make it difficult, if not impossible, for individual Class Members to both seek and
20 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
21 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
22 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

23 **IV. STATEMENT OF FACTS**

24 18. The Wage Order applies to "all persons employed in the public housekeeping
25 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
26 Wage Order defines "Public Housekeeping Industry" to mean:

27 any industry, business, or establishment which provides meals, housing, or
28 maintenance services whether operated as a primary business or when
29 incidental to other operations in an establishment not covered by an industry
30 order of the Commission, and includes, but is not limited to the following:

(7) Establishments providing veterinary or other animal care services



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
2 Witman, and all other Class Members were covered by the Wage Order because the Defendants
3 operated, and Witman, and all other Class Members worked for, one or more veterinary clinics
4 performing surgery and operating twenty-four (24) hours per day. Accordingly, Witman and all
5 other Class Members are entitled to the protections the Wage Order provides.

6 19. On approximately March 30, 2021, the Defendants began to employ Witman in
7 San Mateo in the position of hourly, non-exempt veterinary technician. The Defendants
8 continuously employed her in that capacity until on or about May 25, 2022, when her employment
9 ended.

10 20. At all relevant times, the Defendants issued wages to Witman and all other Class
11 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
12 times, the Defendants classified Witman and all of the other Class Members as non-exempt
13 employees entitled to the protections of the Labor Code and the Wage Order.

14 21. At all relevant times, the Defendants failed to compensate Witman and all other
15 Class Members for all hours worked at the applicable minimum or regular rates of pay. The
16 Defendants required Plaintiff and all other Class Members to be on-call and monitor their phones
17 for animal related questions during their workdays, including during meal and rest breaks. The
18 Defendants also required Plaintiff and all other Class Members to answer work-related phone
19 calls from managers and coworkers during their non-working hours without pay for the time.
20 Additionally, the Defendants forced Plaintiff and all other Class Members to work off-the-clock
21 answering animal care related questions before clocking-in for their shift. Likewise, the
22 Defendants forced Plaintiff and all other Class Members to work off-the-clock answering animal
23 care related questions after clocking-out at the end of their shifts. Consequently, the Defendants
24 compelled Witman and all other Class Members to work hours without pay.

25 22. At all relevant times, the Defendants failed to compensate Witman and all other
26 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
27 week, and for the first eight hours of the seventh day of the workweek. The Defendants required
28 Plaintiff and all other Class Members to be on-call and monitor their phones for animal related
questions during their workdays, including during meal and rest breaks. The Defendants also
required Plaintiff and all other Class Members to answer work-related phone calls from managers
and coworkers during their non-working hours without pay for the time. Additionally, the



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 Defendants forced Plaintiff and all other Class Members to work off-the-clock answering animal
2 care related questions before clocking-in for their shift. Likewise, the Defendants forced Plaintiff
3 and all other Class Members to work off-the-clock answering animal care related questions after
4 clocking-out at the end of their shifts. Consequently, the Defendants compelled Witman and all
5 other Class Members to work overtime hours without pay.

6 23. At all relevant times, the Defendants failed to provide Witman and all other Class
7 Members with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and
8 all other Class Members to work through their meal periods and to monitor their phones for animal
9 related questions during all working hours and expected Plaintiff and all other Class Members to
10 respond to any animal related requests immediately. The Defendants forced Plaintiff and all other
11 Class Members to take their meal breaks after their first five hours of work. Additionally, the
12 Defendants made Plaintiff and all other Class Members take their meal periods on-site and in the
13 area where animals were being held. Consequently, the Defendants disallowed Plaintiff and all
14 other Class Members from taking their full 30-minute, duty-free, meal period. The Defendants
15 also failed to pay premium wages for days on which it failed to provide Witman and all other
16 Class Members with meal periods as required by law.

17 24. At all relevant times, the Defendants failed to authorize and permit Witman and
18 all other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or
19 major portion thereof. The Defendants required Plaintiff and all other Class Members to monitor
20 their phones for animal related questions during all working hours and expected Plaintiff and all
21 other Class Members to respond to any animal related request immediately. Consequently, the
22 Defendants disallowed Plaintiff and all other Class Members from taking duty-free 10-minute
23 rest periods every four hours or major fraction thereof. The Defendants also failed to pay premium
24 wages for days on which it failed to authorize and permit Witman and all other Class Members
25 to take rest breaks as required by law.

26 25. At all relevant times, the Defendants required Witman and all other Class
27 Members to incur certain business expenses in the course of performing their duties. The
28 Defendants required Witman and all other Class Members to supply mobile phones, telecom, and
veterinary equipment to perform their job duties. However, the Defendants did not provide these
items and did not reimburse Witman and the other Class Members for these items. The Defendants
required Plaintiff and all other Class Members to use their personal cell phones to record their



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 clock-in and clock-out time. The Defendants also required Plaintiff and all other Class Members
2 to monitor their personal cell phones during all shifts and to respond to animal related concerns
3 immediately. Additionally, the Defendants compelled Plaintiff and all other Class Members to
4 respond to animal related issues during hours they were not scheduled to work.

