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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated,

PLAINTIFFS,

v.

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

DEFENDANTS.

CASE NO. 23CV410264

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194, 1197 and 1197.1
2. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
3. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
5. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
6. Violation of Labor Code § 226(a)
7. Penalties Pursuant to Labor Code § 203
8. Failure to Pay Sick Wages in Violation of Labor Code §§ 201-204, 233, 246
9. Failure to Pay Timely During Employment in Violation of Labor Code §§ 204 and 210
10. Violation of Business & Professions Code § 17200
11. Penalties Pursuant to Labor Code § 2699, et seq.

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1 Plaintiffs GINA MARTINEZ, ISMAEL ORTEGA, and JESSICA SAELOR as individuals,
2 on behalf of themselves , all others similarly situated, and on behalf of the people of the State of
3 California and as aggrieved employees under Labor Code Private Attorneys General Act of 2004,
4 § 2699, *et seq.* (hereafter “PAGA”), complains of Defendant MOBILE-MED WORK HEALTH
5 SOLUTIONS, INC. (“Defendant”) 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 Plaintiffs 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 at any time from January 1, 2019, through June 13,
2024 (“Proposed Class”).

13 2. From at least four (4) years prior to the filing of this action and continuing to the
14 present, and as a result of Defendant’s previously mentioned policies of failing to pay wages and/or
15 overtime, Plaintiffs and the Proposed Class forfeit minimum wage, overtime wage compensation,
16 and off-duty meal breaks by working without their time being correctly records and without
17 compensation at the applicable rates.

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

- 23 a. Plaintiffs and the Proposed Class were required to routinely work “off the
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 clock” and performed compensable activities before and after each working
2 shift for which no pay was provided. First, Plaintiffs and the Proposed Class
3 were required to arrive 15 to 30 minutes before their scheduled start time to set
4 up computers, chairs, tables and prepare testing sites. Second, Plaintiffs and the
5 Proposed Class were required to attend mandatory weekly meetings “off the
6 clock”, after their scheduled shifts, for which no pay was provided. Third,
7 Plaintiffs and the Proposed Class were required to drop off COVID-19 test
8 results to FedEx locations. These drops-offs were completed while “off the
9 clock” and Plaintiffs and the Proposed Class were not compensated while
10 completing these drop-offs. Fourth, Plaintiffs and the Proposed Class, as a
11 condition of employment, were required to submit to mandatory temperature
12 checks and symptom questionnaires for COVID-19 screening prior to clocking
13 into Defendant’s timekeeping system for the workday. This time spent was
14 “clocked out” and as such, Plaintiffs and the Proposed Class are not
15 compensated for this time worked even though these activities and time are
16 compensable.

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

27 c. Additionally, Defendant had a consistent policy of failing to compensate
28 Plaintiffs and the Proposed Class for time they were on-call or standby.

1 Defendant places significant restrictions on Plaintiffs and the Proposed Class
2 during on-call time, including restricting travel and barring activities that would
3 make the employee unreachable. Employees are not free to use on-call time for
4 their own purposes. Time spent on call constitutes “hours worked” under
5 California law, but Defendant has not compensated Plaintiffs and the Proposed
6 Class for this time. Defendant, as a matter of established company policy and
7 procedure, administer a uniform practice of rounding the actual time worked
8 and recorded by Plaintiffs and the Proposed Class, always to the benefit of
9 Defendant, so that during the course of their employment, Plaintiffs and the
10 Proposed Class members are paid less than they would have been paid had they
11 been paid for actual recorded time rather than “rounded” time.

