

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff JESSE DOWNARD,
Individually and on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff JESSE DOWNARD (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees, hereby files this First Amended Complaint against Defendants SIERRA
3 MENTAL WELLNESS GROUP, a California Corporation; and DOES 1 to 100, inclusive
4 (hereinafter all collectively referred to as “Defendants”). On information and belief, Plaintiff allege
5 the following:

6 **INTRODUCTION**

7 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
8 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
9 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, failure to
10 pay appropriate sick leave wages, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Placer County Superior Court has jurisdiction in this matter pursuant to California
13 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
14 California Business and Professions Code, and Wage Order No. 5.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in Placer County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Nevada County, and Defendants’ obligation to pay wages arose in
18 Nevada County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
20 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
21 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
22 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
23 (“LWDA”) on approximately December 16, 2022. Plaintiff provided facts and legal bases for his claims
24 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
25 of action. Plaintiff also submitted the \$75.00 filing fee. The December 16, 2022, notice was also sent
26 via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
28 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself

1 and all similarly situated employees, *i.e.* Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A),
2 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
3 Aggrieved Employees include, but is not limited to the following: all non-exempt employees who have
4 worked, or continue to work, for Defendants in California as clinicians, nurses, psychologists, or similar
5 positions responsible for providing care to patients from December 16, 2021 to present.

6 **PARTIES**

7 5. JESSE DOWNARD is an individual over the age of eighteen (18) and is a resident of
8 the State of California.

9 6. On information and belief, Plaintiff alleges, SIERRA MENTAL WELLNESS
10 GROUP, is now and/or at all times mentioned in this Complaint was a California Corporation and
11 the owner and operator of an industry, business and/or facility doing business in the State of
12 California.

13 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained.

17 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
18 other Defendants and was acting within the course and scope of such agency or employment. The
19 Defendants are jointly and severally liable to Plaintiff.

20 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

28 //

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 All hourly non-exempt employees who have or continue to work for
6 Defendant in California as clinicians, nurses, psychologists, or similar
7 positions responsible for providing care to patients from December 19,
8 2018, to the present.

9 13. This action has been brought and may be properly maintained as a class action,
10 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
11 defined community of interests in the litigation and the proposed class is easily ascertainable.

12 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
13 is impracticable under the circumstances of this case. While the exact number of class
14 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
15 Defendants have employed as many as one hundred fifty (150) individuals falling within
16 the above stated class definition throughout the State of California during the applicable
17 statute of limitations, who were subjected to the policies and practices outlined in this
18 Complaint. As such, joinder of all members of the putative class is not practicable.

19 (b) Common Questions Predominate: Common questions of law and fact exist as to all
20 members of the putative class and predominate over questions that affect only individual
21 members of the class. These common questions of law and fact include, without
22 limitation, the following:

- 23 (1) Whether Defendants had rounded employees' hours worked despite being able to
24 and actually recording actual hours worked down to the minute;
25 (2) Whether Defendants violated the law by only paying employees for their rounded
26 hours rather than all actual hours worked, including minimum wages and
27 overtime;
28 (3) Whether Defendants paid the putative class members for all hours worked;
(4) Whether Defendants maintained accurate payroll records;

- 1 (5) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
2 class members were not paid all minimum and overtime wages owed;
- 3 (6) Whether Defendants failed to correctly calculate the regular rate of pay for
4 premium wage purposes such as overtime, double time, meal and rest period
5 premiums, and sick leave wages;
- 6 (7) Whether, as a result of Defendants' policies and practices, Plaintiffs and putative
7 class members received all wages, due and owing, at the time of their termination
8 or separation;
- 9 (8) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
10 class members were not authorized and permitted to take all meal and rest periods
11 owed;
- 12 (9) Whether Defendant failed to reimburse Plaintiff and putative class members for
13 work-related cell phone use and internet use; and
- 14 (10) Whether Defendants provided Plaintiff's and putative class members with wage
15 statements that complied with Labor Code section 226.
- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiff and all
19 members of the putative class were non-exempt employees who were not paid minimum
20 and overtime wages, meal and rest period premiums, and reimbursement of expenses as a
21 result of Defendants' policies and practices. Additionally, Defendants issued Plaintiff
22 and all members of the putative class wage statements that did not comply with Labor
23 Code section 226. As a result, Plaintiff and each member of the putative class will have
24 suffered the same type of harm and seek the same type of recovery based on the same
25 legal theories.
- 26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

- 4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

19 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
20 set forth herein.