5 26. Additionally, the Defendants required Plaintiff and all other Class Members to
6 wear work-compliant shoes, and provide stethoscopes, thermometers, and medical scissors and
7 did not supply, pay for, or reimburse Plaintiff and all other Class Members for these required
8 work items.

9 27. At all relevant times, the Defendants failed to issue to Witman, and all of the other
10 Class Members, complete and accurate wage statements that state all hours worked at the correct
11 rates of pay and all wages earned. The Defendants knowingly and intentionally failed to state on
12 the wage statements they issued to Witman and all other Class Members the unpaid wages
13 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
14 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
15 wages earned, and related information.

16 28. At all relevant times, the Defendants also failed to timely pay Witman and all of
17 the other Class Members all earned wages as described above during and at the conclusion of
18 employment.

19 29. At all relevant times, the Defendants failed to provide Witman and all other Class
20 Members with suitable facilities for food and drink or facilities to warm food and drink.

21 30. At all relevant times, the Defendants failed to maintain accurate employee records
22 of Witman and all other Class Members.

23 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
24 unlawful practices and policies, Plaintiff and the Class Members were:

- 25 A. Not provided with all off-duty meal periods;
- 26 B. Not authorized and permitted to take all rest break periods;
- 27 C. Not paid one hour's pay for each workday in which Defendants failed to
28 authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to
provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular,



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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1801 Century Park East
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and overtime wages for work performed while clocked out;

F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;

G. Not provided with accurate and complete wage statements; and

H. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

33. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

34. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

35. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:



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Mail:
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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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Los Angeles, CA 90069

- 1 (a) One and one-half (1 ½) times the employee's regular
2 rate of pay for all hours worked in excess of eight (8)
3 hours up to and including 12 hours in any workday,
4 and for the first eight (8) hours worked on the seventh
5 (7th) consecutive day of work in a workweek.
6
7 (b) Double the employee's regular rate of pay for all
8 hours worked in excess of 12 hours in any workday
9 and for all hours worked in excess of eight (8) hours
10 on the seventh (7th) consecutive day of work in a
11 workweek.
12
13 (c) The overtime rate of compensation required to be
14 paid to a nonexempt full-time salaried employee
15 shall be computed by using the employee's regular
16 hourly salary as one-fortieth (1/40) of the employee's
17 weekly salary.

18 36. Within the healthcare industry, the term "hours worked" means the time during
19 which an employee is suffered or permitted to work for the employer, whether or not required to
20 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA").
21 Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is
22 defined by federal regulations:

23 "...As a general rule the term "hours worked" will include: (a) All time
24 during which an employee is required to be on duty or to be on the
25 employer's premises or at a prescribed workplace and (b) all time during
26 which an employee is suffered or permitted to work whether or not he is
27 required to do so. Thus, working time is not limited to the hours spent in
28 active productive labor, but includes time given by the employee to the
employer even though part of the time may be spent in idleness. Some of
the hours spent by employees, under certain circumstances... in meal
periods and rest periods are regarded as working time and some are not. The
governing principles are discussed in part 785 of this chapter (interpretative
bulletin on "hours worked") and part 790 of this chapter (statement of effect
of Portal-to-Portal Act of 1947). ..."

29 C.F.R. § 778.223

"The United States Supreme Court originally stated that employees subject
to the act must be paid for all time spent in "physical or mental exertion
(whether burdensome or not) controlled or required by the employer and



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.”

29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))”

29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich. 1950), aff’d 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7



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PMB 42554
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1 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and*
2 *Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla.
3 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772
4 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14
5 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29,
6 13 W.H. Cases (E.D. Pa. 1956))”

7 29 C.F.R. § 785.19. Healthcare employees who are required to wear pagers and respond to patient
8 emergencies during meal breaks are entitled to payment from their employer for meal breaks
9 because their employer has not fully relieved them of their responsibilities during those times.
10 *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also
11 *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)
12 (employees required to work during half hour meal break given that they had to stay at the facility
13 and be available to respond to requests to return or check out weapons and equipment); *Wahl v.*
14 *Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police
15 officers stated a claim under the Fair Labor Standarss Act where they alleged that they were not
16 paid for meal periods but were required to remain within a certain area, respond to emergencies
17 and citizen requests, and remain accessible).

18 37. Section 4 of the Wage Order requires an employer to pay non-exempt employees
19 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
20 an employer has actual or constructive knowledge that employees are working.

21 38. Labor Code section 510 states:

22 Eight hours of labor constitutes a day's work. Any work in excess of eight
23 hours in one workday and any work in excess of 40 hours in any one
24 workweek and the first eight hours worked on the seventh day of work in
25 any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee. Any work in excess
27 of 12 hours in one day shall be compensated at the rate of no less than twice
28 the regular rate of pay for an employee. In addition, any work in excess of
29 eight hours on any seventh day of a workweek shall be compensated at the
30 rate of no less than twice the regular rate of pay of an employee. Nothing in
31 this section requires an employer to combine more than one rate of overtime
32 compensation in order to calculate the amount to be paid to an employee for
33 any hour of overtime work.

