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Case #23CV410264
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GINA MARTINEZ, an individual, on behalf
of herself and others similarly situated

PLAINTIFF,

v.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 23CV410264

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff GINA MARTINEZ, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant MOBILE-MED WORK HEALTH SOLUTIONS, INC. (“Defendant”)
5 and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, on behalf of Plaintiff and a Proposed Class defined as:

- 10 a. All non-exempt employees who are employed or have been
11 employed by Mobile-Med Work Health Solutions, Inc., in the State
12 of California who worked one or more pay periods since four (4)
13 years prior to the filing of this action to the present plus any
14 additional time during which the statutes of limitation for the causes
of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19’. (“Proposed Class”)

15 2. From at least four (4) years¹ prior to the filing of this action continuing to the
16 present, Defendant has had a consistent policy of failing to pay wages and/or overtime at the
17 appropriate rate of pay and for all hours worked. Plaintiff and the Proposed Class were not properly
18 compensated for all hours worked because Defendant fails to pay Plaintiff and the Proposed Class
19 for each and every hour worked.

- 20 a. Plaintiff and the Proposed Class were required to routinely work “off the clock”
21 and performed compensable activities before and after each working shift for
22 which no pay was provided. First, Plaintiff and the Proposed Class were
23 required to arrive 15 to 30 minutes before their scheduled start time to set up
24

25 ¹ Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9
26 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of
27 Court, adopted effective April 6, 2020, which provides that the statutes of limitation that
28 exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
[“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to
the relevant time period or statute of limitations referenced in this complaint is extended into
the past by the number of days in which this tolling was in effect.

1 computers, chairs, tables and prepare testing sites. Second, Plaintiff and the
2 Proposed Class were required to attend mandatory weekly meetings “off the
3 clock”, after their scheduled shifts, for which no pay was provided. Third,
4 Plaintiff and the Proposed Class were required to drop off COVID-19 test
5 results to FedEx locations. These drops-offs were completed while “off the
6 clock” and Plaintiff and the Proposed Class were not compensated while
7 completing these drop-offs. This time spent was “clocked out” and as such,
8 Plaintiff and the Proposed Class are not compensated for this time worked even
9 though these activities and time are compensable.

10 b. Further, Plaintiff and the Proposed Class were required to wear uniform and
11 Personal Protective Equipment (PPE). Plaintiff and the Proposed Class are
12 required to put this clothing on and take this clothing off before and after every
13 shift. Plaintiff and the Proposed Class were not paid for all hours worked as a
14 result of the amount of time required to take this clothing on and off before the
15 start of each shift and after the end of each shift (donning and doffing) and the
16 time they were required to work off the clock prior to the scheduled start time
17 of their shift. The time spent was “clocked out” and as such, Plaintiff and the
18 Proposed Class are not compensated for this time worked even though these
19 activities and time are compensable.

20 c. Additionally, Defendant had a consistent policy of failing to compensate
21 Plaintiff and the Proposed Class for time they were on-call or standby.
22 Defendant places significant restrictions on Plaintiff and the Proposed Class
23 during on-call time, including restricting travel and barring activities that would
24 make the employee unreachable. Employees are not free to use on-call time for
25 their own purposes. Time spent on call constitutes “hours worked” under
26 California law, but Defendant has not compensated Plaintiff and the Proposed
27 Class for this time.

28 3. From at least four (4) years prior to the filing of this action and continuing to the

1 present, Defendant has had a consistent policy of failing to inform members of the Proposed Class
2 of their right to take meal periods by way of a lawful policy, failing to provide compliant meal
3 periods, and failing to pay such employees one (1) hour of pay at the employees' regular rate of
4 compensation for each workday that the compliant meal period was not provided as required by
5 California state wage and hour laws. Defendant also had a consistent policy of paying meal period
6 premiums at the base rate and not the blended rate, when meal period premiums are provided, in
7 violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7, 512.

8 4. From at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendant failed to apprise Plaintiff and all members of the Proposed Class of their rights
10 associated with rest periods and failed to provide compliant rest periods. Defendant has had a
11 consistent policy of failing to provide all required, uninterrupted rest periods of at least ten (10)
12 minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one
13 (1) hour of pay at the employee's regular rate of compensation for each workday that the compliant
14 rest period was not provided, as required by California state wage and hour laws. As discussed
15 above, *Ferra* requires the rest period premium payments must include the hourly value of any
16 nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an
17 employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums
18 at the base rate and not the blended rate when rest premiums are provided, in violation of Labor
19 Code § 226.7.

