

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 14 2023

BY 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JESSICA GARCIA, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

PROVIDENCE MEDICAL
FOUNDATION, a California corporation;
PROVIDENCE FACEY MEDICAL
FOUNDATION, a California corporation;
PROVIDENCE MEDICAL INSTITUTE, a
California corporation; PROVIDENCE
SAINT JOHN'S MEDICAL
FOUNDATION, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2229073

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jessica Garcia, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of San Bernardino, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in several locations within the County of San Bernardino, including Defendants' facilities in Apple Valley (19341 Bear Valley Road, Apple Valley, California 92308; 18310 US Highway 18, Apple Valley, California 92307; 19333 Bear Valley Road, Apple Valley, California 92308; 18300 Highway 18, Apple Valley, CA 92307); Chino Hills (15855 Pomona Rincon Rd., Chino Hills, CA 91709); Hesperia (17083 Main Street, Hesperia, California 92345; 17095 Main Street, Hesperia, California 92345; 17061 Main Street, Hesperia, California 92345); and Victorville (12550 Hesperia Road, Suite 100, Victorville, California 92395; 12602 Amargosa Road, Suite F, Victorville, California 92392). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper.

THE PARTIES

4. Plaintiff Jessica Garcia is a resident of Stanton, in Orange County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately January 2021 to April 2022. Plaintiff worked as a Medical Assistant at Defendants' medical facility in Orange, California. During her employment, Plaintiff typically worked eight (8) to ten (10) hours or more per day and four (4) to five (5) days per week. Plaintiff's primary job duties included, without limitation, checking patients in and out, providing forms, examining and updating patients' charts, scheduling appointments, scanning information into patients'

1 charts, and answering phones.

2 5. PROVIDENCE MEDICAL FOUNDATION was and is, upon information and
3 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
4 employees are engaged throughout this county and the State of California.

5 6. PROVIDENCE FACEY MEDICAL FOUNDATION was and is, upon
6 information and belief, a California corporation, and at all times hereinafter mentioned, an
7 employer whose employees are engaged throughout this county and the State of California.

8 7. PROVIDENCE MEDICAL INSTITUTE was and is, upon information and
9 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
10 employees are engaged throughout this county and the State of California.

11 8. PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION was and is, upon
12 information and belief, a California corporation, and at all times hereinafter mentioned, an
13 employer whose employees are engaged throughout this county and the State of California.

14 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
15 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
16 amend the complaint and serve such fictitiously named Defendants once their names and
17 capacities become known.

18 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 were the partners, agents, owners, or managers of PROVIDENCE MEDICAL
20 FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE
21 MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION at
22 all relevant times.

23 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
24 acts and omissions alleged herein was performed by, or is attributable to, PROVIDENCE
25 MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION;
26 PROVIDENCE MEDICAL INSTITUTE; PROVIDENCE SAINT JOHN'S MEDICAL
27 FOUNDATION; and/or DOES 1 through 10 (collectively, "Defendants" or
28 "PROVIDENCE"), each acting as the agent, employee, alter ego, and/or joint venturer of, or

1 working in concert with, each of the other co-Defendants and was acting within the course and
2 scope of such agency, employment, joint venture, or concerted activity with legal authority to
3 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
4 represent, the official policy of Defendants.

5 12. At all relevant times, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing
8 the damages herein alleged.

9 13. Plaintiff is informed and believes, and thereon alleges, that each of said
10 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 14. Under California law, Defendants are jointly and severally liable as employers
13 for the violations alleged herein because they have each exercised sufficient control over the
14 wages, hours, working conditions, and employment status of Plaintiff and class members.
15 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
16 controlled their work schedule and/or conditions of employment, determined their rate of pay,
17 and maintained their employment records. Defendants suffered or permitted Plaintiff and
18 class members to work and/or "engaged" Plaintiff and class members so as to create a
19 common-law employment relationship. As joint employers of Plaintiff and class members,
20 Defendants are jointly and severally liable for the civil penalties and all other relief available
21 to Plaintiff and class members under the law.

22 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
23 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
24 members because Defendants have:

- 25 (a) jointly exercised meaningful control over the work performed by
26 Plaintiff and class members;
- 27 (b) jointly exercised meaningful control over Plaintiff's and class members'
28 wages, hours, and working conditions, including the quantity, quality

standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;

- (c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants' businesses; and
- (d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

17. PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION; and DOES 1 through 10 are therefore alter egos of each other.

18. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name PROVIDENCE.

19. Plaintiff further alleges, upon information and belief, that Defendants PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION are alter egos of each other for the following reasons:

- (a) According to Providence St. Joseph Health's 2022 Q2 Financial

Statement¹, PROVIDENCE MEDICAL FOUNDATION operates practice locations for PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN’S MEDICAL FOUNDATION;

(b) According to the most recent “Statement of Information” forms filed with the California Secretary of State, PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN’S MEDICAL FOUNDATION share common managers and/or members, including, but not limited to, Chief Executive Officer David Kim; Secretary James [D.] Watson; and Chief Financial Officer Connie [Melayne] Yocum;

(c) According to the most recent “Statement of Information” forms filed with the California Secretary of State, PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN’S MEDICAL FOUNDATION share the same agent for service of process, “C T Corporation System (C0168406)”; and

(d) On information and belief, PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN’S MEDICAL FOUNDATION utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

20. Defendants are a comprehensive healthcare organization including seven (7) medical groups and operating 191 health clinics across California. Upon information and

¹ Continuing Disclosure Quarterly Report 6/30/2022 “Financial Statements | Providence” <https://www.providence.org/about/financial-statements> (last accessed October 20, 2022).

1 belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their
2 company headquarters in Anaheim, California, or Irvine, California, which is responsible for
3 the recruiting and hiring of new employees, and communicating and implementing
4 Defendants’ company-wide policies, including timekeeping policies and meal and rest period
5 policies, to employees throughout California.

6 21. In particular, Plaintiff and class members, on information and belief, received
7 the same standardized documents and/or written policies. Upon information and belief, the
8 usage of standardized documents and/or written policies, including new-hire documents,
9 indicate that Defendants dictated policies at the corporate level and implemented them
10 company-wide, regardless of their employees’ assigned locations or positions. Upon
11 information and belief, Defendants set forth uniform policies and procedures in several
12 documents provided at an employee’s time of hire.

13 22. Upon information and belief, Defendants maintain a centralized Payroll
14 department at their company headquarters in Anaheim, California, or Irvine, California, which
15 processes payroll for all non-exempt, hourly paid employees working for Defendants at their
16 various locations and jobsites in California, including Plaintiff and class members. Based
17 upon information and belief, Defendants issue the same formatted wage statements to all non-
18 exempt, hourly paid employees in California, irrespective of their work locations. Upon
19 information and belief, Defendants process payroll for departing employees in the same
20 manner throughout the State of California, regardless of the manner in which each employee’s
21 employment ends.

22 23. Defendants continue to employ non-exempt or hourly paid employees in
23 California.

24 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
26 and advisors knowledgeable about California labor and wage law, employment and personnel
27 practices, and about the requirements of California law.