34 39. Labor Code section 1194 invalidates any agreement between an employer and an
35 employee to work for less than the minimum wage required under the applicable Wage Order.



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

40. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

41. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

42. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

43. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, and overtime wages for all minimum, regular, and overtime hours, respectively, that they worked at the correct rates of pay.

44. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

45. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

46. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

47. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 48. Within the healthcare industry, the term “hours worked” means the time during
2 which an employee is suffered or permitted to work for the employer, whether or not required to
3 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).
4 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is
5 defined by federal regulations:

6 ...As a general rule the term “hours worked” will include: (a) All time
7 during which an employee is required to be on duty or to be on the
8 employer’s premises or at a prescribed workplace and (b) all time during
9 which an employee is suffered or permitted to work whether or not he is
10 required to do so. Thus, working time is not limited to the hours spent in
11 active productive labor, but includes time given by the employee to the
12 employer even though part of the time may be spent in idleness. Some of
13 the hours spent by employees, under certain circumstances... in meal
14 periods and rest periods are regarded as working time and some are not. The
15 governing principles are discussed in part 785 of this chapter (interpretative
16 bulletin on “hours worked”) and part 790 of this chapter (statement of effect
17 of Portal-to-Portal Act of 1947). ...

18 29 C.F.R. § 778.223

19 The United States Supreme Court originally stated that employees subject
20 to the act must be paid for all time spent in “physical or mental exertion
21 (whether burdensome or not) controlled or required by the employer and
22 pursued necessarily and primarily for the benefit of the employer and his
23 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123*
24 (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no
25 exertion at all and that all hours are hours worked which the employee is
26 required to give his employer, that “an employer, if he chooses, may hire a
27 man to do nothing, or to do nothing but wait for something to happen.
28 Refraining from other activity often is a factor of instant readiness to serve,
29 and idleness plays a part in all employments in a stand-by capacity.
30 Readiness to serve may be hired, quite as much as service itself, and time
31 spent lying in wait for threats to the safety of the employer’s property may
32 be treated by the parties as a benefit to the employer.” *Armour & Co. v.*
33 *Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The
34 workweek ordinarily includes “all the time during which an employee is
35 necessarily required to be on the employer’s premises, on duty or at a
36 prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328
37 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide
38 an exception for preliminary and postliminary activities. See Section
39 785.34.

40 29 C.F.R. § 785.7.



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 Rest periods of short duration, running from 5 minutes to about 20 minutes,
2 are common in industry. They promote the efficiency of the employee and
3 are customarily paid for as working time. They must be counted as hours
4 worked. Compensable time of rest periods may not be offset against other
5 working time such as compensable waiting time or on-call time. (*Mitchell*
v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v.*
Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

6 29 C.F.R. § 785.18.

7
8 Bona fide meal periods are not worktime. Bona fide meal periods do not
9 include coffee breaks or time for snacks. These are rest periods. The
10 employee must be completely relieved from duty for the purposes of eating
11 regular meals. Ordinarily 30 minutes or more is long enough for a bona fide
12 meal period. A shorter period may be long enough under special conditions.
13 The employee is not relieved if he is required to perform any duties, whether
14 active or inactive, while eating. For example, an office employee who is
15 required to eat at his desk or a factory worker who is required to be at his
16 machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*,
17 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert.
18 denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp.
19 213 (E.D. Mich. 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua*
Hendy Corp., 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9,
20 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7
21 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and*
Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla.
22 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772
23 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14
24 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29,
25 13 W.H. Cases (E.D. Pa. 1956))

26 29 C.F.R. § 785.19. Healthcare employees who were required to wear pagers and respond to
27 patient emergencies during meal breaks were held entitled to payment from their employer for
28 meal breaks because their employer had not fully relieved them of their responsibilities during
those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14,
1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar.
14, 2016) (employees required to work during half hour meal break given that they had to stay
at the facility and be available to respond to requests to return or check out weapons and
equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec.
21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 that they were not paid for meal periods but were required to remain within a certain area,
2 respond to emergencies and citizen requests, and remain accessible).

3 Notwithstanding any other provision of this order, employees in the health
4 care industry who work shifts in excess of eight (8) total hours in a workday
5 may voluntarily waive their right to one of their two meal periods. In order
6 to be valid, any such waiver must be documented in a written agreement
7 that is voluntarily signed by both the employee and the employer. The
8 employee may revoke the waiver at any time by providing the employer at
least one day's written notice. The employee shall be fully compensated for
all working time, including any on-the-job meal period, while such a waiver
is in effect.

9 Wage Order 5, § 11(D).

10 49. In relevant part, In relevant part, California Labor Code § 512 states:

11 An employer shall not employ an employee for a work period of more than
12 five hours per day without providing the employee with a meal period of
13 not less than 30 minutes, except that if the total work period per day of the
14 employee is no more than six hours, the meal period may be waived by
mutual consent of both the employer and employee.