20 5. From at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has violated Labor Code § 2802 by failing to reimburse Plaintiff and the
22 Proposed Class for out of pocket business related expenses.

23 a. Plaintiff and the Proposed Class were required to use their own vehicles,
24 cell phones, and computers and purchase their own uniforms, necessary to perform and complete
25 their job duties. Defendant did not provide a vehicle or other transportation to Plaintiff and the
26 Proposed Class so they could transport COVID-19 test to FedEx locations as required by
27 Defendant and, as a result, Plaintiff and the Proposed Class used their own vehicles to travel from
28 location to location in the middle of their scheduled shifts. Defendant did not reimburse Plaintiff

1 and the Proposed Class for their vehicle use for travel between Defendant's job site and FedEx
2 facility during the course of a work shift, in violation of California law.

3 b. Defendant has also failed to reimburse Plaintiff and the Proposed Class the
4 cost of using their personal cell phones and computers for business related purposes. Defendant
5 required that Plaintiff and the Proposed Class be available by cell phone and answer/use their cell
6 phones to perform their job duties. These computers were also necessary for the completion of
7 Plaintiff's and the Proposed Class's job duties and Defendant did not reimburse Plaintiff and the
8 Proposed Class for using their personal computers. Further, Plaintiff and the Proposed Class were
9 required to purchase their own uniforms, such as medical scrubs and shoes, for business related
10 purposes. These cell phones, computers and uniforms were not provided by Defendant, and
11 Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using
12 these personal cell phones and computers and purchasing their own uniforms.

13 6. For at least one (1) year prior to the filing of this action continuing to the present,
14 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
15 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized
16 wage statements in writing showing the number of total hours worked at each applicable hourly
17 rate in effect during the pay period and the corresponding number of hours worked at each hourly
18 rate by Plaintiff and members of the Proposed Class. Further, Plaintiff and members of the
19 Proposed Class are issued wage statements that do not include meal and rest premiums as a result
20 of the claims alleged above and when they do, they are not the accurate rate.

21 7. For at least three (3) years prior to the filing of this action continuing to the present,
22 Defendant has failed to pay all wages due at the time of termination or resignation to Proposed
23 Class.

24 8. Plaintiff brings this action on behalf of herself and all members of the Proposed
25 Class pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and
26 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking
27 unpaid wages/overtime, meal and rest period penalties, reimbursement of out of pocket expenses,
28 wage statements penalties, all wages due upon termination, other penalties as appropriate,

1 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

2 9. Plaintiff, on behalf of herself and all Proposed Class members, pursuant to Business
3 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
4 all benefits Defendant enjoyed from its unlawful conduct as described herein.

5 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
6 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
7 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
8 1 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
9 pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or
10 formerly employed by Defendant during the liability period as defined in her PAGA notice letter
11 (see Exhibit "1"), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
12 penalties for Defendant's violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512,
13 1194, 1194.2, 1199 and 2802.

14 **II.**

15 **JURISDICTION AND VENUE**

16 11. This Court has subject matter jurisdiction over all causes of action asserted herein
17 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
18 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
19 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
20 State of California or is subject to adjudication in the courts of the State of California.

21 12. This Court has personal jurisdiction over Defendant because Defendant has caused
22 injuries in the County of Santa Clara and the State of California through their acts, and by their
23 violation of the California Labor Code, California state common law, and California Business &
24 Professions Code § 17200, *et seq.*

25 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
26 Civil Procedure § 395. Defendant operates within California and does business within Santa Clara
27 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
28 members within the State of California and the county of Santa Clara.

14. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

A. PLAINTIFF

1 is believed to be 2101 Forest Avenue, Suite 220A, San Jose, California 95128. Upon information
2 and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees
3 within California. Defendant has done and does business throughout the State of California.

4 22. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
6 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
7 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
8 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
9 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
10 capacities of the Defendants designated hereinafter as DOES when such identities become known.

11 23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff and members of the Proposed Class.

16 24. Furthermore, Defendants acted in all respects as the employers or joint employers
17 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
18 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
19 engaged, thereby creating a common law employment relationship, with the Proposed Class.
20 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

21 IV.

22 FACTUAL BACKGROUND

23 25. Plaintiff and members of the Proposed Class are, and at all times pertinent hereto,
24 have been classified as non-exempt employees by Defendant. Defendant hires employees who
25 work as hourly employees who are paid on an hourly basis.

26 26. Upon information and belief, Plaintiff and the Proposed Class are covered by
27 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
28 Code of Regs. § 11040).