28 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class

1 members were not paid for all hours worked because all hours worked were not recorded.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive certain wages for
4 overtime compensation and that they were not receiving certain wages for overtime
5 compensation.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and/or class members were entitled to be paid at a regular
8 rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
9 premiums, that included as eligible income all remuneration required by law, including but not
10 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
11 forms of compensation, but failed to include all forms of remuneration in calculating the
12 regular rate of pay for Plaintiff and/or class members.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive at least minimum
15 wages for compensation and that they were not receiving at least minimum wages for work
16 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
17 and class members were not paid at least minimum wages for work done off-the-clock.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and/or class members were entitled to meal periods in
20 accordance with the California Labor Code and applicable IWC Wage Order or payment of
21 one (1) additional hour of pay at their regular rates of pay when they were not provided with
22 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and/or class members
23 were not provided with all meal periods or payment of one (1) additional hour of pay at their
24 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
25 period.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to rest periods in
28 accordance with the California Labor Code and applicable IWC Wage Order or payment of

one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class members were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and class members with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and class members were not provided complete and accurate wage statements.

32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, rest period premiums, and/or sick leave pay, within permissible time periods.

34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and class members did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, rest period premiums, and/or sick leave pay, within permissible time periods.

35. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
2 and expenses Plaintiff and class members incurred obtaining mandatory medical or physical
3 examinations, but failed to do so.

4 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and/or class members were entitled to receive sick leave
6 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
7 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation,
8 but failed to include all forms of remuneration in calculating the regular rate of pay for sick
9 leave pay.

10 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment and that they did not receive full reimbursement of applicable
14 business-related expenses and costs incurred.

15 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that Defendants had a duty to provide
17 Plaintiff and class members with written notice of the material terms of their employment with
18 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

19 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
22 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
23 falsely represented to Plaintiff and class members that they were properly denied wages, all in
24 order to increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 40. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the LWDA for violations of the California Labor Code and

1 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
2 civil action brought on behalf of themselves and other current or former employees pursuant
3 to procedures outlined in California Labor Code section 2699.3.

4 41. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
5 person who was employed by the alleged violator and against whom one or more of the
6 alleged violations was committed.”

7 42. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
9 or former employees and one or more of the alleged violations were committed against them.

10 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
12 following requirements have been met:

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged
17 violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The LWDA shall notify the employer and the aggrieved employee or
22 representative by certified mail that it does not intend to investigate the
23 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
24 the postmark date of the aggrieved employee’s notice. Upon receipt of
25 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
26 (65) calendar days of the postmark date of the aggrieved employee’s
27 notice, the aggrieved employee may commence a civil action pursuant
28 to California Labor Code section 2699 to recover civil penalties.

1 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated (other than those listed in Section 2699.5), including the
9 facts and theories to support the alleged violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice sent by the aggrieved
15 employee or representative. The employer shall give written notice
16 within that period of time by certified mail to the aggrieved employee or
17 representative and by online filing with the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the aggrieved employee may
21 commence a civil action pursuant to Section 2699.

22 45. On December 1, 2022, Plaintiff provided written notice by online filing to the
23 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-922303-22. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

2 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the notice described above to the LWDA, and the LWDA has not responded that it
4 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

5 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510,
8 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

9 48. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.”

18 49. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
20 rights by violating various sections of the California Labor Code as set forth above.

21 50. As set forth below, Defendants have violated numerous provisions of both the
22 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
23 Order.

24 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
25 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
26 private attorney general, seeks assessment and collection of civil penalties for herself, all other
27 aggrieved employees, and the State of California against Defendants for violations of
28 California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

2 **CLASS ACTION ALLEGATIONS**

3 52. Plaintiff brings this action on her own behalf, as well as on behalf of each and
4 all other persons similarly situated, and thus seeks class certification under California Code of
5 Civil Procedure section 382.

6 53. All claims alleged herein arise under California law for which Plaintiff seeks
7 relief authorized by California law.

8 54. Plaintiff's proposed class consists of and is defined as follows:

9 All persons who worked for Defendants as non-exempt, hourly
10 paid employees in California, within four years prior to the filing
of the initial complaint² until the date of trial ("Class").

11 55. Plaintiff's proposed subclass consists of and is defined as follows:

12 All persons who worked for Defendants as non-exempt, hourly
13 paid employees in California and who received at least one wage
14 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

15 56. Members of the Class and Subclass are referred to herein as "class members."

16 57. Plaintiff reserves the right to redefine the Class and Subclass and to add
17 additional subclasses as appropriate based on further investigation, discovery, and specific
18 theories of liability.

19 58. There are common questions of law and fact as to class members that
20 predominate over questions affecting only individual members, including, but not limited to:

- 21 (a) Whether Defendants required Plaintiff and class members to work over
22 eight (8) hours per day, over twelve (12) hours per day, or over forty
23 (40) hours per week and failed to pay all legally required overtime
24 compensation to Plaintiff and class members;
- 25 (b) Whether Defendants failed to include all forms of remuneration in the
26 "regular rate" of pay as required by law for purposes of paying overtime

27 ² Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited
28 to, tolling under Emergency Rule 9 of the California Rules of Court.

wages, and/or meal and rest period premiums to Plaintiff and/or class members;

(c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;

(d) Whether Defendants failed to provide Plaintiff and/or class members with meal periods;

(e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;

(f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to pay earned overtime wages, minimum wages, rest period premiums, and/or sick leave pay due to Plaintiff and class members upon their discharge;

(i) Whether Defendants failed timely to pay overtime wages, minimum wages, rest period premiums, and/or sick leave pay due to Plaintiff and class members during their employment;

(j) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory medical or physical examinations;

(k) Whether Defendants failed to properly calculate the “regular rate” of pay upon which Plaintiff’s and/or class members’ sick leave rate of pay was based;

(l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(m) Whether Defendants failed to provide written notice of information

- 1 material to Plaintiff's and class members' employment with Defendants;
- 2 (n) Whether Defendants engaged in unlawful and unfair business practices
- 3 in violation of California Business & Professions Code sections 17200,
- 4 *et seq.*; and
- 5 (o) The appropriate amount of damages, restitution, or monetary penalties
- 6 resulting from Defendants' violations of California law.

7 59. There is a well-defined community of interest in the litigation and the class

8 members are readily ascertainable:

- 9 (a) Numerosity: The class members are so numerous that joinder of all
- 10 members would be unfeasible and impractical. The membership of the
- 11 entire class is unknown to Plaintiff at this time; however, the class is
- 12 estimated to be greater than one hundred (100) individuals and the
- 13 identity of such membership is readily ascertainable by inspection of
- 14 Defendants' employment records.
- 15 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
- 16 protect the interests of each class member with whom she has a well-
- 17 defined community of interest, and Plaintiff's claims (or defenses, if
- 18 any) are typical of all class members as demonstrated herein.
- 19 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
- 20 protect the interests of each class member with whom she has a well-
- 21 defined community of interest and typicality of claims, as demonstrated
- 22 herein. Plaintiff acknowledges that she has an obligation to make
- 23 known to the Court any relationship, conflicts or differences with any
- 24 class member. Plaintiff's attorneys, the proposed class counsel, are
- 25 versed in the rules governing class action discovery, certification, and
- 26 settlement. Plaintiff has incurred, and throughout the duration of this
- 27 action, will continue to incur costs and attorneys' fees that have been,
- 28 are, and will be necessarily expended for the prosecution of this action

1 for the substantial benefit of each class member.

2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve
4 economies of time, effort, and expense as compared with separate
5 lawsuits, and will avoid inconsistent outcomes because the same issues
6 can be adjudicated in the same manner and at the same time for the
7 entire class.

8 (e) Public Policy Considerations: Employers in the State of California
9 violate employment and labor laws every day. Current employees are
10 often afraid to assert their rights out of fear of direct or indirect
11 retaliation. Former employees are fearful of bringing actions because
12 they believe their former employers might damage their future
13 endeavors through negative references and/or other means. Class
14 actions provide the class members who are not named in the complaint
15 with a type of anonymity that allows for the vindication of their rights
16 while simultaneously protecting their privacy.