15 An employer shall not employ an employee for a work period of more than
16 10 hours per day without providing the employee with a second meal period
17 of not less than 30 minutes, except that if the total hours worked is no more
18 than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

19 50. In relevant part, Section 11 of the Wage Order states:

20 **Meal Periods**

21 (A) No employer shall employ any person for a work period of more
22 than five (5) hours without a meal period of not less than 30 minutes,
23 except that when a work period of not more than six (6) hours will
24 complete the day's work the meal period may be waived by mutual
consent of the employee and the employer. Unless the employee is
relieved of all duty during a 30 minute meal period, the meal period
shall be considered an 'on duty' meal period and counted as time
worked. An 'on duty' meal period shall be permitted only when the
nature of the work prevents an employee from being relieved of all
duty and when by written agreement between the parties an on-the-
job paid meal period is agreed to. The written agreement shall state
that the employee may, in writing, revoke the agreement at any time.



25 SPIVAK LAW

26
27 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

28 Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

51. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30-minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

53. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants required Witman and all other Class Members to work through their meal periods and to monitor their phones for animal related questions during all working hours and expected Witman and all other Class Members to respond to any animal related requests immediately. The Defendants forced Witman and all other Class Members to take their meal breaks after their first five hours of work. Additionally, the Defendants made Witman and all other Class Members take their meal periods on-site and in the area where animals were being held. Consequently, the Defendants disallowed Witman and all other Class Members from taking their full 30-minute, duty-free meal period.

54. At all relevant times, Defendants failed to provide Plaintiff and the Class



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Plaintiff and the Class Members with all off-duty meal periods required by California law.

56. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

57. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

59. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

60. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

61. In relevant part, Section 12 of the Wage Order states:

///

///



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

62. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
2 Plaintiff and the other Class Members to take timely rest periods.

3 66. The Defendants required Witman and all other Class Members to monitor their
4 phones for animal related questions during all working hours and expected Witman and all other
5 Class Members to respond to any animal related requests immediately. Consequently, the
6 Defendants disallowed Witman and all other Class Members from taking duty-free 10-minute
rest periods every four hours or major fraction thereof.

7 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
8 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
9 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
10 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
11 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they
12 failed to authorize and permit them to take 10-minute rest periods every four hours worked or
major fraction thereof.

13 68. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
16 take all rest breaks required by California law.

17 69. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 70. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
26 the Class Members with additional wages for all rest breaks not provided to them as required by
California Labor Code § 226.7.

27 71. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
28 have suffered damages in amounts subject to proof to the extent they were not paid additional



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 wages owed for all rest breaks not provided to them.

2 72. By reason of the above, Plaintiff and the Class Members are entitled to premium
3 wages for workdays in which one or more rest breaks were not provided to them pursuant to
4 California Labor Code § 226.7.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **Lab. Code § 2802**

8 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

9 73. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

10 74. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
11 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
12 direct consequence of the discharge of his or her duties.”

13 75. California Labor Code § 1198 prohibits employers from employing their
14 employees under conditions prohibited by the Wage Order.

15 76. At all relevant times, Defendants required Plaintiff and the Class Members to
16 incur certain business expenses in the course of performing their duties.

17 77. As described above, the Defendants required Witman and all other Class
18 Members to incur certain business expenses in the course of performing their duties. The
19 Defendants required Witman and all other Class Members to supply mobile phones, telecom,
20 and veterinary equipment to perform their job duties. However, the Defendants did not provide
21 these items and did not reimburse Witman and the other Class members for these items. The
22 Defendants required Witman and all other Class Members to use their personal cell phones to
23 record their clock-in and clock-out time. The Defendants also required Witman and all other
24 Class Members to monitor their personal cell phones during all shifts and to respond to animal
25 related inquiries promptly. The Defendants compelled Witman and all other Class Members to
26 respond to animal related issues during hours they were not scheduled to work.

27 78. Additionally, the Defendants required Witman and all other Class Members to
28 wear work-compliant shoes and provide stethoscopes, thermometers, and medical scissors and
did not supply, pay for, or reimburse Witman and all other Class Members for these required
work items.

79. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

81. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
2 if the employer fails to provide accurate and complete information as required by California
3 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
4 statement alone one or more of the following:

5 A. The amount of the gross wages or net wages paid to the employee during
6 the pay period or any of the other information required to be provided on the itemized wage
7 statement pursuant to California Labor Code § 226(a);

8 B. Which deductions the employer made from gross wages to determine the
9 net wages paid to the employee during the pay period;

10 C. The name and address of the employer and, if the employer is a farm labor
11 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
12 and address of the legal entity that secured the services of the employer during the pay period;

13 D. The name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number; and

15 E. The number of piece-rate units earned and the piece rate.

16 83. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
17 means a reasonable person would be able to readily ascertain the information without reference
18 to other documents or information.