1 27. On a regular and consistent basis, Defendant has failed to pay wages and/or
2 overtime to the Proposed Class. Plaintiff and the Proposed Class were not properly compensated
3 for all hours worked because Defendant fails to pay Plaintiff and the Proposed Class for each and
4 every hour worked.

5 a. Plaintiff and the Proposed Class were required to routinely work “off the
6 clock” and performed compensable activities before and after each working shift for which no pay
7 was provided. First, Plaintiff and the Proposed Class were required to arrive 15 to 30 minutes
8 before their scheduled start time to set up computers, chairs, tables and prepare testing sites.
9 Second, Plaintiff and the Proposed Class were required to attend mandatory weekly meetings “off
10 the clock”, after their scheduled shifts, for which no pay was provided. Third, Plaintiff and the
11 Proposed Class were required to drop off COVID-19 test results to FedEx locations. These drops-
12 offs were completed while “off the clock” and Plaintiff and the Proposed Class were not
13 compensated while completing these drop-offs. This time spent was “clocked out” and as such,
14 Plaintiff and the Proposed Class are not compensated for this time worked even though these
15 activities and time are compensable.

16 b. Further, Plaintiff and the Proposed Class were required to wear uniform and
17 Personal Protective Equipment (PPE). Plaintiff and the Proposed Class are required to put this
18 clothing on and take this clothing off before and after every shift. Plaintiff and the Proposed Class
19 were not paid for all hours worked as a result of the amount of time required to take this clothing
20 on and off before the start of each shift and after the end of each shift (donning and doffing) and
21 the time they were required to work off the clock prior to the scheduled start time of their shift.
22 The time spent was “clocked out” and as such, Plaintiff and the Proposed Class are not
23 compensated for this time worked even though these activities and time are compensable.

24 c. Additionally, Defendant had a consistent policy of failing to compensate
25 Plaintiff and the Proposed Class for time they were on-call or standby. Defendant places
26 significant restrictions on Plaintiff and the Proposed Class during on-call time, including restricting
27 travel and barring activities that would make the employee unreachable. Employees are not free
28 to use on-call time for their own purposes. Time spent on call constitutes “hours worked” under

California law, but Defendant has not compensated Plaintiff and the Proposed Class for this time.

28. On a regular and consistent basis, Plaintiff and members of the Proposed Class have been forced by Defendant to work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate when meal period premiums are provided, in violation of *Ferra* and Labor Code §§ 226.7 and 512. Defendant also failed to inform Plaintiff and the Proposed Class of their right to take compliant meal periods by way of a lawful policy.

29. On a regular and consistent basis, Defendant has failed to provide Plaintiff and members of the Proposed Class all required uninterrupted rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the employee's regular rate of compensation for each workday that the compliant rest period was not provided, as required by California state wage and hour laws. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate, when rest break premiums are provided, as required. Defendant also failed to inform Plaintiff and the Proposed Class of their right to take compliant rest periods by way of a lawful policy.

30. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and the Proposed Class for out of pocket business related expenses in violation of Labor Code § 2802.

a. Plaintiff and the Proposed Class were required to use their own vehicles, cell phones, and computers and purchase their own uniforms, necessary to perform and complete their job duties. Defendant did not provide a vehicle or other transportation to Plaintiff and the Proposed Class so they could transport COVID-19 test to FedEx locations as required by Defendant and, as a result, Plaintiff and the Proposed Class used their own vehicles to travel from location to location in the middle of their scheduled shifts. Defendant did not reimburse Plaintiff and the Proposed Class for their vehicle use for travel between Defendant's job site and FedEx facility during the course of a work shift, in violation of California law.

b. Defendant has also failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones and computers for business related purposes. Defendant required that Plaintiff and the Proposed Class be available by cell phone and answer/use their cell phones to perform their job duties. These computers were also necessary for the completion of Plaintiff's and the Proposed Class's job duties and Defendant did not reimburse Plaintiff and the Proposed Class for using their personal computers. Further, Plaintiff and the Proposed Class were required to purchase their own uniforms, such as medical scrubs and shoes, for business related purposes. These cell phones, computers and uniforms were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell phones and computers and purchasing their own uniforms.

31. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Labor Code § 226(a). Plaintiff and members of the Proposed Class are furnished wage statements in violation of Labor Code §226(a) that do not accurately show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and members of the Proposed Class in violation of Labor Code §226(a)(2) and (9). Further, Plaintiff and members of the Proposed Class are issued wage statements that do not include accurate meal and rest period premiums as a result of the claims alleged above.

32. Defendant willfully failed to pay wages and compensation, when Plaintiff and members of the Proposed Class quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and members of the Proposed Class's rights.

33. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a Proposed Class composed of and defined as follows:

a. All non-exempt employees who are employed or have been

1 employed by Mobile-Med Work Health Solutions, Inc., in the State
2 of California who worked one or more pay periods since four (4)
3 years prior to the filing of this action to the present plus any
4 additional time during which the statutes of limitation for the causes
5 of action herein were tolled pursuant to Emergency Rule 9 of the
6 California Rules of Court, the 'Emergency Rules Related to
7 COVID-19'. ("Proposed Class")

8 35. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
9 amend or modify the class description with greater specificity, by division into subclasses, or by
10 limitation to particular issues.

11 36. This action has been brought and may properly be maintained as a class action
12 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
13 community of interest in the litigation and the Proposed Class are easily ascertainable.

14 **A. NUMEROSITY**

15 37. The potential members of the Proposed Class as defined are so numerous that
16 joinder of all the members of the Proposed Class is impracticable. While the precise number of
17 proposed class members has not been determined at this time, Plaintiff is informed and believes
18 that Defendant currently employ, and during the relevant time periods employed over 50 members
19 of the Proposed Class.

20 38. Plaintiff alleges that Defendant's employment records would provide information
21 as to the number and location of all members of the Proposed Class. Joinder of all members of the
22 Proposed Class is not practicable.

23 **B. COMMONALITY**

24 39. There are questions of law and fact common to the Proposed Class that predominate
25 over any questions affecting only individual members of the Proposed Class. These common
26 questions of law and fact include, without limitation:

27 a. Whether Defendant failed to pay wages and/or overtime compensation at
28 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
Labor Code §§ 510, 1194, 1194.2, and 1199;

b. Whether Defendant violated Labor Code § 226.7, 512 and IWC Wage Order

1 4-2001 or other applicable IWC Wage Orders by failing to provide required uninterrupted meal
2 periods throughout the term of employment and/or failing to compensate said employees one (1)
3 hour of wages at their regular rate of compensation in lieu of meal periods;

4 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 -
5 2001 or other applicable IWC Wage Orders by failing to provide all required uninterrupted rest
6 periods throughout the term of employment and failing to compensate said employees one (1)
7 hours wages in lieu of rest periods;

8 d. Whether Defendant violated Labor Code § 2802 and IWC Wage Order 4 -
9 2001 or other applicable IWC Wage Orders by failing to reimburse Plaintiff and the Proposed
10 Class out of pocket expenses for the cost of using personal vehicles, cell phones, and computers
11 and purchasing their own uniforms for business related purposes.

12 e. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001
13 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
14 furnish accurate itemized wage statements that accurately show total hours worked, all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate, and meal and rest period premiums to Plaintiff and the members of the Proposed Class;

17 f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
18 compensation due and owing at the time that any member of the Proposed Class's employment
19 with Defendant terminated;

20 g. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
21 Code by engaging in the acts previously alleged; and

22 h. Whether Plaintiff and the members of the Proposed Class are entitled to
23 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

24 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts
25 alleged herein.

26 **C. TYPICALITY**

27 40. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
28 all members of the Proposed Class sustained injuries and damages arising out of and caused by

Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

41. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

42. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

43. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Class is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to provide compliant meal and rest periods, failing to reimburse out of pocket expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

44. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

LABOR CODE §§ 510, 1194, 1194.2, AND 1199

45. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

46. Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes

1 require an employer to compensate its employees at the minimum wage rate for all hours worked
2 and at a rate of no less than one and one-half times the regular rate of pay for any work in excess
3 of eight hours in one workday and any work in excess of 40 hours in any one workweek.

4 47. Defendant has had a consistent policy of failing to pay wages and/or overtime to
5 Plaintiff and all members of the Proposed Class at the proper rate. Plaintiff and the Proposed Class
6 were not properly compensated for all hours worked because Defendant fails to pay Plaintiff and
7 the Proposed Class for each and every hour worked.

8 48. Plaintiff and the Proposed Class were required to routinely work “off the clock”
9 and performed compensable activities before and after each working shift for which no pay was
10 provided.

11 49. On a regular and consistent basis, Plaintiff and the Proposed Class were required to
12 arrive 15 to 30 minutes before their scheduled start time to set up computers, chairs, tables and
13 prepare testing sites.

14 50. On a regular and consistent basis, Plaintiff and the Proposed Class were required to
15 attend mandatory weekly meetings “off the clock”, after their scheduled shifts, for which no pay
16 was provided.

17 51. On a regular and consistent basis, Plaintiff and the Proposed Class were required to
18 drop off COVID-19 test results to FedEx locations. These drops-offs were completed while “off
19 the clock” and Plaintiff and the Proposed Class were not compensated while completing these
20 drop-offs.