12 4. From at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendant has had a consistent policy of failing to inform members of the Proposed Class
14 of their right to take meal periods by way of a lawful policy, failing to provide compliant meal
15 periods, and failing to pay such employees one (1) hour of pay at the employees’ regular rate of
16 compensation for each workday that the compliant meal period was not provided as required by
17 California state wage and hour laws. Further, Defendant from time to time failed to provide
18 Plaintiffs and the Proposed Class members with a second off-duty meal period for some workdays
19 in which these employees were required by Defendant to work ten (10) hours of work. Defendant
20 also engaged in the practice of rounding the meal period times to avoid paying penalties to
21 Plaintiffs and the other Proposed Class Members. Plaintiffs and the other Proposed Class Members
22 therefore forfeit meal breaks without additional compensation and in accordance with Defendant’s
23 corporate policy and practice. Defendant also had a consistent policy of paying meal period
24 premiums at the base rate and not the blended rate, when meal period premiums are provided, in
25 violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7, 512. From at least
26 four (4) years prior to the filing of this action and continuing to the present, Defendant failed to
27 apprise Plaintiffs and all members of the Proposed Class of their rights associated with rest periods
28 and failed to provide compliant rest periods. Defendant has had a consistent policy of failing to

1 provide all required, uninterrupted rest periods of at least ten (10) minutes per four (4) hours
2 worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the
3 employee's regular rate of compensation for each workday that the compliant rest period was not
4 provided, as required by California state wage and hour laws. As discussed above, *Ferra* requires
5 the rest period premium payments must include the hourly value of any nondiscretionary earnings
6 (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.
7 Additionally, the applicable California Wage Order requires employers to provide employees with off-
8 duty rest periods, Which the California Supreme Court defined as time during which an employee is
9 relieved from all work related duties and free from employer control. In so doing, the Court held that
10 the requirement under California law that employers authorize and permit all employees to take rest
11 period means that employers must relieve employees of all duties and relinquish control over how
12 employees spend their time which includes control over the locations where employees may take their
13 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
14 five minutes out, five minutes back. Here, Defendant's policy restricted Plaintiffs and other Proposed
15 Class Members from unconstrained walks and is unlawful based on Defendant's rule which states
16 Plaintiffs and other Proposed Class Members cannot leave the work premises during their rest period.
17 Defendant has had a consistent policy of paying rest period premiums at the base rate and not the
18 blended rate when rest premiums are provided, in violation of Labor Code § 226.7.

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

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

1 facility during the course of a work shift, in violation of California law.

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

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

20 7. Defendant from time to time failed to pay Plaintiffs and the members of the
21 Proposed Class within seven (7) days of the close of the payroll period in accordance with Labor
22 Code § 204(d), including but not limited to for the "Hourly" regular wage payments. Defendant
23 underpaid sick pay wages to Plaintiffs and the Proposed Class by failing to pay such wages at the
24 regular rate of pay in violation of Labor Code § 246. Specifically, Plaintiff and other non-exempt
25 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of
26 pay, Defendant underpaid sick pay to Plaintiff and the Proposed Class at their base rates of pay.

27 8. For at least three (3) years prior to the filing of this action continuing to the present,
28 Defendant has failed to pay all wages due at the time of termination or resignation to Proposed

1 Class. Further, Plaintiffs are informed and believe and based on thereon that such failure to pay
2 sick pay at regular rate was willful, such that Plaintiffs and the Proposed Class whose employment
3 has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

4 9. Defendant failed to pay all compensation due to Plaintiffs and the Proposed Class
5 members, made unlawful deductions from compensation payable to Plaintiffs and the Proposed
6 Class, failed to disclose all aspects of the deductions from compensation payable to Plaintiffs and
7 the Proposed Class, and thereby failed to pay these employees all wages due at each applicable
8 pay period and upon termination, in violation of Labor Code § 221.

9 10. Defendant failed to timely pay Plaintiffs and the Proposed Class members wages
10 earned during the pay period.

11 11. Plaintiffs brings this action on behalf of themselves and all members of the
12 Proposed Class pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.3, 226.7,
13 233, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800,
14 and 2802; Wage Order 4-2001; Code of California Civil Procedure § 1021.5; and California Code
15 of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime, meal and rest period
16 penalties, reimbursement of out of pocket expenses, wage statements penalties, all wages due upon
17 termination, sick pay, other penalties as appropriate, injunctive and other equitable relief, and
18 reasonable attorneys' fees and costs.