19 84. As alleged herein, at all relevant times during the applicable limitations period,
20 Defendants violated California Labor Code section 226 because they did not properly and
21 accurately itemize each employee’s gross wages earned, net wages earned, the total hours
22 worked, the corresponding number of hours worked at each rate by the employee and other
23 requirements of California Labor Code section 226. Defendants failed to state in the wage
24 statements they issued to Plaintiff and the other Class Members all their hours worked and wages
25 earned, including, but not limited to, regular and overtime wages for work they performed off-
26 the-clock after clocking-out (as described above). Defendants knowingly and intentionally did
27 not issue either as a detachable part of the check, draft, or voucher paying the employee’s wages,
28 or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
Members that state all minimum wages earned, all regular wages earned, all overtime wages
earned, all meal period premium wages earned, and all rest break premium wages earned.

85. Defendants’ failure to provide Plaintiff and the other Class Members with



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 accurate wage statements was knowing and intentional. Defendants had the ability to provide
2 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
3 wage statements that Defendants knew were not accurate.

4 86. As a result of being provided with inaccurate wage statements by Defendants,
5 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
6 wage statements were violated and they were misled about the amount of wages they had actually
7 earned and were owed. In addition, the absence of accurate information on their wage statements
8 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
9 and mathematical computations to determine the amounts of wages owed, has caused difficulty
10 and expense in attempting to reconstruct time and pay records and/or has led to the submission
11 of inaccurate information about wages to state and federal government agencies. Further,
12 Plaintiff and the other Class Members were not able to ascertain from the wage statements
13 whether Defendants complied with their obligations under California Labor Code section 226(a).

14 **SIXTH CAUSE OF ACTION**

15 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

16 **Lab. Code §§ 201, 202, and 203**

17 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

18 87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 88. At all relevant times during the applicable limitations period, Plaintiffs and the
20 Class have been non-exempt employees of Defendants and entitled to the benefits and
21 protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

22 89. Labor Code § 201 provides that all earned and unpaid wages of an employee who
23 is discharged are due and payable immediately at the time of discharge.

24 90. Labor Code § 202 provides that all earned and unpaid wages of an employee who
25 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
26 quitting and that all earned and unpaid wages of an employee who quits without providing at
27 least 72-hours' notice before quitting are due and payable within 72 hours.

28 91. The Defendants failed to pay Witman and all of the other Class Members whose
employment ended all of the earned, but unpaid wages described above by the conclusion of
their employment with Witman, including minimum wages, regular wages, overtime wages,
unprovided meal period premium wages, and unprovided rest break premium wages.



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 92. By failing to pay such earned wages to Plaintiff and the Class Members,
2 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
3 § 201 or § 202.

4 93. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
5 and the Class Members all their earned and unpaid wages (described above) have been willful
6 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
7 violate the requirements of the Labor Code and the Wage Order, even though at all relevant
8 times, they have had the ability to comply with those legal requirements.

9 94. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf
10 of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
11 penalties for each Class Member.

12 **SEVENTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **Bus. & Prof. Code §§ 17200, *et seq.***

15 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

16 95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 96. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of the Business and Professions Code §§ 17200, *et seq.*

20 97. The unlawful conduct of Defendants alleged herein amount to and constitutes
21 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
22 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
23 gained a competitive advantage over other comparable companies doing business in California
24 that comply with their legal obligations to compensate employees for all earned wages.

25 98. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
26 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
27 Members were deprived of missed meal period premium wages, missed rest period premium
28 wages, phone expenses, telecom expenses, uniform and equipment expenses, minimum wages,
regular wages, overtime wages, and comparable money and property.

 99. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
Class Members are entitled to restitution of all monies rightfully belonging to them that



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90069

1 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
2 business practices.

3 100. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
4 connection with their unfair competition claims pursuant to California Code of Civil Procedure
5 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

6 **EIGHTH CAUSE OF ACTION**

7 **CIVIL PENALTIES**

8 **Lab. Code §§ 2698, et seq.**

9 **(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
10 against all Defendants)**

11 101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 102. The "Aggrieved Employees" are all members of the Class defined above who
13 Defendants employed during the period beginning December 16, 2021, and ending on the date
14 that final judgment is entered in this action.

15 103. Labor Code § 204 states:

16 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
17 204.2, earned by any person in any employment are due and payable twice
18 during each calendar month, on days designated in advance by the employer
19 as the regular paydays. Labor performed between the 1st and 15th days,
20 inclusive, of any calendar month shall be paid for between the 16th and the
21 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar
23 month, shall be paid for between the 1st and 10th day of the following
24 month.

25 ...

26 (b) (1) Notwithstanding any other provision of this section, all wages
27 earned for labor in excess of the normal work period shall be paid no later
28 than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision
(a) of Section 226 relating to total hours worked by the employee, if hours
worked in excess of the normal work period during the current pay period
are itemized as corrections on the paystub for the next regular pay period.
Any corrections set out in a subsequently issued paystub shall state the
inclusive dates of the pay period for which the employer is correcting its
initial report of hours worked.