21 16. Defendants provide mental health services to patients and employ various health care
22 professionals to provide these services, including clinicians, nurses, and psychologists, across California.
23 Defendants contract with several counties to provide these services at health care facilities therein,
24 including San Luis Obispo County, Glenn County, Nevada County, Placer County, and Colusa County.

25 17. Plaintiff worked for Defendants as a non-exempt employee from approximately
26 December 12, 2020, to September 9, 2022. Plaintiff was employed by Defendants as a non-exempt
27 employee from approximately December 21, 2020, to approximately September 9, 2022, working as a
28

1 crisis clinician. Similarly, similarly situated employees worked as clinicians, nurses, psychologists, or
2 similar positions responsible for providing care to patients.

3 18. Defendants paid Plaintiff and similarly situated employees under an on-call/roll out pay
4 system. Under this pay system, Plaintiff and similarly situated employees were given set shifts in which
5 they were required to be ready to respond to calls for care at any number of healthcare facilities in the
6 area, including, potentially, going to the facility to perform services. Plaintiff and similarly situated
7 employees were paid approximately \$13-\$15 per hour during the time in which they were subject to
8 being called. When Plaintiff and similarly situated employees were actually responding to calls over the
9 phone, actually in the facility in response to a call, or working during a regularly scheduled shift, they
10 were paid a higher amount, approximately \$33-\$36 per hour. Plaintiff and similarly situated employees
11 regularly worked more than eight (8) hours a day and forty (40) hours a week. When Defendants
12 calculated Plaintiff and similarly situated employees' regular rate of pay for premium purposes such as
13 overtime, double time, sick leave, they failed to incorporate the value of on-call earnings when
14 calculating the regular rate of pay. This resulted in overtime, double time, and sick leave wage
15 payments that were substantially lower than they otherwise should be, sometimes \$12-\$24 lower per
16 hour than required under the law.

17 19. For example, Defendants paid Plaintiff and similarly situated employees bi-monthly and
18 utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to
19 Saturday 11:59:59 p.m. During the pay period of August 1, 2022, to August 15, 2022, Plaintiff's basic
20 hourly rate was \$36 and he was paid overtime at the rate of \$54. But, Plaintiff also earned \$105 in on-
21 call pay during the first week of this pay period (7 hours x \$15/hr), which also included 3.5 hours of
22 overtime. His regular rate for this week should have been \$38.41, which would equal a \$57.62 overtime
23 rate of pay. Thus, Plaintiff was underpaid \$12.67 in this week alone. Plaintiff and similarly situated
24 employees earning records are replete with these types of errors. In or around January 2022, Plaintiff
25 raised this issue with his supervisor, stating he believed the overtime calculation was wrong. However,
26 his supervisor simply stated that she would pass on the information. Nothing was ever done to correct
27 the issue. Thus, Plaintiff and similarly situated employees were not paid all overtime, double time, and
28 sick leave wages due. Plaintiff is informed and believes that, due to the systemic nature of this pay

1 practice, any meal and rest period premiums paid also failed to include the failure of on-call time when
2 calculating the regular rate of pay.

3 20. Defendants regularly understaffed its operations such that there were many scheduled
4 shifts where only one individual was working at a time. For example, Plaintiff and similarly situated
5 employees covered hospitals and were mobile crisis responders where they would go to residences, the
6 side of a highway, community centers, schools, or other locations where a patient requiring emergency
7 care might be. The length of time for these trips and ensuring care prevented timely meal or rest periods
8 from occurring. Furthermore, due to the nature of the services, Plaintiff and similarly situated
9 employees were not able to take meal periods because there was no one else scheduled to cover for them
10 during this time. Plaintiff and similarly situated employees missed many rest periods due to similar
11 reasons. Plaintiff and similarly situated employees would also receive many work-related phone calls
12 from the hospital or county during their meal and rest periods. As a result, Defendants did not authorize
13 and permit Plaintiff and similarly situated employees to take all meal and rest periods owed to them.
14 Plaintiff and similarly situated employees did not receive all uninterrupted thirty (30) minute meal
15 periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction
16 thereof. The lack of compliant meal periods is confirmed by Defendants' time records, which show
17 many instances where no meal period clock in/outs occurred on shifts lasting greater than five (5) hours
18 and no meal period was paid either. Defendants did not pay Plaintiff and similarly situated employees
19 all meal and rest period premiums owed to them.