19 12. Plaintiffs, on behalf of themselves and all Proposed Class members, pursuant to
20 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
21 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

22 13. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
23 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
24 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
25 1 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
26 pursuant to PAGA. Plaintiffs, on behalf of themselves and all non-exempt employees who are
27 employed or have been employed by Defendant at any time from March 6, 2022, through June 13,
28 2024 ("aggrieved employees").

1 Plaintiffs and the other aggrieved employees bring this representative action pursuant to Labor
2 Code § 2699, *et seq.* seeking penalties for Defendant's violations of Labor Code §§ 201, 202, 203,
3 204, 221, 226(a), 226.7, 233, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1194.2, 1197, 1197.1, 1198,
4 1199 and 2802.

5 **II.**

6 **JURISDICTION AND VENUE**

7 14. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
10 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
11 State of California or is subject to adjudication in the courts of the State of California.

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

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

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

25 **III.**

26 **PARTIES**

27 **A. PLAINTIFF**

28 18. Plaintiffs GINA MARTINEZ ISMAEL ORTEGA, and JESSICA SAELOR are

1 residents of California.

2 19. As specifically pled herein, Plaintiffs and all members of the Proposed Class, were
3 regularly required to:

- 4 a. Work without being accurately paid the correct minimum wage pay;
5 b. Work without being paid for all hours worked; Work without being provided
6 compliant meal periods;
7 c. Work without being provided compliant rest periods;
8 d. Work without being reimbursed for out of pocket business related expenses;
9 e. Work without being provided accurate itemized wage statements;
10 f. Work without being provided accurate sick pay.
11 g. Work without being paid timely for wages earned during the pay period;

12 20. Defendant willfully failed to compensate Plaintiffs and all members of the Proposed
13 Class for wages at the termination of their employment with Defendant.

14 21. As a result of this conduct, Defendant has engaged in unfair competition and
15 unlawful business practices.

16 22. Plaintiffs and all aggrieved employees as defined in her notice letter to the LWDA
17 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
18 §2699(c).)

19 **B. DEFENDANTS**

20 23. Defendant MOBILE-MED WORK HEALTH SOLUTIONS, INC. is believed to be
21 a California corporation operating within the State of California. Defendant’s corporate address
22 is believed to be 2101 Forest Avenue, Suite 220A, San Jose, California 95128. Upon information
23 and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees
24 within California. Defendant has done and does business throughout the State of California.

25 24. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
28 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
2 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

4 25. Plaintiffs are informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiffs and members of the Proposed Class.

9 26. Furthermore, Defendants acted in all respects as the employers or joint employers
10 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
11 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
12 engaged, thereby creating a common law employment relationship, with the Proposed Class.
13 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

14 IV.

15 FACTUAL BACKGROUND

16 27. Plaintiffs and members of the Proposed Class are, and at all times pertinent hereto,
17 have been classified as non-exempt employees by Defendant. Defendant hires employees who
18 work as hourly employees who are paid on an hourly basis.

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

22 29. On a regular and consistent basis, and as a result of Defendant's previously
23 mentioned policies of failing to pay wages and/or overtime, Plaintiffs and the Proposed Class
24 forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working
25 without their time being correctly records and without compensation at the applicable rates.

26 30. On a regular and consistent basis, Defendant has failed to pay wages and/or
27 overtime to the Proposed Class. Plaintiffs and the Proposed Class were not properly compensated
28 for all hours worked because Defendant fails to pay Plaintiff and the Proposed Class for each and

every hour worked. Further, the second component of Plaintiffs' and the Proposed Class's compensation is Defendant's non-discretionary incentive program that paid Plaintiffs and the Proposed Class incentive wages based on their performance for Defendant. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by Defendant. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to Plaintiff and the Proposed Class, Defendant failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiffs and the Proposed Class must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break premiums to Plaintiffs and the Proposed Class by Defendant.

a. Plaintiffs and the Proposed Class 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, Plaintiffs and the Proposed Class were required to arrive 15 to 30 minutes before their scheduled start time to set up computers, chairs, tables and prepare testing sites. Second, Plaintiffs and the Proposed Class were required to attend mandatory weekly meetings "off the clock", after their scheduled shifts, for which no pay was provided. Third, Plaintiffs and the Proposed Class were required to drop off COVID-19 test results to FedEx locations. These drop-offs were completed while "off the clock" and Plaintiffs and the Proposed Class were not compensated while completing these drop-offs. Fourth, Plaintiffs and the Proposed Class, as a condition of employment, required employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into Defendant's timekeeping system for the workday. This time spent was "clocked out" and as such, Plaintiffs and the Proposed Class are not compensated for this time worked even though these activities and time are compensable.