17 **FIRST CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 19 **(Against all Defendants)**

20 60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 61. Labor Code section 1198 makes it illegal to employ an employee under
23 conditions of labor that are prohibited by the applicable wage order. California Labor Code
24 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
25 be the . . . standard conditions of labor for employees. The employment of any employee . . .
26 under conditions of labor prohibited by the order is unlawful.”

27 62. California Labor Code section 1198 and the applicable IWC Wage Order
28 provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

3 63. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiff and class members working more than eight (8) hours in a day
5 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
6 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
7 workweek.

8 64. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
10 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
11 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
12 employee, including nondiscretionary bonuses and incentive pay.

13 65. California Labor Code section 510 codifies the right to overtime compensation
14 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
16 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
17 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
18 in a day on the seventh (7th) day of work.

19 66. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
21 class members were not paid overtime premiums for all of the hours they worked in excess of
22 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
23 hours in a week, because all hours worked were not recorded.

24 67. Defendants had, and continue to have, a company-wide policy and/or practice
25 of discouraging and impeding Plaintiff and class members from recording hours worked that
26 were outside of their scheduled shifts in order to limit the amount of overtime employees
27 could accrue. On information and belief, this policy of limiting overtime, coupled with
28 Defendants' practice of understaffing and assigning heavy workloads, led Plaintiff and class

1 members to work off-the-clock outside of their scheduled shift times in order to complete their
2 assigned tasks. Because Defendants discouraged overtime accrual, Plaintiff and class
3 members were required to complete assigned tasks outside of their scheduled shifts without
4 being compensated for the time they worked.

5 68. For example, Defendants required Plaintiff to take the National Healthcareer
6 Association (“NHA”) Certified Clinical Medical Assistant (CCMA) examination and take an
7 8-week long course preparing and studying for the exam; Plaintiff was advised that she would
8 be terminated unless she took this exam. Plaintiff spent about nine (9) hours per week taking
9 courses and studying for the NHA examination during the 8-week-course, but she was not
10 permitted to record this time worked. As a result, she was forced to complete courses, review
11 materials, and study for the NHA examination before or after her scheduled shifts and/or on
12 days off. Plaintiff spent approximately 72 hours preparing for the NHA examination, time for
13 which she was not paid. Additionally, Plaintiff and class members were required to answer
14 the office phone line before clocking in for their shifts. For example, about five (5) times per
15 month, Plaintiff spent about three (3) minutes per instance answering the office phone line
16 before having a chance to clock in for her shift. This off-the-clock work could have been
17 recorded by Defendants, but they refused to do so to avoid the payment of additional wages to
18 Plaintiff and class members.

19 69. Defendants knew or should have known that as a result of these company-wide
20 practices and/or policies, Plaintiff and class members were performing their assigned duties
21 off-the-clock and were suffered or permitted to perform work for which they were not paid.
22 Because Plaintiff and class members worked shifts of eight (8) hours or more a day, or forty
23 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
24 pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the
25 overtime hours they actually worked.

26 70. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and/or class
27 members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
28 However, in violation of the California Labor Code, Defendants failed to incorporate all

1 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
2 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
3 overtime wage rate. Therefore, during times when Plaintiff and/or class members worked
4 overtime and received these other forms of pay, Defendants failed to pay all overtime wages
5 by paying a lower overtime rate than required.

6 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
7 compensation as required by California law, violates the provisions of California Labor Code
8 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
9 members are entitled to recover from Defendants their unpaid overtime compensation, as well
10 as interest, costs, and attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 13 **Minimum Wages** 14 **(Against all Defendants)**

15 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
18 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
19 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
20 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
21 time during which an employee is suffered or permitted to work for the employer, whether or
22 not required to do so, as interpreted in accordance with the provisions of the Fair Labor
23 Standards Act." Cal. Code Regs. Tit. 8, § 11050(2)(K) (defining "Hours Worked").

24 74. As set forth above, due to Defendants' restrictions on overtime accrual,
25 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
26 outside of their scheduled shifts, because these hours were not accurately recorded. Because
27 Defendants discouraged and impeded Plaintiff and class members from recording hours
28 worked that were outside of their scheduled shifts, along with understaffing their locations

1 while assigning heavy workloads, Plaintiff and class members were required to perform work
2 off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off,
3 including completing online courses, studying for and taking an NHA examination, and
4 answering office phone lines.

5 75. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
6 and class members. To the extent that these off-the-clock hours did not qualify for overtime
7 premium payment, Defendants did not pay at least minimum wages for those hours worked
8 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
9 1198.

10 76. Defendants' failure to pay Plaintiff and class members minimum wages violates
11 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
12 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
13 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
14 interest thereon.

15 **THIRD CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 17 **(Against all Defendants)**

18 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 78. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
22 members' employment by Defendants.

23 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

1 80. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest
4 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break time, and
6 relieve their employees of all duties—including the obligation that an employee remain on
7 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
8 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
9 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
10 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
11 required rest period was not authorized and permitted.

12 81. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
14 period worked or major fraction thereof. Defendants’ company-wide practices, including
15 assigning heavy workloads and understaffing their locations, prevented Plaintiff and class
16 members from being relieved of all duty to take rest periods. Additionally, Defendants failed
17 to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest
18 period coverage, further led to Plaintiff and class members not being authorized and permitted
19 to take rest periods.

20 82. Furthermore, Defendants maintained and implemented a company-wide on-
21 premises rest period policy, which mandated that Plaintiff and class members remain on the
22 premises during their rest periods. Because Plaintiff and class members were restricted from
23 leaving Defendants’ premises during rest periods, they were denied the ability to use their rest
24 periods freely for their own purposes, such as completing personal errands. Thus, Defendants
25 effectively maintained control over Plaintiff and class members during rest periods.

26 83. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

1 Plaintiff had to forego her rest periods altogether because of the heavy workload, lack of
2 coverage, and Defendants' failure to schedule rest periods for employees.

3 84. Defendants have also engaged in a company-wide practice and/or policy of not
4 paying all rest period premiums owed when compliant rest periods are not authorized and
5 permitted. Because of this practice and/or policy, Plaintiff and class members have not
6 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
7 did pay Plaintiff and/or class members one (1) additional hour of premium pay for missed rest
8 periods, Defendants did not pay Plaintiff and/or class members at the correct rate of pay for
9 premiums because Defendants failed to include all forms of compensation, such as incentive
10 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.
11 As a result, Defendants denied Plaintiff and/or class members rest periods and failed to pay
12 them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the
13 applicable IWC Wage Order.

14 85. Defendants' conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
16 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
17 compensation for each work day that a compliant rest period was not authorized and
18 permitted.

19 **FOURTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 21 **Statements and Failure to Maintain Accurate Payroll Records** 22 **(Against all Defendants)**

23 86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 87. At all relevant times herein set forth, California Labor Code section 226(a)
26 provides that every employer shall furnish each of his or her employees an accurate and
27 complete itemized wage statement in writing, including, but not limited to, the name and
28 address of the legal entity that is the employer, the inclusive dates of the pay period, total

1 hours worked, and all applicable rates of pay.

2 88. At all relevant times, Defendants have knowingly and intentionally provided
3 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
4 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
5 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
6 applicable hourly rates in effect during the pay period, including rates of pay for overtime
7 wages, rest period premiums, and/or paid sick leave, and the corresponding number of hours
8 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
9 226(a)(5), and 226(a)(9).