21 52. On a regular and consistent basis, Plaintiff and all Proposed Class members were
22 required to wear uniform and Personal Protective Equipment (PPE). Plaintiff and all Proposed
23 Class members are required to put this clothing on and take this clothing off before and after every
24 shift. As a result, Plaintiff and all Proposed Class members were not paid for all hours worked as
25 a result of the amount of time required to take this clothing on and off before the start of each shift
26 and after the end of each shift (donning and doffing) and the time they were required to work off
27 the clock prior to the scheduled start time of their shift.

53. The time spent was “clocked out” and as such, Plaintiff and the Proposed Class are not compensated for this time worked even though these activities and time are compensable.

54. Additionally, Defendant had a consistent policy of failing to compensate Plaintiff and the Proposed Class for time they were on-call or standby. Defendant places significant restrictions on Plaintiff and the Proposed Class during on-call time, including restricting travel and barring activities that would make the employee unreachable. Employees are not free to use on-call time for their own purposes. Time spent on call constitutes “hours worked” under California law, but Defendant has not compensated Plaintiff and the Proposed Class for this time.

55. By their policy of requiring Plaintiff and members of the Proposed Class to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

56. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS PURSUANT TO

LABOR CODE § 226.7 AND LABOR CODE § 512

57. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

58. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift.

59. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of

1 these rights.

2 60. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
3 Defendant failed to provide Plaintiff and the Proposed Class with uninterrupted meal periods of
4 not less than thirty (30) minutes as required by the Labor Code during the relevant time period.

5 61. On a regular and consistent basis, meal periods were interrupted because Defendant
6 required Plaintiff and the Proposed Class to be available by phone to respond to text messages or
7 emails during meal periods. As such, when meal periods were provided, they were not a full thirty
8 (30) minutes in length (short) and/or were interrupted. As a result, Defendant failed to provide
9 Plaintiff and the Proposed Class compliant meal periods.

10 62. Additionally, Defendant has had a consistent policy of failing to pay Plaintiff and
11 the Proposed Class one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the compliant meal period was not provided. Very recently, on July 15, 2021, in
13 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
14 calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide
15 a compliant meal period or rest break. Specifically, the Court held that those bonus payments must
16 include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses,
17 commissions, etc.), and cannot simply be paid at an employee's base hourly rate. Here, when meal
18 periods are provided, Defendant has had a consistent policy of paying meal period premiums at
19 the base rate and not the appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

20 63. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
21 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
22 uninterrupted meal break, per day in a sum to be proven at trial.

23 **VIII.**

24 **THIRD CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

26 **FAILURE TO PROVIDE COMPLIANT REST PERIODS PURSUANT TO**

27 **LABOR CODE § 226.7**

28 64. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by

1 reference all previous paragraphs.

2 65. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
3 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
4 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).

5 66. Defendant failed to maintain an accurate policy informing Plaintiff and the
6 Proposed Class of their rights with respect to rest periods.

7 67. Defendant failed to provide Plaintiff and members of the Proposed Class with
8 uninterrupted rest breaks of not less than ten (10) minutes as required by the Labor Code during
9 the relevant time period.

10 68. On a regular and consistent basis, rest periods were interrupted because Defendant
11 required Plaintiff and the Proposed Class to be available by phone to respond to text messages or
12 emails during rest periods.

13 69. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff
14 and the Proposed Class with a second rest period despite regularly requiring Plaintiff and the
15 Proposed Class to work over six (6) hours. Because there was limited coverage for Plaintiff and
16 other employees to be able to take their second breaks, Plaintiff and members of the Proposed
17 Class did not have the opportunity to take their breaks. If Plaintiff took a second rest break, then
18 there would not be another employee available to cover the shift while Plaintiff was on break.

19 70. As a result, Defendant failed to provide Plaintiff and the Proposed Class compliant
20 rest periods.

21 71. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour
22 of wages for each compliant rest period as required by Labor Code § 226.7 and *Ferra v. Loews*
23 *Hollywood Hotel, LLC*. Here, when rest period premiums are provided, Defendant has had a
24 consistent policy of paying rest period premiums at the base rate and not the blended rate in
25 violation of Labor Code §§ 226.7.

26 72. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
27 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
28 at trial.

1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **VIOLATION OF LABOR CODE § 2802**

5 73. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

7 74. Labor Code § 2802 provides that an employer shall indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
10 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
11 unlawful.