b. Further, Plaintiffs and the Proposed Class were required to wear uniform

1 and Personal Protective Equipment (PPE). Plaintiffs and the Proposed Class are required to put
2 this clothing on and take this clothing off before and after every shift. Plaintiffs and the Proposed
3 Class were not paid for all hours worked as a result of the amount of time required to take this
4 clothing on and off before the start of each shift and after the end of each shift (donning and
5 doffing) and the time they were required to work off the clock prior to the scheduled start time of
6 their shift. The time spent was “clocked out” and as such, Plaintiffs and the Proposed Class are not
7 compensated for this time worked even though these activities and time are compensable.

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

15 d. Defendant, as a matter of established company policy and procedure,
16 administer a uniform practice of rounding the actual time worked and recorded by Plaintiffs and
17 the Proposed Class, always to the benefit of Defendant, so that during the course of their
18 employment, Plaintiffs and the Proposed Class members are paid less than they would have been
19 paid had they been paid for actual recorded time rather than “rounded” time.

20 31. On a regular and consistent basis, Plaintiffs and members of the Proposed Class
21 have been forced by Defendant to work over five (5) hours in one day without being provided a
22 thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at their
23 regular rate of compensation for each workday that a compliant meal period was not provided or
24 provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial
25 Welfare Commission Wage Orders. Further, Defendant from time to time failed to provide
26 Plaintiffs and the Proposed Class members with a second off-duty meal period for some workdays
27 in which these employees were required by Defendant to work ten (10) hours of work. Defendant
28 also engaged in the practice of rounding the meal period times to avoid paying penalties to

1 Plaintiffs and the other Proposed Class Members. Plaintiffs and the other Proposed Class Members
2 therefore forfeit meal breaks without additional compensation and in accordance with Defendant's
3 corporate policy and practice. Defendant has had a consistent policy of paying meal period
4 premiums at the base rate and not the blended rate when meal period premiums are provided, in
5 violation of *Ferra* and Labor Code §§ 226.7 and 512. Defendant also failed to inform Plaintiffs
6 and the Proposed Class of their right to take compliant meal periods by way of a lawful policy.

7 32. On a regular and consistent basis, Defendant has failed to provide Plaintiffs and
8 members of the Proposed Class all required uninterrupted rest periods of at least ten (10) minutes
9 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
10 of pay at the employee's regular rate of compensation for each workday that the compliant rest
11 period was not provided, as required by California state wage and hour laws. Additionally, the
12 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
13 Which the California Supreme Court defined as time during which an employee is relieved from all
14 work related duties and free from employer control. In so doing, the Court held that the requirement
15 under California law that employers authorize and permit all employees to take rest period means that
16 employers must relieve employees of all duties and relinquish control over how employees spend their
17 time which includes control over the locations where employees may take their rest period. Employers
18 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
19 minutes back. Here, Defendant's policy restricted Plaintiffs and other Proposed Class Members from
20 unconstrained walks and is unlawful based on Defendant's rule which states Plaintiffs and other
21 Proposed Class Members cannot leave the work premises during their rest period. Defendant has had
22 a consistent policy of paying rest period premiums at the base rate and not the blended rate, when
23 rest break premiums are provided, as required. Defendant also failed to inform Plaintiffs and the
24 Proposed Class of their right to take compliant rest periods by way of a lawful policy.

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

27 a. Plaintiffs and the Proposed Class were required to use their own vehicles,
28 cell phones, and computers and purchase their own uniforms, necessary to perform and complete

1 their job duties. Defendant did not provide a vehicle or other transportation to Plaintiffs and the
2 Proposed Class so they could transport COVID-19 test to FedEx locations as required by
3 Defendant and, as a result, Plaintiffs and the Proposed Class used their own vehicles to travel from
4 location to location in the middle of their scheduled shifts. Defendant did not reimburse Plaintiffs
5 and the Proposed Class for their vehicle use for travel between Defendant's job site and FedEx
6 facility during the course of a work shift, in violation of California law.