10 89. Because Defendants did not record the time Plaintiff and Subclass members
11 spent working off the clock, Defendants did not list the correct amount of gross wages and net
12 wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and
13 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
14 worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list
15 the applicable hourly rates of pay in effect during the pay period and the corresponding
16 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

17 90. Additionally, because Defendants did not calculate Plaintiff's and Subclass
18 members' regular rate of pay correctly for purposes of paying overtime wages, rest period
19 premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in
20 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
21 amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list
22 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
23 overtime wages, rest period premiums, and/or paid sick leave, in violation of section
24 226(a)(9).

25 91. The wage statement deficiencies also include, among other things, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
27 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
28 for which employees were paid; failing to list the name of the employee and only the last four

1 digits of his or her social security number or an employee identification number other than a
2 social security number; failing to list the name and address of the legal entity that is the
3 employer; and/or failing to state all hours worked as a result of not recording or stating the
4 hours worked off-the-clock.

5 92. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
12 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
13 members showing the daily hours they worked and the wages paid thereto as a result of failing
14 to record the off-the-clock hours that they worked.

15 93. California Labor Code section 1198 provides that the maximum hours of work
16 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
17 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
18 employment of any employees for longer hours than those fixed by the order or under
19 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
20 Wage Order, employers are required to keep accurate time records showing when the
21 employee begins and ends each work period and meal period. During the relevant time
22 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
23 start and stop times for Plaintiff and Subclass members, in violation of section 1198.

24 94. Plaintiff and Subclass members are entitled to recover from Defendants the
25 greater of their actual damages caused by Defendants’ failure to comply with California Labor
26 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
27 employee.

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FIFTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

96. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, rest period premiums, and/or sick leave pay that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

97. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

98. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

99. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**

3 **Employment**

4 **(Against all Defendants)**

5 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 101. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, rest period premiums, and/or sick leave pay that were not timely paid
9 to Plaintiff and class members during their employment.

10 102. At all times relevant herein set forth, Labor Code section 204 provides that all
11 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
12 days, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
14 the month during which the labor was performed.

15 103. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned by any person in any employment between the sixteenth (16th) and the last day,
17 inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
19 month.

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

26 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 class members all wages due including, but not limited to, overtime wages, minimum wages,
28 rest period premiums, and/or sick leave pay, within the time periods specified by California

1 Labor Code section 204.

2 106. Defendants' failure to pay Plaintiff and class members all wages due violates
3 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
4 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
7 **(Against all Defendants)**

8 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 108. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
16 tools or equipment are required by the employer or are necessary to the performance of a job,
17 such tools and equipment shall be provided and maintained by the employer, except that an
18 employee whose wages are at least two (2) times the minimum wage provided herein may be
19 required to provide and maintain hand tools and equipment customarily required by the trade
20 or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required
21 by the employer to be worn by the employee as a condition of employment, such uniforms
22 shall be provided and maintained by the employer."

23 109. First, during the relevant time period, Defendants required that Plaintiff and
24 class members obtain and pay for the NHA CCMA certification that was required for their
25 continued employment. Plaintiff signed up for the NHA certification and paid a \$155 fee to
26 take the requisite examination. However, Defendants never reimbursed Plaintiff for this
27 examination fee. When Plaintiff submitted the claim for reimbursement, which happened to
28 be after her employment with Defendants had ended, Defendants informed Plaintiff that she

1 was not eligible for reimbursement because she was no longer employed by Defendants, even
2 though she obtained the certification for the benefit of Defendants. Thus, Defendants failed to
3 reimburse Plaintiff and class members for all of the costs of obtaining the NHA certification, a
4 certification which Defendants required Plaintiff and class members to obtain as a condition to
5 their continued employment.

6 110. Second, during the relevant time period, Defendants required Plaintiff and class
7 members to wear scrubs bearing the company logo. Defendants provided Plaintiff and class
8 members with \$150 annual allowance to purchase uniform items. However, Defendants did
9 not provide their employees with sufficient uniform allowance to purchase enough uniform
10 items to wear for their shifts throughout the week. For example, Plaintiff was able to purchase
11 only three (3) pairs of pants, two (2) shirts, and one (1) sweatshirt with the allowance.
12 Because Defendants failed to provide Plaintiff and class members with an adequate allowance
13 in relation to their scheduled shifts, Plaintiff and class members had to wash their uniforms
14 more frequently than they otherwise would do laundry, and incur expenses in doing so. Thus,
15 Defendants failed to maintain uniforms they required Plaintiff and class members to wear
16 during their shifts and forced them to incur the cost of maintaining employee uniforms.

17 111. Third, during the relevant time period, Defendants had a company-wide policy
18 of requiring Plaintiff and class members to travel to medical facilities using their personal
19 vehicles or obtain alternate transportation to obtain mandatory tuberculin (TB) testing, but did
20 not reimburse them for their travel expenses, including mileage. For example, Defendants
21 gave Plaintiff and class members strict instructions to obtain TB testing, and Plaintiff and
22 class members underwent the testing for the sole benefit of Defendants. Plaintiff followed
23 Defendants' instructions and traveled several miles roundtrip to and from Defendants'
24 designated medical facility to undergo the requisite TB testing. Although Defendants required
25 Plaintiff and class members to use their own vehicles or obtain alternate transportation to
26 undergo TB testing, Defendants never reimbursed them for their travel expenses.

27 112. Defendants could have provided Plaintiff and class members with the actual
28 equipment for use on the job, such as company vehicles, and access to laundering services; or

Defendants could have reimbursed employees for the costs of their certifications, travel, mileage, and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class members.

113. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

114. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

EIGHTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

116. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 222.5, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12, and 2810.5.

117. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein and set forth below;

- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums, to Plaintiff and/or other aggrieved employees, as alleged herein and set forth below;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein and set forth below;
- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide other aggrieved employees with meal periods, as set forth below;
- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

- 1 (j) Violation of Labor Code section 222.5 for failure to pay for cost of
2 mandatory medical and/or physical examinations, as set forth below;
- 3 (k) Violation of Labor Code section 246 for failure to properly calculate the
4 sick leave rate paid to Plaintiff and/or other aggrieved employees, as set
5 forth below;
- 6 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
7 and other aggrieved employees for all business expenses necessarily
8 incurred, as alleged herein; and
- 9 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
10 provide written notice of information material to Plaintiff's and other
11 aggrieved employees' employment with Defendants, as set forth below.

12 118. At all relevant times herein set forth, the applicable IWC Wage Order and
13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to other
14 aggrieved employees' employment by Defendants.

15 119. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

22 120. At all relevant times herein set forth, California Labor Code sections 226.7,
23 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
24 meal period mandated by an applicable order of the IWC.

25 121. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
26 and the applicable IWC Wage Order also require employers to provide a second meal period
27 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
28 an employee one (1) additional hour of pay at the employee's regular rate, except that if the

1 total hours worked is no more than twelve (12) hours, the second meal period may be waived
2 by mutual consent of the employer and the employee only if the first meal period was not
3 waived.

4 122. Defendants had, and continue to have, a company-wide policy and/or practice
5 of understaffing their locations. Defendants' understaffing, combined with the assignment of
6 heavy workloads, resulted in a failure to provide other aggrieved employees with adequate
7 meal period coverage to permit them to take compliant meal periods. Defendants also failed
8 to schedule meal periods, which further caused other aggrieved employees to not be relieved
9 of their duties for compliant meal periods. As a result, other aggrieved employees missed
10 meal periods and/or had meal periods cut short or interrupted in order to handle their
11 workloads. Additionally, Defendants did not provide other aggrieved employees with second
12 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
13 Other aggrieved employees did not sign valid meal period waivers on days that they were
14 entitled to meal periods and were not relieved of all duties.