20 21. Plaintiff and similarly situated employees used their personal cell phone for work related
21 matters. Plaintiff and similarly situated employees used their cell phones to address patient placements,
22 communicate with coworkers and management, communicate with county members, enter timecards,
23 text messages, and for searching diagnosis codes and criteria. Plaintiff informed his supervisor that he
24 was getting work-related phone calls when he was not working a regularly scheduled shift shift and was
25 not clocked in during on call hours. The calls occurred several times per week and lasted approximately
26 5-10 minutes each time. Defendants told Plaintiff that Defendants would reimburse Plaintiff for cell
27 phone use, but Defendants never did. Plaintiff was also not reimbursed for work-related internet usage
28 from home. Plaintiff's cell phone bill was approximately \$60.00 per month and his internet bill was

1 approximately \$100 per month. Plaintiff is informed and believes that similarly situated employees were
2 not reimbursed for work-related cell phone and internet usage.

3 22. In addition, Plaintiff and similarly situated employees would enter their hours worked
4 using their cell phone in Paycom, a service used by Defendants for time reporting. Plaintiff's supervisor
5 would review his timecards and approve them. However, Defendants engaged in rounding despite being
6 able to record actual hours worked down to the minute through Paycom. Defendants does not have a
7 policy regarding its rounding practices and failed to inform Plaintiff of its rounding practices.
8 Defendants' rounding resulted in Plaintiff and similarly situated employees not receiving pay for all
9 actual hours worked, including overtime and minimum wages.

10 23. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
11 overtime, double time, sick leave wages, and meal and rest period premiums owed, the wage statements
12 Defendants issued were inaccurate. The paystubs that Defendants issued did not itemize accurate
13 regular and overtime hours worked, accurate missed meal and rest period premiums owed, and accurate
14 gross and net wages earned. Furthermore, the total hours stated on the paystub were incorrect and did
15 not even correspond to the actual total hours worked that Defendant was paying Plaintiff and similarly
16 situated employees for. For example, Defendants included the number of on call hours paid as part of
17 total hours worked, when, in fact, the time spent being on-call not actively responding to calls ("roll out
18 time") was not considered hours worked. This practice masked Defendants failure to appropriately
19 calculate the regular rate of pay for overtime and other premium pay purposes. Furthermore, time
20 periods for which the wage statements purport to be paying for are incorrect. Due to Defendants' bi-
21 monthly pay system, there were several instances where overtime or regular hours from a prior pay
22 period were included in a current pay period and where overtime or regular hours worked during a
23 current pay period were not paid because they would be paid in the future pay period. However, those
24 hours and wages paid that were affected by this practice were not itemized on Plaintiff and similarly
25 situated employees' paystubs. Consequently, Plaintiff and similarly situated employees were not able to
26 determine the total wages owed to them from their paystubs alone.

27 24. As of this date of this letter, Defendants has not paid Plaintiff and similarly situated
28 employees all overtime wages, minimum wages, meal and rest period premiums, sick leave wages and

1 reimbursement expenses owed to them. As of this date of this letter, Defendants have not paid Plaintiff
2 and similarly situated employees all overtime wages, minimum wages, meal and rest period premiums,
3 and reimbursement expenses owed to them.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **(As to all Defendants)**

8 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
9 set forth herein.

10 26. During the period Plaintiff was employed by Defendants, Defendants were required to
11 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
12 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
13 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 5, section (3)(A);
14 Cal. Lab. Code §§ 510, 1194.

15 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
16 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
17 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
18 worked at their regular rate of pay.