(c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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- 1 shall apply to the covered employees.
- 2 (d) The requirements of this section shall be deemed satisfied by the payment
- 3 of wages for weekly, biweekly, or semimonthly payroll if the wages are
- 4 paid not more than seven calendar days following the close of the payroll
- 5 period.
- 6 104. Defendants paid wages to employees on regular intervals. Defendants, however,
- 7 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
- 8 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
- 9 intervals for all wages earned and all hours worked.
- 10 105. During the applicable time period, Defendants violated California Labor Code §§
- 11 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.
- 12 106. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
- 13 behalf of themselves and other current or former employees, to bring a civil action to recover
- 14 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.
- 15 107. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
- 16 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants'
- 17 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194,
- 18 1197, 1198, and 2802 during the applicable limitations period in the following amounts:
- 19 108. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
- 20 each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
- 21 Aggrieved Employee for each subsequent willful or intentional violation (penalty amounts
- 22 established by California Labor Code § 210).
- 23 109. For violations of California Labor Code § 226(a), two hundred fifty dollars
- 24 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
- 25 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
- 26 established by California Labor Code § 226.3).
- 27 110. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
- 28 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
- Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).
111. For violations of California Labor Code § 1174, five hundred dollars (\$500.00)
- for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty amounts

1 established by Labor Code § 1174.5).

2 112. For violations of California Labor Code § 1197, one hundred dollars (\$100.00)
3 for each Aggrieved Employee for each initial and intentional violation and two hundred fifty
4 dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
5 (regardless of whether the initial violations were intentionally committed) (penalty amounts
6 established by California Labor Code § 1197.1).

7 113. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and
8 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
9 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
10 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

11 114. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated December 16, 2022, Plaintiff filed written notice online
13 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
14 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
15 have been violated, including the facts and theories to support the alleged violations. A true and
16 correct copy of the notice to the LWDA dated December 16, 2022 is attached as **Exhibit A**.
17 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
18 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
19 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
20 intend to investigate these allegations.

21 115. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
23 connection with their claims for civil penalties.

24 **V. PRAYER FOR RELIEF**

25 116. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
26 relief and judgment against Defendants as follows:

- 27 A. An order that the action be certified as a class action with respect to
28 Plaintiff’s claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, missed meal



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period premium, and missed rest period premium wages;

- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Civil penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 16, 2023

By:



DAVID G. SPIVAK,
JENICA P. LEONARD
Attorneys for Plaintiff, TINA A.
WITMAN, and all others similarly
situated



SPIVAK LAW

Mail:
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PMB 42554
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EXHIBIT A



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

December 16, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Tina A. Witman / North Peninsula Veterinary Employers

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Tina A. Witman (hereafter “Witman” or “Complainant”) provides notice that North Peninsula Veterinary Surgical Group Veterinary Corporation, a California corporation and related entities (collectively “the North Peninsula Veterinary Employers” or “the Employers”) violated her rights and those of all other individuals the North Peninsula Veterinary Employers have employed or otherwise contracted with in California as hourly, nonexempt employees, including registered veterinary technicians/technologists, veterinary assistants, laboratory animal caretakers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Witman hereby provides this notice to the Labor & Workforce Development Agency and the North Peninsula Veterinary Employers and their agents and representatives.

At all relevant times, the North Peninsula Veterinary Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies throughout California. Witman and all other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately March 30, 2021, the North Peninsula Veterinary Employers began to employ Witman in San Mateo in the position of hourly, non-exempt veterinary technician. The North Peninsula Veterinary Employers continuously employed her in that capacity until on or about May 25, 2022, when her employment ended.

At all relevant times, the North Peninsula Veterinary Employers issued wages to Witman and all other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the North Peninsula Veterinary Employers classified Witman, and all other Aggrieved Employees, as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to be on-call and monitor their phones for animal related questions during their workdays, including during meal and rest breaks. The North Peninsula Veterinary Employers also required Witman and all other Aggrieved Employees to answer work-related phone calls from managers and coworkers during their non-working hours without pay for the time. Additionally, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care related questions before clocking-in for their shift. Likewise, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care related questions after clocking-out at the end of their shifts. Consequently, the North Peninsula Veterinary Employers compelled Witman and all other Aggrieved Employees to work hours without pay.

The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to be on-call and monitor their phones for animal related questions during their workdays, including during meal and rest breaks. The North Peninsula Veterinary Employers also required Witman and all other Aggrieved Employees to answer work-related phone calls from managers and coworkers during their non-working hours without pay for the time. Additionally, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care related questions before clocking-in for their shift. Likewise, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care related questions after clocking-out at the end of their shifts. Consequently, the North Peninsula Veterinary Employers compelled Witman and all other Aggrieved Employees to work overtime hours without pay.