15 123. At all times mentioned herein, Defendants knew or should have known that as a
16 result of their policies, other aggrieved employees were not actually relieved of all duties to
17 take timely, uninterrupted meal periods. Defendants further knew or should have known that
18 they did not pay other aggrieved employees meal period premiums when meal periods were
19 late, interrupted, shortened, or missed.

20 124. Furthermore, Defendants engaged in a company-wide practice and/or policy of
21 not paying all meal period premiums owed when compliant meal periods are not provided.
22 Because of this practice and/or policy, other aggrieved employees have not received premium
23 pay for missed, late, and interrupted meal periods. Alternatively, on information and belief, to
24 the extent that Defendants did pay other aggrieved employees premium pay for missed, late,
25 and interrupted meal periods, Defendants did not pay other aggrieved employees at the correct
26 rate of pay for premiums because Defendants systematically failed to include all forms of
27 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
28 remuneration, in the regular rate of pay.

1 125. Defendants' conduct violates the applicable IWC Wage Order, and California
2 Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are therefore
3 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
4 (g).

5 126. Moreover, Defendants knew or should have known that as a result of these
6 company-wide practices and/or policies, other aggrieved employees were working off-the-
7 clock during their meal periods, and were suffered or permitted to perform work for which
8 they were not paid. Defendants' failure to compensate other aggrieved employees at least
9 minimum wages for all hours worked off-the-clock, as alleged herein, in violation of
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable
11 IWC Wage Order. To the extent that these off-the-clock hours qualified for overtime
12 premium payment, Defendants failed to pay other aggrieved employees the balance of
13 overtime compensation in violation of California Labor Code sections 510 and 1198. Other
14 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
15 sections 2699(a), (f), and (g).

16 127. At all times herein, California Labor Code section 222.5 requires employers to
17 pay for the costs an employee incurs for obtaining any required medical or physical
18 examination.

19 128. During the relevant period, Defendants implemented, on a company-wide basis,
20 an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
21 mandatory tuberculin (TB) testing, but required them to do so at their own expense. As
22 stated, Defendants had a company-wide policy requiring that Plaintiff and other aggrieved
23 employees travel to medical facilities and use their own means of transportation to undergo
24 TB testing during their employment. At all times, Defendants were in control of selecting the
25 provider/facility where the testing was to take place and determining the scope of the testing.
26 For example, as stated, Plaintiff was instructed by Defendants to travel to Defendants'
27 designated facility and obtain TB testing, and Plaintiff underwent the testing for the sole
28 benefit of Defendants. Plaintiff followed Defendants' instructions and traveled several miles

1 roundtrip to undergo the requisite TB testing. However, Defendants did not reimburse
2 Plaintiff and other aggrieved employees for all of the expenses they incurred getting to and
3 from the medical facilities.

4 129. Defendants' policy and/or practice of not paying for all costs Plaintiff and other
5 aggrieved employees incurred obtaining mandatory TB testing violates California Labor Code
6 section 222.5. Plaintiff and other aggrieved employees are entitled to recover civil penalties,
7 pursuant to Labor Code sections 2699(a), (f), and (g).

8 130. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
9 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
10 days from the commencement of employment with paid sick days, to be accrued at least one
11 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
12 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
13 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
14 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
15 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
16 the same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
18 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in the
20 full pay periods of the prior 90 days of employment."

21 131. During the relevant time period, Defendants did not pay Plaintiff and/or other
22 aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage,
23 Defendants paid Plaintiff and/or other aggrieved employees incentive pay, nondiscretionary
24 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
25 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
26 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
27 calculating the sick leave rate. Therefore, during times when Plaintiff and/or other aggrieved
28 employees took sick leave and received these other forms of pay, Defendants failed to pay all

1 sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants
2 paid Plaintiff and/or other aggrieved employees sick leave based on their hourly rate of pay
3 instead of their regular rate of pay.

4 132. Defendants' failure to properly calculate the sick leave rates of pay based on all
5 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or
6 other aggrieved employees on a company-wide basis in violation of Labor Code 246(l).
7 Plaintiff and/or other aggrieved employees are entitled to recover civil penalties pursuant to
8 Labor Code sections 248.5 and/or 2699(a), (f), and (g).

9 133. At all relevant times herein, California Labor Code section 2810.5 provides that
10 at the time of hiring, an employer must provide written notice to employees containing basic
11 and material payroll information, including, among other things, the rate(s) of pay and basis
12 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
13 including any rates for overtime, the regular payday designated by the employer, and any
14 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
15 Code § 2810.5(a)(1)(A)-(C).

16 134. At all relevant times, on information and belief, Defendants failed, on a
17 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
18 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
19 Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with the
20 hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section
21 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is blank
22 where the aforementioned wage information should be filled in.

23 135. Defendants' failure to provide Plaintiff and other aggrieved employees with
24 written notice of basic information regarding their employment with Defendants is in violation
25 of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled
26 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **NINTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 136. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 137. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 138. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 139. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 140. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to include all forms of remuneration in the “regular rate” of pay
26 as required by law for purposes of paying overtime wages and/or rest
27 period premiums to Plaintiff and/or class members, in violation of
28 California Labor Code sections 226.7, 510, and 1198, and the applicable

IWC Wage Order, as alleged herein;

- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (g) Failing to pay Plaintiff and class members the costs of mandatory medical or physical examinations in violation of California Labor Code section 222.5, as set forth below;
- (h) Failing to properly calculate the sick leave paid to Plaintiff and/or class members in violation of Labor Code section 246(l), as set forth below;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and
- (j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

141. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any medical or physical

1 examination taken pursuant to any law or regulation.

2 142. During the relevant period, Defendants implemented, on a company-wide basis,
3 an employer-imposed requirement that Plaintiff and class members undergo mandatory TB
4 testing, but required them to do so at their own expense. As stated, Defendants had a
5 company-wide policy requiring that Plaintiff and class members travel to medical facilities
6 and use their own means of transportation to undergo TB testing during their employment. At
7 all times, Defendants were in control of selecting the provider/facility where the testing was to
8 take place and determining the scope of the testing.

9 143. During the relevant time period, as stated, Plaintiff was instructed by
10 Defendants to travel to Defendants' designated facility and obtain drug TB testing, and
11 Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed
12 Defendants' instructions, and traveled several miles roundtrip to undergo the requisite TB
13 testing. However, Defendants did not reimburse Plaintiff and class members for all of the
14 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
15 practice of not paying for all costs Plaintiff and class members incurred obtaining mandatory
16 TB testing violates California Labor Code section 222.5.

17 144. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
18 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
19 days from the commencement of employment with paid sick days, to be accrued at least one
20 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
21 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
22 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
23 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
24 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
25 the same manner as the regular rate of pay for the workweek in which the employee uses paid
26 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
27 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
28 total wages, not including overtime premium pay, by the employee's total hours worked in the

1 full pay periods of the prior 90 days of employment.”