19 28. Plaintiff and similarly situated employees were not exempt from overtime protections
20 employees under the California Wage Orders and Labor Code.

21 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
22 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
23 the extent pertinent as if set forth here in full.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(As to all Defendants)**

27 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
28 set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to
compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

every hour worked. See MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.

32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

37. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

38. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the

1 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
2 rights to all meal periods throughout their employment.

3 39. Defendants further failed to pay Plaintiff and similarly situated employees the
4 applicable meal period premiums for any such missed meal breaks.

5 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
6 employees have been damaged as stated in the section below entitled "DAMAGES," which is
7 incorporated here to the extent pertinent as if set forth here in full.

8 **FOURTH CAUSE OF ACTION**
9 **REST PERIOD VIOLATIONS**
10 **(As to all Defendants)**

11 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
12 set forth herein.

13 42. An employer must provide an employee a rest period in accordance with the
14 applicable Wage Order and California Labor Code section 226.7.

15 43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an
16 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
17 four (4) hours or a major fraction thereof.

18 44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
19 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
20 they worked more than four (4) hours or a major fraction thereof.

21 45. Defendants further failed to pay Plaintiff and similarly situated employees the
22 applicable rest period premiums for any such missed rest periods.

23 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
24 employees have been damaged as stated in the section below entitled "DAMAGES," which is
25 incorporated here to the extent pertinent as if set forth here in full.

26 **FIFTH CAUSE OF ACTION**
27 **WAGE STATEMENT VIOLATIONS**
28 **(As to all Defendants)**

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
set forth herein.

1 48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
2 statement to an employee, semimonthly or at the time of each payment of wages, showing:

3 *(1) gross wages earned, (2) total hours worked by the employee, except for*
4 *any employee whose compensation is solely based on a salary and who is*
5 *exempt from payment of overtime under subdivision (a) of Section 515 or*
6 *any applicable order of the Industrial Welfare Commission, (3) the*
7 *number of piece-rate units earned and any applicable piece rate if the*
8 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
9 *all deductions made on written orders of the employee may be aggregated*
10 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
11 *period for which the employee is paid, (7) the name of the employee and*
12 *the last four digits of his or her social security number or an employee*
13 *identification number other than a social security number, (8) the name*
14 *and address of the legal entity that is the employer and, if the employer is*
15 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
16 *name and address of the legal entity that secured the services of the*
17 *employer, and (9) all applicable hourly rates in effect during the pay*
18 *period and the corresponding number of hours worked at each hourly rate*
19 *by the employee. The deductions made from payment of wages shall be*
20 *recorded in ink or other indelible form, properly dated, showing the*
21 *month, day, and year, and a copy of the statement and the record of the*
22 *deductions shall be kept on file by the employer for at least three years at*
23 *the place of employment or at a central location within the State of*
24 *California.*

25 49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
26 itemized statement or failed to provide an accurate and complete itemized statement showing the
27 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
28 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
worked due to Defendants' rounding, non-counting of on-call hours towards the amount of overtime
hours, nonpayment of meal and rest period premiums, and work-related calls that resulted in off-the-
clock work. Plaintiff and similarly situated employees were not able to promptly and easily
determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly
situated employees suffered confusion over whether they received all wages owed and were
prevented from effectively challenging information on their wage statements.

50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

53. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

54. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, and reimbursement expenses at their termination or within the required time after their separation from employment.

55. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid all regular and overtime wages, as well as meal and rest period premiums, and sick leave wages because Defendants authorized the violating practices to occur in the first place. Also, Defendants knew of the number of regular hours, overtime hours, and on call hours that Plaintiff worked because Plaintiff's timecards were reviewed and approved by Plaintiff's supervisor. Furthermore, Defendants knew that Plaintiff was the only crisis worker on the shift or on call and that Plaintiff received and responded to many phone calls while off the clock. Plaintiff informed his management that he was receiving phone calls outside of his work shift and that he used his cell phone to communicate regarding work related matters. Defendants promised Plaintiff to reimburse him for his cell phone use, but they never did. Also, Plaintiff communicated via his cell

1 phone with Defendants and management regarding work issues while Plaintiff was off the clock. As a
2 result, Defendants knew that Plaintiff was using his cell phone for work purposes. Plaintiff also
3 submitted many work-related documents from his home using his internet connection. Defendants knew
4 that submitting work documents regarding patient care required internet connection. Such conduct
5 shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants
6 still refused to pay the remaining wages owed.