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

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

25 35. On a regular and consistent basis, Defendant from time to time failed to pay
26 Plaintiffs and the members of the Proposed Class within seven (7) days of the close of the payroll
27 period in accordance with Labor Code § 204(d), including but not limited to for the "Hourly"
28 regular wage payments.

1 36. On a regular and consistent basis, Defendant underpaid sick pay wages to Plaintiffs
2 and the Proposed Class by failing to pay such wages at the regular rate of pay in violation of Labor
3 Code § 246. Specifically, Plaintiff and other non-exempt employees earn non-discretionary
4 remuneration. Rather than pay sick pay at the regular rate of pay, Defendant underpaid sick pay to
5 Plaintiff and the Proposed Class at their base rates of pay.

6 37. Defendant willfully failed to pay wages and compensation, when Plaintiff and
7 members of the Proposed Class quit or were discharged. This failure was willful, without legal
8 justification, and interfered with Plaintiff's and members of the Proposed Class's rights. Further,
9 Plaintiffs are informed and believe and based on thereon that such failure to pay sick pay at regular
10 rate was willful, such that Plaintiffs and the Proposed Class whose employment has separated are
11 entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

12 38. Defendant failed to pay all compensation due to Plaintiffs and the Proposed Class
13 members, made unlawful deductions from compensation payable to Plaintiffs and the Proposed
14 Class, failed to disclose all aspects of the deductions from compensation payable to Plaintiffs and
15 the Proposed Class, and thereby failed to pay these employees all wages due at each applicable
16 pay period and upon termination, in violation of Labor Code § 221.

17 39. Defendant, in violation of the applicable sections of the California Labor Code and
18 the requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
19 intentionally, knowingly, and systematically failed to provide Plaintiffs and the other aggrieved
20 employees suitable seating when the nature of these employees' work reasonably permitted
21 seating. Defendant violated Labor Code § 1198 and California Code of Regulations, Title 8,
22 Section 11070(14), Wage Order 4-2001, Section 14 by failing to provide suitable seats.

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

24 **V.**

25 **CLASS ACTION ALLEGATIONS**

26 41. Plaintiffs brings this action on behalf of themselves and all others similarly situated
27 as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seeks to represent a
28 Proposed Class composed of and defined as follows:

- 1 a. All non-exempt employees who are employed or have been
2 employed by Mobile-Med Work Health Solutions, Inc., in the State
3 of California at any time from January 1, 2019 through June 13,
4 2024 (“Proposed Class”).

5 42. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to
6 amend or modify the class description with greater specificity, by division into subclasses, or by
7 limitation to particular issues.

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

11 **A. NUMEROSITY**

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

17 45. Plaintiffs allege that Defendant’s employment records would provide information
18 as to the number and location of all members of the Proposed Class. Joinder of all members of the
19 Proposed Class is not practicable.

20 **B. COMMONALITY**

21 46. There are questions of law and fact common to the Proposed Class that predominate
22 over any questions affecting only individual members of the Proposed Class. These common
23 questions of law and fact include, without limitation:

24 a. Whether Defendant failed to pay minimum wages as a result of Defendant’s
25 policies of failing to pay wages and/or overtime in violation of Labor Code §§ 1194, 1197 and
26 1197.1;

27 b. 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; Whether Defendant violated Labor Code § 226.7, 512

1 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders by failing to provide required
2 uninterrupted meal periods throughout the term of employment and/or failing to compensate said
3 employees one (1) 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 Plaintiffs 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 Labor Code § 204(d) by failing to pay
18 Plaintiffs and the members of the Proposed Class within seven (7) days of the close of the payroll
19 period;

20 g. Whether Defendant violated Labor Code § 246 by underpaying sick pay
21 wages to Plaintiffs and the Proposed Class by failing to pay such wages at the regular rate of pay;

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

25 i. Whether Defendant made unlawful deductions from compensation payable
26 to Plaintiffs and the Proposed Class in violation of Labor Code § 221.