12 75. On a regular and consistent basis, Defendant required Plaintiff and the Proposed
13 Class to incur mileage on their personal vehicles for work purposes. This necessary travel included
14 transporting COVID-19 tests to FedEx. Because Defendant did not provide a vehicle or other
15 transportation to workers so they could complete this travel, Plaintiff and the Proposed Class used
16 their own vehicles to travel from location to location in the middle of their scheduled shifts.
17 Defendant did not reimburse Plaintiff and the Proposed Class for their vehicle use for travel
18 between Defendant's job site and FedEx facility during the course of a work shift, in violation of
19 California law.

20 76. On a regular and consistent basis, Defendant has also failed to reimburse Plaintiff
21 and the Proposed Class the cost of using their personal cell phones and computers for business
22 related purposes. Defendant required that Plaintiff and the Proposed Class be available by cell
23 phone and answer/use their cell phones to perform their job duties. These computers were also
24 necessary for the completion of Plaintiff's and the Proposed Class's job duties and Defendant did
25 not reimburse Plaintiff and the Proposed Class for using their personal computers.

26 77. On a regular and consistent basis, Plaintiff and the Proposed Class were required to
27 purchase their own uniforms, such as medical scrubs and shoes, for business related purposes.

28 78. These cell phones, computers and uniforms were not provided by Defendant, and

1 Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using
2 these personal cell phones and computers and purchasing their own uniforms.

3 79. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
4 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
5 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

6 **X.**

7 **FIFTH CAUSE OF ACTION**

8 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

9 **VIOLATION OF LABOR CODE § 226(A)**

10 80. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
11 reference all previous paragraphs.

12 81. Labor Code §226(a)(2) requires employers to furnish accurate itemized wage
13 statements in writing that show total hours worked by the employee. Defendant furnishes Plaintiff
14 and members of the Proposed Class with itemized wage statements that do not accurately show
15 total hours worked.

16 82. Labor Code §226(a)(9) requires employers to furnish accurate itemized wage
17 statements in writing that show all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee. Defendant furnishes
19 Plaintiff and members of the Proposed Class with itemized wage statements that do not accurately
20 show all applicable hourly rates in effect during the pay period and the corresponding number of
21 hours worked at each hourly rate.

22 83. Further, Plaintiff and the Proposed Class are issued wage statements that do not
23 include accurate meal and rest premiums as a result of the claims alleged above.

24 84. Defendant's failure to provide accurate itemized wages statements according to
25 Labor Code § 226(a) was all done on a regular and consistent basis.

26 85. An employee suffering injury as a result of a knowing and intentional failure by an
27 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
28 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred

1 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
2 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
3 reasonable attorneys' fees.

4 **XI.**

5 **SIXTH CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

7 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

8 86. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
9 reference all previous paragraphs.

10 87. Numerous members of the Proposed Class including the Plaintiff are no longer
11 employed by Defendant. They were either fired or quit Defendant's employ.

12 88. Defendant's failure to pay wages, as alleged above was willful in that Defendant
13 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
14 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
15 penalty until paid for a period of up to thirty (30) days from the time they were due.

16 89. Defendant has failed to pay Plaintiff and others a sum certain at the time of
17 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
18 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
19 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and members of the
20 Proposed Class's daily wage multiplied by thirty (30) days.

21 **XII.**

22 **SEVENTH CAUSE OF ACTION**

23 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

24 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

25 90. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
26 reference all previous paragraphs.

27 91. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
28 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to

1 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
2 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
3 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure § 1021.5.

5 92. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
6 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
7 appropriate equitable relief.

8 93. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
9 practices.

10 94. California’s wage and hour laws express fundamental public policies. Providing
11 employees with proper wages and compensation are fundamental public policies of this State and
12 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
13 vigorously minimum labor standards, to ensure that employees are not required or permitted to
14 work under substandard and unlawful conditions, and to protect law-abiding employers and their
15 employees from competitors who lower their costs by failing to comply with minimum labor
16 standards.

17 95. Defendant has violated statutes and public policies as alleged herein. Through the
18 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
19 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
20 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
21 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
22 guaranteed to all employees under law.

23 96. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
24 violation of § 17200, *et seq.* of the Business & Professions Code.

25 97. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
26 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
27 § 17200, *et seq.* of the Business & Professions Code.

28 98. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and

1 others similarly situated have been damaged in a sum as may be proven.

2 99. Unless restrained, Defendant will continue to engage in the unlawful conduct as
3 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
4 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
5 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
6 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
7 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
8 Proposed Class the money Defendant has unlawfully failed to pay.

9 **XIII.**

10 **EIGHTH CAUSE OF ACTION**

11 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

12 100. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
13 incorporates by reference all previous paragraphs.