7 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
8 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
9 thirty (30) days for Defendants' failure to pay all wages due.

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE EXPENSES**
12 **(As to all Defendants)**

13 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
14 set forth herein.

15 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
17 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
18 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
19 unlawful."

20 60. Defendants required Plaintiff and similarly situated employees to use their cell phones
21 but failed to reimburse them for such use. Also, Plaintiff had to use his internet connection at home to
22 work from home and respond to calls, inquires, and submit documents for different work issues, such as
23 patient management and placement. Plaintiff used his cell phone to respond to calls, communicate
24 regarding patient placement, communicate with coworkers, management, and county members. Plaintiff
25 also used his cell phone to report his working hours via Paycom, send text messages, and for searching
26 diagnoses codes and criteria. Plaintiff informed his supervisor that he was getting work-related phone
27 calls when he was not working in the shift and was not clocked in. Plaintiff had to use his laptop at
28 home to assess for danger of patient to self and others and to address diagnoses and patient placement
matters. Defendant told Plaintiff that Defendant would reimburse Plaintiff for cell phone use, but

1 Defendant never did. Plaintiff was also not reimbursed for work-related internet usage from home.
2 Plaintiff's cell phone bill was approximately \$60.00 per month and his internet bill was approximately
3 \$100 per month. Plaintiff is informed and believes that similarly situated employees were not
4 reimbursed for work-related cell phone and internet usage.

5 61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **EIGHTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION**
10 **(As to all Defendants)**

11 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
12 set forth herein.

13 63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
14 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
15 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
16 California Business and Professions ("B&P") Code § 17200.

17 64. Plaintiff and similarly situated employees were not paid all wages owed, including
18 minimum and overtime wages, sick leave wages, and meal and rest period premiums, or reimbursed for
19 business expenses, during their employment or any time thereafter. Moreover, through Defendants'
20 conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and
21 rest periods.

22 65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
23 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
24 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

25 66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
26 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
27 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
28 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and

1 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
2 of this Action.

3 **NINTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(As to all Defendants)**

6 67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully
7 set forth herein.

8 68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
9 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
10 current and former employees:

- 11 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime
12 Wages)
- 13 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay
14 Minimum Wages)
- 15 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B)
16 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 17 • Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest
18 Periods or Pay Premiums in Lieu Thereof)
- 19 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 20 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 21 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 22 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
23 Work in Any Industrial Welfare Commission Order)
- 24 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 25 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

26 69. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
27 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
28 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:

- 1 a. Penalties as provided for in Labor Code section 226, including the greater of all
2 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
3 violation occurred and one hundred dollars (\$100.00) per employee for each
4 violation in the subsequent pay periods, but not to exceed four thousand dollars
5 (\$4,000.00);
- 6 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
7 226(e);

8 7. As to the Seventh Cause of Action:

- 9 a. Unreimbursed expenses in an amount to be proven at trial;
- 10 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

11 8. As to the Ninth Cause of Action:

- 12 a. For civil penalties as provided in the Labor Code for each enumerated
13 violation;
- 14 b. For those Labor Code sections where there is no civil penalty provided for their
15 violation, the default penalty provided in Labor Code section 2699(f): for any
16 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
17 period; For any subsequent violation, two hundred dollars (\$200) for each
18 aggrieved employee per pay period;
- 19 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 20 d. For any other remedies as allowed by law and/or deemed appropriate by the
21 Court;

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Downard v Sierra Mental Wellness Group
Placer County Superior Court of California S-CV-0049587

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On March 27, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

Ronald E. Enabnit Matheny Sears Linkert & Jaime, LLP 3638 American River Dr Sacramento, CA 95864 Telephone: 916-978-3434 Facsimile: 916-978-3430 E-mail: renabnit@mathenysears.com msilva@mathenysears.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 27, 2023, at Elk Grove, California.


Elias Tapia