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

1 k. Whether Plaintiffs and the members of the Proposed Class are entitled to
2 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

3 l. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
4 acts alleged herein.

5 **C. TYPICALITY**

6 47. The claims of Plaintiffs are typical of the claims of the Proposed Class. Plaintiffs
7 and all members of the Proposed Class sustained injuries and damages arising out of and caused
8 by Defendant's common course of conduct in violation of laws, regulations that have the force and
9 effect of law, and statutes as alleged herein.

10 **D. ADEQUACY OF REPRESENTATION**

11 48. Plaintiffs will fairly and adequately represent and protect the interests of the
12 members of the Proposed Class.

13 49. Counsel who represent Plaintiffs and the Proposed Class are competent and
14 experienced in litigating large employment class actions.

15 **E. SUPERIORITY OF CLASS ACTION**

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

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

VI.

FIRST CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

FAILURE TO PAY MINIMUM WAGES PURSUANT TO

LABOR CODE § 1194, 1197 AND 1197.1

52. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

53. Plaintiffs and the other members of the Proposed Class bring a claim for Defendant's willful and intentional Violations of the California Labor Code and the Industrial Welfare Commission requirements for Defendant's failure to accurately calculate and pay minimum wages to Plaintiff and the Proposed Class Members.

54. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

55. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

56. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

57. During the relevant time period, Defendants failed to pay Plaintiff and the Proposed Class Members all wages owed when Defendants did not pay minimum wage for all hours worked.

58. Defendant maintained a wage practice of paying Plaintiffs and the other members of the Proposed Class without regard to the correct amount of time they work. As set forth herein, Defendant's policy and practice was to unlawfully and intentionally deny timely payment of wages due to Plaintiffs and the other members of the Proposed Class.

59. Defendant's unlawful wage and hour practices manifested, without limitation, applicable to the Proposed Class as a whole, as a result of implementing a policy and practice that denies accurate compensation to Plaintiffs and the other members of the Proposed Class in regards to minimum wage pay.

60. In committing these Violations of the California Labor Code, Defendant inaccurately calculated the correct time worked and consequently underpaid the actual time worked by Plaintiffs and other members of the Proposed Class. Defendant acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in Violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

61. As a direct result of Defendant's unlawful wage practices as alleged herein, Plaintiffs and the other members of the Proposed Class did not receive the correct minimum wage compensation for their time worked for Defendant.

62. Defendant required, permitted, or suffered Plaintiffs and the Proposed Class to work without paying them for all the time they were under Defendant's control. Plaintiffs and the other members of the Proposed Class were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

63. By virtue of Defendant's unlawful failure to accurately pay all earned compensation to Plaintiffs and the other members of the Proposed Class for the true time they worked, Plaintiffs and the other members of the Proposed Class have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

64. Defendant knew or should have known that Plaintiffs and the other members of the Proposed Class were under compensated for their time worked. Defendant elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and Defendant perpetrated this scheme by refusing to pay Plaintiffs and the other members of the Proposed Class the correct minimum wages for their time worked.

65. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the Proposed Class for all time worked and provide them with the requisite compensation, Defendant acted and continues to act intentionally, oppressively, and maliciously toward Plaintiffs and the other members of the Proposed Class with

1 a conscious and utter disregard for their legal rights, or the consequences to them, and with the
2 despicable intent of depriving them of their property and legal rights, and otherwise causing them
3 injury in order to increase company profits at the expense of these employees.

4 66. Pursuant to Labor Code § 1194.2, Plaintiffs and the other members of the Proposed
5 Class are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
6 and the accrued interest thereon.

7 67. Plaintiffs and the other members of the Proposed Class therefore request recovery
8 of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
9 statutory penalties against Defendant, in a sum as provided by the California Labor Code and/or
10 other applicable statutes. To the extent minimum wage compensation is determined to be owed to
11 the Proposed Class Members who have terminated their employment, Defendant's conduct also
12 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
13 waiting time penalties under Cal. Lab. Code § 203, Which penalties are sought herein on behalf of
14 these Proposed Class Members. Defendant's conduct as alleged herein was willful, intentional and
15 not in good faith. Further, Plaintiffs and other Proposed Class Members are entitled to seek and
16 recover statutory costs.