14 101. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
15 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
16 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 4-2001; and
17 California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

18 102. For each such penalty, Plaintiff and the aggrieved employees are entitled to
19 penalties in an amount to be shown at trial, subject to the following formula:

20 a. \$100 for the initial violation per employee per pay period.

21 b. \$200 for each subsequent violation per employee per pay period.

22 103. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
23 twenty-five percent (25%) to the affected employees.

24 104. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
25 LWDA² and mailed a letter by certified mail to Defendant's entity address, which is 2101 Forest
26 Avenue, Suite 220A, San Jose, CA 95128, as proscribed by the Code on January 19, 2023,

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 (see Exhibit "1.") Plaintiff received a signed green return receipt from Defendant, indicating that it received Plaintiff's notice letter. (see Exhibit "2.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "3").

105. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each member of the Proposed Class from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For liquidated damages in the amount of unpaid minimum wages not paid to Plaintiff and each member of the Proposed Class from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each member of the Proposed Class's hourly wage at the appropriate regular rate of compensation for each non-compliant meal period from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For compensatory damages in the amount of Plaintiff's and each member of the Proposed Class's hourly wage for each non-compliant rest period from at least four (4) years prior to the filing of this action to the present as may be proven;

5. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' unreimbursed out of pocket expenses as a requirement of employment;

6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)

1 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
3 an aggregate penalty of four thousand dollars (\$4,000);

4 7. For penalties pursuant to Labor Code § 203 for all employees who were terminated
5 or resigned equal to their daily wage times thirty (30) days;

6 8. An award of prejudgment and post judgment interest;

7 9. An order enjoining Defendant and its agents, servants, and employees, and all
8 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
9 overtime, meal periods, rest periods, reimbursement of out of pocket expenses, accurate itemized
10 wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202,
11 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, and IWC 4-2001;

12 10. For restitution for unfair competition pursuant to Business & Professions Code
13 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

14 11. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff
15 and all other Aggrieved Employees for Defendant's violation of Labor Code §§ 201, 202, 203,
16 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802; Wage Order 4-2001; and California Code of
17 Regulations, Title 8, Section 11040;

18 12. An award providing for payment of costs of suit;

19 13. An award of attorneys' fees; and

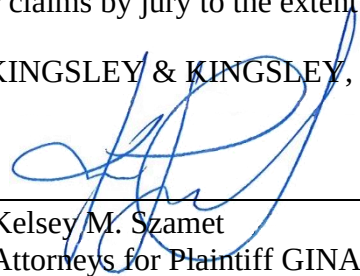
20 14. Such other and further relief as this Court may deem proper and just.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

23 DATED: March 27, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Kelsey M. Szamet
27 Attorneys for Plaintiff GINA MARTINEZ and the
28 Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 19, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Mobile-Med Work Health Solutions, Inc.
2101 Forest Avenue, Suite 220A
San Jose, California 95128

Re: Gina Martinez v. Mobile-Med Work Health Solutions, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Gina Martinez (“Plaintiff”) and a proposed group of current and former employees working for Mobile-Med Work Health Solutions, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Mobile-Med Work Health Solutions, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked because Defendant fails to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and all aggrieved employees were required to routinely work “off the clock” and performed compensable activities before and after each working shift for which no pay was provided. First, Plaintiff and all aggrieved employees were required to arrive 15 to 30 minutes before their scheduled start time to set up computers, chairs, tables and prepare testing sites. Second, Plaintiff and the aggrieved employees were required to attend mandatory weekly meetings “off the clock”, after their scheduled shifts, for which no pay

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 19, 2023

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was provided. Third, Plaintiff and the aggrieved employees were required to drop off COVID-19 test results to FedEx locations. Again, these drops-offs were completed while “off the clock” and Plaintiff and all aggrieved employees were not compensated while completing these drop-offs. This time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though these activities and time are compensable.

Further, Plaintiff and all aggrieved employees were required to wear uniform and Personal Protective Equipment (PPE). Plaintiff and all aggrieved employees are required to put this clothing on and take this clothing off before and after every shift. As a result, Plaintiff and all aggrieved employees were not paid for all hours worked as a result of the amount of time required to take this clothing on and off before the start of each shift and after the end of each shift (donning and doffing) and the time they were required to work off the clock prior to the scheduled start time of their shift. The time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though these activities and time are compensable.

Additionally, Defendant had a consistent policy of failing to compensate Plaintiff and all aggrieved employees for time they were on-call or standby. Defendant places significant restrictions on Plaintiff and other aggrieved employees during on-call time, including restricting travel and barring activities that would make the employee unreachable. Employees are not free to use on-call time for their own purposes. Time spent on call constitutes “hours worked” under California law, but Defendant has not compensated Plaintiff and aggrieved employees for this time.