2 145. During the relevant time period, Defendants did not pay Plaintiff and/or class
3 members the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid
4 Plaintiff and/or class members incentive pay, nondiscretionary bonuses, and/or other forms of
5 remuneration. However, in violation of the California Labor Code, Defendants failed to
6 incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into
7 the calculation of the regular rate of pay for purposes of calculating the sick leave rate.
8 Therefore, during times when Plaintiff and/or class members took sick leave and received
9 these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower
10 sick leave rate than required. Specifically, Defendants paid Plaintiff and/or class members
11 sick leave based on their hourly rate of pay instead of their regular rate of pay.

12 146. Defendants’ failure to properly calculate the sick leave rates of pay based on all
13 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or
14 class members on a company-wide basis, in violation of Labor Code 246(l).

15 147. At all relevant times herein, California’s Wage Theft Prevention Act was
16 enacted to ensure that employers provide employees with basic information material to their
17 employment relationship at the time of hiring, and to ensure that employees are given written
18 and timely notice of any changes to basic information material to their employment. Codified
19 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
20 time of hiring, an employer must provide written notice to employees containing basic and
21 material payroll information, including, among other things, the rate(s) of pay and basis
22 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
23 including any rates for overtime, the regular payday designated by the employer, and any
24 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
25 Code § 2810.5(a)(1)(A)-(C).

26 148. During the relevant time period, Defendants failed to provide Plaintiff and class
27 members with written notice that lists all the requisite information set forth in Labor Code
28 section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and class

1 members with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of
2 section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is
3 blank where the aforementioned wage information should be filled in.

4 149. Defendants' failure to provide Plaintiff and class members with written notice
5 of basic information regarding their employment with Defendants is in violation of Labor
6 Code section 2810.5.

7 150. As a result of the violations of California law herein described, Defendants
8 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
9 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
10 herein.

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

17 **TENTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

19 **Unfair Business Practices**

20 **(Against all Defendants)**

21 152. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 153. Defendants are "persons" as defined by California Business & Professions
24 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
25 and/or associations.

26 154. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
27 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
28 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff

1 seeks to enforce important rights affecting the public interest within the meaning of Code of
2 Civil Procedure section 1021.5.

3 155. Defendants' activities, namely Defendants' company-wide practice and/or
4 policy of not paying Plaintiff and class members rest period premiums due to them under
5 Labor Code section 226.7, deprived Plaintiff and class members of the compensation
6 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
7 provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate
8 employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238
9 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
10 Plaintiff and class members as part of their employment with Defendants, and thus
11 Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
12 business practice in violation of California Business & Professions Code sections 17200, *et*
13 *seq. (Id.)*

14 156. A violation of California Business & Professions Code sections 17200, *et seq.*
15 may be predicated on any unfair business practice. In the instant case, Defendants' policies
16 and practices have violated the spirit of California's rest period laws and constitute acts
17 against the public policy behind these laws.

18 157. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
19 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
20 benefits implemented by section 226.7 withheld and retained by Defendants during a period
21 that commences four years prior to the filing of this complaint; a permanent injunction
22 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
23 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
24 Procedure section 1021.5 and other applicable laws; and an award of costs.

25 **REQUEST FOR JURY TRIAL**

26 Plaintiff requests a trial by jury.

27 **PRAYER FOR RELIEF**

28 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment

1 against Defendants, jointly and severally, as follows:

2 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
3 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
4 reserves the right to amend her prayer for relief to seek a different amount.

5 **Class Certification**

6 2. That this case be certified as a class action;

7 3. That Plaintiff be appointed as the representative of the Class and Subclass;

8 4. That counsel for Plaintiff be appointed as class counsel.

9 **As to the First Cause of Action**

10 5. That the Court declare, adjudge, and decree that Defendants violated California
11 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
12 pay all overtime wages due to Plaintiff and class members;

13 6. For general unpaid wages at overtime wage rates and such general and special
14 damages as may be appropriate;

15 7. For pre-judgment interest on any unpaid overtime compensation commencing
16 from the date such amounts were due, or as otherwise provided by law;

17 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
18 California Labor Code section 1194(a); and

19 9. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Second Cause of Action**

22 10. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
24 Order by willfully failing to pay minimum wages to Plaintiff and class members;

25 11. For general unpaid wages and such general and special damages as may be
26 appropriate;

27 12. For pre-judgment interest on any unpaid compensation from the date such
28 amounts were due, or as otherwise provided by law;

1 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a);

3 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

4 15. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Third Cause of Action**

7 16. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
9 failing to authorize and permit Plaintiff and class members to take all rest periods;

10 17. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a rest period was not
12 authorized and permitted;

13 18. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 19. For premiums pursuant to California Labor Code section 226.7(c);

16 20. For pre-judgment interest on any unpaid rest period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 21. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 22. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fourth Cause of Action**

23 23. That the Court declare, adjudge and decree that Defendants violated the
24 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
25 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
26 itemized wage statements thereto;

27 24. For all actual, consequential, and incidental losses and damages, according to
28 proof;

- 1 25. For injunctive relief pursuant to California Labor Code section 226(h);
2 26. For statutory penalties pursuant to California Labor Code section 226(e);
3 27. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 28. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Fifth Cause of Action**

- 8 29. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
10 rest period premiums, and/or sick leave pay owed at the time of termination of the
11 employment of Plaintiff and other terminated class members;
12 30. For all actual, consequential and incidental losses and damages, according to
13 proof;
14 31. For waiting time penalties according to proof pursuant to California Labor
15 Code section 203 for all employees who have left Defendants' employ;
16 32. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due, or as otherwise provided by law;
18 33. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and
20 34. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Sixth Cause of Action**

- 23 35. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
25 overtime wages, minimum wages, rest period premiums, and/or sick leave pay during their
26 employment;
27 36. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 37. For statutory penalties according to proof pursuant to California Labor Code
2 section 210;

3 38. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 39. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 40. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Seventh Cause of Action**

10 41. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
12 related expenses and costs incurred by Plaintiff and class members;

13 42. For unpaid business-related expenses and such general and special damages as
14 may be appropriate;

15 43. For pre-judgment interest on any unpaid business-related expenses from the
16 date such amounts were due, or as otherwise provided by law;

17 44. For all actual, consequential, and incidental losses and damages, according to
18 proof;

19 45. For attorneys' fees and costs pursuant to California Labor Code section
20 2802(c), or as otherwise provided by law; and

21 46. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Eighth Cause of Action**

24 47. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
26 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
27 to include all forms of remuneration in the "regular rate" of pay for purposes of paying
28 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); 222.5 (by failing to pay for costs of mandatory medical and/or physical
7 examinations); 246 (by failing to properly calculate sick leave pay); 2802 (by failing to
8 reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of
9 employment);

10 48. For civil penalties pursuant to the California Labor Code, including sections
11 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor
12 Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
13 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

14 49. For attorneys' fees and costs pursuant to California Labor Code section
15 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
16 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),
17 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

18 50. For pre-judgment and post-judgment interest as provided by law; and

19 51. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Ninth Cause of Action**

22 52. That the Court declare, adjudge and decree that Defendants' conduct of failing
23 to provide Plaintiff and class members all overtime wages due to them, failing to include all
24 forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages
25 and/or rest recovery period premiums to Plaintiffs and/or class members, failing to provide
26 Plaintiff and class members all minimum wages due to them, failing to authorize and permit
27 Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class
28 members accurate and complete wage statements, failing to maintain accurate payroll records

1 for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned
2 wages during employment, failing to pay the costs of mandatory medical or physical
3 examinations, failing to properly calculate Plaintiff's and/or class members' sick leave pay,
4 failing to reimburse Plaintiff and class members for business-related expenses, and failing to
5 provide notice of material terms of employment, constitutes an unlawful business practice in
6 violation of California Business and Professions Code sections 17200, *et seq.*;

7 53. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 54. For the appointment of a receiver to receive, manage, and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

13 55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 56. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Tenth Cause of Action**

18 57. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
20 an unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 58. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiff and class members and prejudgment interest from the day such amounts were
24 due and payable;

25 59. For the appointment of a receiver to receive, manage, and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections
28 17200, *et seq.*;

1 60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 61. For pre-judgment and post-judgment interest as provided by law; and
4 For such other and further relief as the Court may deem equitable and appropriate.