At all relevant times, the North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to work through their meal periods and to monitor their phones for animal related questions during all working hours and expected Witman and all other Aggrieved Employees to respond to any animal related requests immediately. The North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to take their meal breaks after their first five hours of work. Additionally, the North Peninsula Veterinary Employers made Witman and all other Aggrieved Employees take their meal periods on-site and in the area where animals were being held. Consequently, the North Peninsula Veterinary Employers disallowed Witman and all other Aggrieved Employees from taking their full 30-minute, duty-free, meal period. The North Peninsula Veterinary Employers also failed to pay premium wages for days on which it failed to provide Witman and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the North Peninsula Veterinary Employers failed to authorize and permit Witman and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to monitor their phones for animal related questions during all working hours and expected Witman and all other Aggrieved Employees to respond to any animal related request immediately. Consequently, the North Peninsula Veterinary Employers disallowed Witman and all other Aggrieved Employees from taking duty-free 10-minute rest periods every four hours or major fraction thereof. The North Peninsula Veterinary Employers also failed to pay premium wages for days on which it failed to authorize and permit Witman and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to supply mobile phones, telecom, and veterinary equipment to perform their job duties. However, the North Peninsula Veterinary Employers did not provide these items and did not reimburse Witman and the other Aggrieved Employees for these items. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to use their personal cell phones to record their clock-in and clock-out time. The North Peninsula Veterinary Employers also required Witman and all other Aggrieved Employees to monitor their personal cell phones during all shifts and to respond to animal related concerns immediately. Additionally, the North Peninsula Veterinary Employers compelled Witman and all other Aggrieved Employees to respond to animal related medical and medication questions during hours they were not scheduled to work.

Further, the North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to wear work-compliant shoes and supply their own stethoscopes, thermometers, and medical scissors and did not supply, pay for, or reimburse Witman and all other Aggrieved Employees for these items.

At all relevant times, the North Peninsula Veterinary Employers failed to issue to Witman and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The North Peninsula Veterinary Employers knowingly and intentionally failed to state on the wage statements they issued to Witman and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, and all rest break premium wages earned.

The North Peninsula Veterinary Employers also failed to timely pay Witman and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees with suitable facilities for eating and drinking or reheating food and drink.

The North Peninsula Veterinary Employers failed to maintain accurate employee records of Witman and all other Aggrieved Employees.

For the reasons stated herein, Witman alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all other Aggrieved Employees:

- (a) The North Peninsula Veterinary Employers failed to pay Witman and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees all meal periods in compliance with California law;

- (c) The North Peninsula Veterinary Employers failed to authorize and permit Witman and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees at one hour's pay for each day in which the North Peninsula Veterinary Employers failed to provide them with one or more meal periods as required by law;
- (e) The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees at one hour's pay for each day in which the North Peninsula Veterinary Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The North Peninsula Veterinary Employers failed to indemnify Witman and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The North Peninsula Veterinary Employers knowingly and intentionally failed to provide Witman and all other Aggrieved Employees with accurate wage statements;
- (h) The North Peninsula Veterinary Employers willfully failed to timely pay Witman and all other Aggrieved Employees all earned and unpaid wages during their employment with the North Peninsula Veterinary Employers and when their employment ended;
- (i) The North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees with suitable facilities for eating and drinking or reheating food and drink; and

- (j) The North Peninsula Veterinary Employers failed to maintain accurate employment records pertaining to Witman and all other Aggrieved Employees.

Accordingly, Witman now seeks civil penalties on behalf of herself and all other Aggrieved Employees based on the North Peninsula Veterinary Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to include

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the North Peninsula Veterinary Employers, Witman, and all other Aggrieved Employees were covered by the Wage Order because the North Peninsula Veterinary Employers operated, and Witman, and all other Aggrieved Employees worked for, one or more veterinary clinics performing surgery and operating twenty-four (24) hours per day. Accordingly, Witman and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

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Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh

day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Within the healthcare industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the

Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...”
29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily

includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.” 29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff’d 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff’d 136 F. 2d

359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who are required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to be on-call and monitor their phones for animal and medication related questions during their workdays, including during meal and rest breaks. The North Peninsula Veterinary Employers also required Witman and all other Aggrieved Employees to answer work-related phone calls during

their non-working hours. Additionally, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care and medication related questions before clocking-in for their shift. Likewise, the North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to work off-the-clock answering animal care and medication related questions after clocking-out. Consequently, the North Peninsula Veterinary Employers compelled Witman and all other Aggrieved Employees to work hours without pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–905. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the North Peninsula Veterinary Employers, Witman and all other Aggrieved Employees earned rest period premium wages and meal period premium wages during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the North Peninsula Veterinary Employers failed to pay to Witman and all other Aggrieved Employees overtime premium pay on such rest period premium wages and meal period premium wages.

At all relevant times during the applicable limitations period, the North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Witman now seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount

sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.” Within the healthcare industry, the term “hours worked” means the

time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...”
29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety

of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34." 29 C.F.R. § 785.7.

"Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))" 29 C.F.R. § 785.18.

"Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer &*

Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

“Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.”

Wage Order 5, § 11(D).