By their policy of requiring Plaintiff and all aggrieved employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a compliant manner.

Defendant failed to maintain a policy informing Plaintiff and all aggrieved employees of their rights associated with meal periods. In addition, Defendant has had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently

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January 19, 2023

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interrupted because Defendant required Plaintiff and all aggrieved employees to be available by phone to respond to text messages or emails during meal periods. As such, when meal periods were provided, they were not a full thirty (30) minutes in length (short) and/or were interrupted.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and all aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a policy of informing Plaintiff and all aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fraction thereof) without being provided with a ten (10) minute uninterrupted rest period. Rest periods were frequently interrupted because Defendant required Plaintiff and all aggrieved employees to be available by phone to respond to text messages or emails during rest periods. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Because there was limited coverage for Plaintiff and other employees to be able to take their second breaks, Plaintiff and other aggrieved employees did not have the opportunity to take their breaks. If Plaintiff took a second rest break, then there would not be another employee available to cover the shift while Plaintiff was on break. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods.

Further, Plaintiff and all aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant required Plaintiff and all aggrieved employees to incur mileage on their personal vehicles for work purposes. This necessary travel included transporting COVID-19 tests to FedEx.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 19, 2023

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Because Defendant did not provide a vehicle or other transportation to workers so they could complete this travel, Plaintiff and aggrieved employees used their own vehicles to travel from location to location in the middle of their scheduled shifts. Defendant did not reimburse Plaintiff and the aggrieved employees for their vehicle use for travel between Defendant's job site and FedEx facility during the course of a work shift, in violation of California law.

Defendant has also failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and computers for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones to perform their job duties. These computers were also necessary for the completion of Plaintiff and aggrieved employees' job duties and Defendant did not reimburse Plaintiff and the aggrieved employees for using their personal computers. Further, Plaintiff and other aggrieved employees were required to purchase their own uniforms, such as medical scrubs and shoes, for business related purposes. These cell phones, computers and uniforms were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones and computers and purchasing their own uniforms.

Labor Code §226(a) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§226(a)(2) and (9), respectively.) As a result of Defendant's failure to pay for all hours worked as described above, Plaintiff and the aggrieved employees are issued wage statements that do not accurately include the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and all aggrieved employees in violation of Labor Code §226(a). Further, Plaintiff and all aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the meal and rest claims alleged above and when they do, they are not the accurate rate.

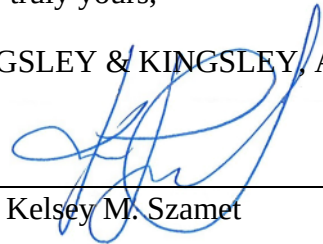
Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety

of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Mobile-Med Work Health Solutions, Inc. via USPS Certified Mail # 7022 3330 0002 1335 5072
 3. Smith Law, 4515 Van Nuys Blvd #302, Sherman Oaks, CA91403

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mobile-Med Work Health Solutions, Inc.
2101 Forest Avenue, Suite 220A
San Jose, California 95128



9590 9402 7019 1225 1700 16

2. Article Number (Transfer from service label)

7022 3330 0002 1335 5072

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

■ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted
Delivery

☐ Signature Confirmation™

☐ Signature Confirmation™
Restricted Delivery

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

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United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
MOBILE-MED WORK HEALTH SOLUTIONS, INC.

EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Gina Martinez

Plaintiff/Aggrieved Employee Occupation *

non-exempt employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Mobile-Med Work Health Solutions, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

2101 Forest Avenue, Suite 220A	San Jose
Employer State * California	Employer Zip/Postal Code * 95128
Employer Industry * Other	Employer Industry for "Other" * Health and allied services

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File LWDA Letter - ...ions, Inc..pdf

Other Attachment - (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

[Previous Page](#)

[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, January 19, 2023 8:17 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

1/19/2023

LWDA Case No. LWDA-CM-930270-23
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Gina Martinez
Employer: Mobile-Med Work Health Solutions, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7Ca0c94946e8d8483c671c08dafa38a643%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638097418473400606%7CUnknown%7CTWFPbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=HBnKSURjg4oh702bD4GPczq932tl4h9mx0CFDmXl3qw%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, January 19, 2023 8:18 AM
To: Kimberly Madrid
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-930270-23

Order Number: ORD-000207299

Total:\$75.00

Card Type: 

Date: 1/19/2023

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436