5

6 Dated: April 14, 2023

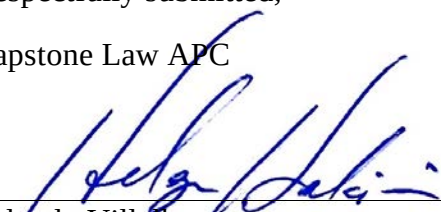
Respectfully submitted,

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Capstone Law APC

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By: 

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Orlando Villalba

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Helga Hakimi

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Roxanna Tabatabaeepour

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Attorneys for Plaintiff Jessica Garcia

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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

December 1, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jessica Garcia v. Providence Medical Foundation, et al.*

Dear PAGA Administrator:

This office represents Jessica Garcia in connection with her claims under the California Labor Code. Ms. Garcia was an employee of PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and/or PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION. For the purpose of this letter, Ms. Garcia collectively refers to these entities as "PMF."

The employers may be contacted directly at the addresses below:

PROVIDENCE MEDICAL FOUNDATION
200 W. CENTER STREET, PROMENADE,
SUITE 800
ANAHEIM, CA 92805

PROVIDENCE MEDICAL FOUNDATION
DEPT. LEGAL AFFAIRS -
3345 MICHELSON DR. SUITE 100
IRVINE, CA 92612

PROVIDENCE FACEY MEDICAL
FOUNDATION
DEPT. LEGAL AFFAIRS,
1801 LIND AVE. SW
RENTON, WA 98057

PROVIDENCE MEDICAL INSTITUTE
1801 LIND AVE. SW
RENTON, WA 98057

PROVIDENCE SAINT JOHN'S MEDICAL
FOUNDATION
20555 EARL STREET
TORRANCE, CA 90503

Ms. Garcia intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Garcia seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PMF in California as

a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PMF employed Ms. Garcia as an hourly paid, non-exempt employee from approximately January 2021 to April 2022. Ms. Garcia worked as a Medical Assistant at PMF’s medical facility in Orange, California. During her employment, Ms. Garcia typically worked eight (8) to ten (10) hours or more per day and four (4) to five (5) days per week. Ms. Garcia’s job duties included, without limitation, checking patients in and out, providing forms, examining and updating patients’ charts, scheduling appointments, scanning information into patients’ charts, and answering phones.

PMF has committed one or more of the following Labor Code violations against Ms. Garcia, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PMF’s Company-Wide and Uniform Payroll and HR Practices

PROVIDENCE MEDICAL FOUNDATION; PROVIDENCE FACEY MEDICAL FOUNDATION; PROVIDENCE MEDICAL INSTITUTE; and PROVIDENCE SAINT JOHN’S MEDICAL FOUNDATION are California corporations. Together, they are a comprehensive healthcare organization including 7 medical groups and operating 191 health clinics across California. Upon information and belief, PMF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Anaheim, California, or Irvine, California, for all non-exempt, hourly paid employees working for PMF in California, including Ms. Garcia and other aggrieved employees. At all relevant times, PMF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Garcia and other aggrieved employees, regardless of their location or position.

Upon information and belief, PMF maintains a centralized Payroll department at its corporate headquarters in Anaheim, California, or Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for PMF in California, including Ms. Garcia and other aggrieved employees. Further, PMF issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Garcia and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PMF utilized the same methods and formulas when calculating wages due to Ms. Garcia and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the

¹ These facts, theories, and claims are based on Ms. Garcia’s experience and counsel’s review of those records currently available relating to Ms. Garcia’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Garcia reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PMF willfully failed to pay all overtime wages owed to Ms. Garcia and other aggrieved employees. During the relevant time period, Ms. Garcia and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, PMF had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Garcia and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with PMF's practice of understaffing and assigning heavy workloads, led Ms. Garcia and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. Because PMF discouraged overtime accrual, Ms. Garcia and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, PMF required Ms. Garcia to take the National Healthcareer Association ("NHA") Certified Clinical Medical Assistant (CCMA) examination and take an 8-week-long course preparing and studying for the exam; Ms. Garcia was advised that she would be terminated unless she took this exam. Ms. Garcia spent about nine (9) hours per week taking courses and studying for the NHA examination during the 8-week course, but she was not permitted to record this time worked. As a result, she was forced to complete courses, review materials, and study for the NHA examination before or after her scheduled shifts and/or on days off. Ms. Garcia spent approximately 72 hours preparing for the NHA examination, time for which she was not paid. Additionally, Ms. Garcia and other aggrieved employees were required to answer the office phone line before clocking in for their shifts. For example, about five (5) times per month, Ms. Garcia spent about three (3) minutes per instance answering the office phone line before having a chance to clock in for her shift. This off-the-clock work could have been recorded by PMF, but they refused to do so to avoid the payment of additional wages to Ms. Garcia and other aggrieved employees.

Second, PMF had, and continues to have, a company-wide policy and/or practice of understaffing its locations. PMF's understaffing, combined with the assignment of heavy workloads, resulted in a failure to provide other aggrieved employees with adequate meal period coverage to permit them to take compliant meal periods. PMF also failed to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

PMF knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Garcia and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Garcia and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock

work qualified for overtime premium pay. Therefore, Ms. Garcia and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, PMF did not pay Ms. Garcia and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PMF paid Ms. Garcia and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, PMF failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Garcia and/or other aggrieved employees worked overtime and received these other forms of pay, PMF failed to pay all overtime wages by paying a lower overtime rate than required.

For example, PMF paid Ms. Garcia and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Garcia's and/or other aggrieved employees' wage statements as "Bonus Sign On," "Award Spot Bonus," and "Bns Retention." During pay periods that Ms. Garcia and/or other aggrieved employees were paid overtime wages, PMF did not incorporate the incentive pay and/or nondiscretionary bonuses into Ms. Garcia's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, PMF paid Ms. Garcia and/or other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PMF's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Garcia and/or other aggrieved employees on a company-wide basis.

PMF's failure to pay Ms. Garcia and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "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." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to PMF's restrictions on overtime accrual, PMF systematically failed to pay Ms. Garcia and other aggrieved employees for actual hours worked outside of their scheduled shifts, because these hours were not accurately recorded. Because PMF discouraged and impeded Ms. Garcia and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, along with understaffing its locations while assigning heavy workloads, Ms. Garcia and other aggrieved employees were required to perform work off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off, including completing online courses, studying for and taking an NHA examination, and answering office phone lines.

Additionally, as set forth above, due to PMF's uniform practices of understaffing, assigning heavy workloads, failing to schedule meal periods, and the resulting lack of coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Thus, PMF did not pay minimum wages for all hours worked by Ms. Garcia and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PMF did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, PMF regularly failed to pay at least minimum wages to Ms. Garcia and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

As stated above, PMF had, and continues to have, company-wide policies and/or practices of understaffing its locations which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, PMF did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, PMF knew or should have known that as a result of its policies, other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PMF further knew or should have known that it did not pay other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Furthermore, PMF engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, on information and belief, to the extent that PMF did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, PMF did not pay other aggrieved employees at the correct rate of pay for premiums because PMF systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PMF failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

PMF's company-wide practices, including assigning heavy workloads and understaffing its locations, prevented Ms. Garcia and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PMF failed to schedule rest periods, which, coupled with PMF's failure to provide adequate rest period coverage, further led to Ms. Garcia and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, PMF maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Garcia and other aggrieved employees remain on the premises during their rest periods. Because Ms. Garcia and other aggrieved employees were restricted from leaving PMF's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, PMF effectively maintained control over Ms. Garcia and other aggrieved employees during rest periods.