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees with all timely meal periods. The North Peninsula Veterinary Employers denied Witman and all other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to work through their meal periods and to monitor their phones for animal or medication related questions during all working hours and respond to any animal or medication related requests immediately. The North Peninsula Veterinary Employers forced Witman and all other Aggrieved Employees to take their meal breaks after their first five hours of work and remain on-site and in the area where animals were being held. Consequently, the North Peninsula Veterinary Employers disallowed Witman and all other Aggrieved Employees from taking their full 30-minute meal period. Furthermore, the North Peninsula Veterinary Employers failed to pay premium wages for days on which they failed to provide Witman and all other Aggrieved

Employees with timely meal periods. Accordingly, Witman now seeks civil penalties for these Labor Code violations that the North Peninsula Veterinary Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The North Peninsula Veterinary Employers failed to authorize and permit Witman and all other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The North Peninsula Veterinary Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to monitor their phones for animal and medication related questions during all working hours and to respond to any animal and medication related request immediately. Consequently, the North Peninsula Veterinary Employers disallowed Witman and all other Aggrieved Employees from taking duty-free 10-minute rest periods every four hours or major fraction thereof. Moreover, the North Peninsula Veterinary Employers failed to pay Witman and all other Aggrieved Employees premium wages on workdays the North Peninsula Veterinary Employers failed to provide Witman and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Witman now seeks civil penalties for these Labor Code violations that the North Peninsula Veterinary Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses

(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to supply mobile phones, telecom, and veterinary equipment to perform their job duties. However, the North Peninsula Veterinary Employers did not provide these items and did not reimburse Witman and the other Aggrieved Employees for these items. The North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to use their personal cell phones to record their clock-in and clock-

out time. The North Peninsula Veterinary Employers also required Witman and all other Aggrieved Employees to monitor their personal cell phones during all shifts and to respond to animal and medication related concerns promptly. The North Peninsula Veterinary Employers compelled Witman and all other Aggrieved Employees to respond to animal related issues during hours they were not scheduled to work.

Additionally, the North Peninsula Veterinary Employers required Witman and all other Aggrieved Employees to wear work-compliant shoes, and provide stethoscopes, thermometers, and medical scissors and did not supply, pay for, or reimburse Witman and all other Aggrieved Employees for these required work items.

Accordingly, Witman seeks civil penalties for these Labor Code violations that the North Peninsula Veterinary Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the North Peninsula Veterinary Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The North Peninsula Veterinary Employers failed to state in the wage statements they issued to Witman and all of the other Aggrieved

Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The North Peninsula Veterinary Employers knowingly and intentionally failed to state on the wage statements they issued to Witman and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, and all rest break premium wages earned.

Accordingly, Witman seeks civil penalties for the Labor Code violations that the North Peninsula Veterinary Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the North Peninsula Veterinary Employers failed to timely pay all earned wages

due during employment within the time periods set by Labor Code section 204. Accordingly, Witman now seeks civil penalties for the Labor Code violations that the North Peninsula Veterinary Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72-hours thereafter, unless the employee has given 72-hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72-hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The North Peninsula Veterinary Employers failed to pay Witman and all other Aggrieved Employees whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment, including minimum wages, regular wages, overtime wages, unprovided meal period

premium wages, and unprovided rest break premium wages. By failing to pay Witman and all other Aggrieved Employees as set forth above at the end of employment, the North Peninsula Veterinary Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Witman seeks civil penalties from the North Peninsula Veterinary Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Suitable Facility for Food and Drink
(Lab. Code § 1198)

The Wage Order states,

If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

Wage Order, § 3(H). It continues, “In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.” *Id.*, § 11(c). It further states, “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours. *Id.*, § 13(b). Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant period, the North Peninsula Veterinary Employers failed to provide a suitable place for Witman and all other Aggrieved Employees to prepare and consume food and drink. The North Peninsula Veterinary Employers failed to provide a suitable facility for Witman and all other Aggrieved Employees to secure hot food and drink or heat their food or drink and a suitable sheltered place to consume their food and drink. Accordingly, Witman, on behalf of herself and all other Aggrieved Employees, seeks \$100.00 for each aggrieved employee per pay period for each initial violation of § 1198 and \$200.00 for each aggrieved employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The North Peninsula Veterinary Employers failed to compensate Witman and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, and all rest break premium wages

earned. As a result, the North Peninsula Veterinary Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Witman and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Witman seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Tina A. Witman will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Tina A. Witman
Walter L. Haines Esq.

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North Peninsula Veterinary Surgical Group Veterinary Corporation
c/o Gilbert Tsai Esq.
Hanson Bridgett LLP
425 Market St
San Francisco, CA 94105
gtsai@hansonbridgett.com

State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

Gilbert J. Tsai, Esq.
Kendall C. Fisher-Wu, Esq.
Hanson Bridgett LLP
425 Market St
San Francisco, CA 94105
gtsai@hansonbridgett.com
KFisher-Wu@hansonbridgett.com
tramirez@hansonbridgett.com
jleong@hansonbridgett.com

EXECUTED on Tuesday, March 21, 2023, at Los Angeles, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

BRECK OYAMA