As a result of PMF's practices and policies, Ms. Garcia and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Garcia had to

forego her rest periods altogether because of the heavy workload, lack of coverage, and PMF's failure to schedule rest periods for employees.

PMF has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Garcia and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, on information and belief, to the extent that PMF did pay Ms. Garcia and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PMF did not pay Ms. Garcia and/or other aggrieved employees at the correct rate of pay for premiums because PMF failed to include all forms of compensation, such incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PMF failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Garcia and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PMF has not provided Ms. Garcia and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PMF has knowingly and intentionally provided Ms. Garcia and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PMF issued uniform wage statements to Ms. Garcia and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, PMF violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PMF did not record the time Ms. Garcia and other aggrieved employees spent working off-the-clock, PMF did not list the correct amount of gross wages and net wages earned by Ms. Garcia and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PMF failed to accurately list the total number of the hours worked by Ms. Garcia and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Moreover, on information and belief, because PMF did not calculate Ms. Garcia's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and

rest period premiums, and/or paid sick leave, PMF did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). PMF also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PMF willfully failed to maintain accurate payroll records for Ms. Garcia and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PMF failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and end times for Ms. Garcia and other aggrieved employees in violation of section 1198. Furthermore, in light of PMF’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PMF kept no records of meal start and end times for second meal periods.

Because PMF failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Garcia and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Garcia and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PMF failed to pay Ms. Garcia and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

PMF willfully failed to pay Ms. Garcia and other aggrieved employees who are no longer employed by PMF all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving PMF's employ.

Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Medical Examinations

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant period, PMF implemented, on a company-wide basis, an employer-imposed requirement that Ms. Garcia and other aggrieved employees undergo mandatory tuberculin (TB) testing, but required them to do so at their own expense. As stated, PMF had a company-wide policy requiring that Ms. Garcia and other aggrieved employees travel to medical facilities and use their

own means of transportation to undergo TB testing during their employment. At all times, PMF was in control of selecting the provider/facility where the testing was to take place and determining the scope of the testing.

During the relevant time period, as stated, Ms. Garcia was instructed by PMF to travel to PMF's designated facility and obtain TB testing, and Ms. Garcia underwent the testing for the sole benefit of PMF. Ms. Garcia followed PMF's instructions and traveled several miles roundtrip to undergo the requisite TB testing. However, PMF did not reimburse Ms. Garcia and other aggrieved employees for all of the expenses they incurred getting to and from the medical facilities. PMF's policy and/or practice of not paying for all costs Ms. Garcia and other aggrieved employees incurred obtaining mandatory TB testing violates California Labor Code section 222.5.

Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, PMF did not pay Ms. Garcia and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, PMF paid Ms. Garcia and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PMF failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Ms. Garcia and/or other aggrieved employees took sick leave and received these other forms of pay, PMF failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, PMF paid Ms. Garcia and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

PMF's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Garcia and/or other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Ms. Garcia and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen 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.” IWC Wage Order No. 5-2001 further provides that: “[w]hen 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.”

First, during the relevant time period, PMF required that Ms. Garcia and other aggrieved employees obtain and pay for the NHA CCMA certification that was required for their continued employment. Ms. Garcia signed up for the NHA certification and paid a \$155 fee to take the requisite examination. However, PMF never reimbursed Ms. Garcia for this examination fee. When Ms. Garcia submitted the claim for reimbursement, which happened to be after her employment with PMF had ended, PMF informed Ms. Garcia that she was not eligible for reimbursement because she was no longer employed by PMF, even though she obtained the certification for the benefit of PMF. Thus, PMF failed to reimburse Ms. Garcia and other aggrieved employees for all of the costs of obtaining the NHA certification, a certification which PMF required Ms. Garcia and other aggrieved employees to obtain as a condition to their continued employment.

Second, during the relevant time period, PMF required Ms. Garcia and other aggrieved employees to wear scrubs bearing the company logo. PMF provided Ms. Garcia and other aggrieved employees with \$150 annual allowance to purchase uniform items. However, PMF did not provide its employees with sufficient uniform allowance to purchase enough uniform items to wear for their shifts throughout the week. For example, Ms. Garcia was able to purchase only three (3) pairs of pants, two (2) shirts, and one (1) sweatshirt with the allowance. Because PMF failed to provide Ms. Garcia and other aggrieved employees with an adequate allowance in relation to their scheduled shifts, Ms. Garcia and other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. Thus, PMF failed to maintain uniforms it required Ms. Garcia and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Third, during the relevant time period, PMF had a company-wide policy of requiring Ms. Garcia and other aggrieved employees to travel to medical facilities using their personal vehicles or obtain alternate transportation to obtain mandatory TB testing, but did not reimburse them for their travel expenses, including mileage. For example, PMF gave Ms. Garcia and other aggrieved employees strict instructions to obtain TB testing, and Ms. Garcia and other aggrieved employees underwent the testing for the sole benefit of PMF. Ms. Garcia followed PMF's instructions and traveled several miles roundtrip to and from PMF's designated medical facility to undergo the requisite TB testing. Although PMF required Ms. Garcia and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo TB testing, PMF never reimbursed them for their travel expenses.

PMF could have provided Ms. Garcia and other aggrieved employees with the actual equipment for use on the job, such as company vehicles, and access to laundering services; or PMF could have reimbursed employees for the costs of their certifications, travel, mileage, and laundering expenses or provided a uniform maintenance allowance. Instead, PMF passed these operating costs off onto Ms. Garcia and other aggrieved employees.

Thus, PMF had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, PMF failed to provide Ms. Garcia and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, PMF failed to provide Ms. Garcia and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that PMF provided to Ms. Garcia is blank where the aforementioned wage information should be filled in.

PMF's failure to provide Ms. Garcia and other aggrieved employees with written notice of basic information regarding their employment with PMF is in violation of Labor Code section 2810.5. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

PMF, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Garcia's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Garcia seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Garcia, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PMF for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Garcia seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: PROVIDENCE MEDICAL FOUNDATION (via U.S. Certified Mail); PROVIDENCE FACEY MEDICAL FOUNDATION (via U.S. Certified Mail); PROVIDENCE MEDICAL INSTITUTE (via U.S. Certified Mail); PROVIDENCE SAINT JOHN'S MEDICAL FOUNDATION (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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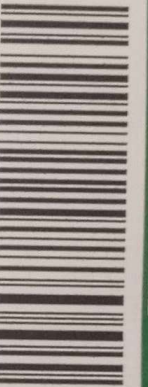
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3345 MICHELSON DR. SUITE 100
IRVINE, CA 92612

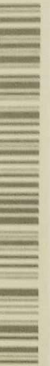
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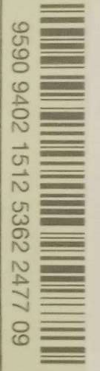
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☐ Addressee

C. Date of Delivery

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C. Date of Delivery

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☐ No

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[Signature]

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☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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Service Type

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