17 **VII.**

18 **SECOND CAUSE OF ACTION**

19 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

20 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

21 **LABOR CODE §§ 510, 1194, 1194.2, 1198 AND 1199**

22 68. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
23 incorporates by reference all previous paragraphs.

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

28 70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public

1 policy, an employer must timely pay its employees for all hours worked.

2 71. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
3 to employ persons without compensating them at a rate of pay either one and one-half (1 ½) or
4 two (2) times the person's regular rate of pay, depending on the number of hours worked by the
5 person on a daily or weekly basis.

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

10 73. Plaintiffs and the Proposed Class were required to routinely work "off the clock"
11 and performed compensable activities before and after each working shift for which no pay was
12 provided.

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

16 75. On a regular and consistent basis, Plaintiffs and the Proposed Class were required
17 to attend mandatory weekly meetings "off the clock", after their scheduled shifts, for which no pay
18 was provided.

19 76. On a regular and consistent basis, Plaintiffs and the Proposed Class were required
20 to drop off COVID-19 test results to FedEx locations. These drops-offs were completed while "off
21 the clock" and Plaintiffs and the Proposed Class were not compensated while completing these
22 drop-offs.

23 77. On a regular and consistent basis, Plaintiffs and the Proposed Class, as a condition
24 of employment, required employees to submit to mandatory temperature checks and symptom
25 questionnaires for COVID-19 screening prior to clocking into Defendant's timekeeping system
26 for the workday.

27 78. On a regular and consistent basis, Plaintiffs and all Proposed Class members were
28 required to wear uniform and Personal Protective Equipment (PPE). Plaintiffs and all Proposed

1 Class members are required to put this clothing on and take this clothing off before and after every
2 shift. As a result, Plaintiffs and all Proposed Class members were not paid for all hours worked
3 as a result of the amount of time required to take this clothing on and off before the start of each
4 shift and after the end of each shift (donning and doffing) and the time they were required to work
5 off the clock prior to the scheduled start time of their shift.

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

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

14 81. On a regular and consistent basis, Defendant, as a matter of established company
15 policy and procedure, administer a uniform practice of rounding the actual time worked and
16 recorded by Plaintiffs and the Proposed Class, always to the benefit of Defendant, so that during
17 the course of their employment, Plaintiffs and the Proposed Class members are paid less than they
18 would have been paid had they been paid for actual recorded time rather than “rounded” time.

19 82. In committing these Violations of the California Labor Code, Defendant
20 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
21 Plaintiffs and other Proposed Class Members. Defendant acted in an illegal attempt to avoid the
22 payment of all earned wages, and other benefits in Violation of the California Labor Code, the
23 Industrial Welfare Commission requirements and other applicable laws and regulations. As a direct
24 result of Defendant’s unlawful wage practices as alleged herein, the Plaintiffs and the other
25 members of the Proposed Class did not receive full compensation for overtime worked.

26 83. By their policy of requiring Plaintiffs and members of the Proposed Class to work
27 without being paid all wages at their appropriate regular rate of pay and to work in excess of eight
28 (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the

1 rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor
2 Code §§ 510, 1194, 1194.2, and 1199.

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

6 **THIRD CAUSE OF ACTION**

7 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

8 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS PURSUANT TO**

9 **LABOR CODE § 226.7 AND LABOR CODE § 512**

10 85. Plaintiffs on behalf of themselves and the Proposed Class, realleges and
11 incorporates by reference all previous paragraphs.

12 86. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
13 compensation for each meal period the employer fails to provide. Employees are entitled to a first
14 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
15 first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiffs and the
16 Proposed Class of these rights.

17 87. Plaintiffs and the Proposed Class consistently worked shifts over five (5) hours.
18 Defendant failed to provide Plaintiffs and the Proposed Class with uninterrupted meal periods of
19 not less than thirty (30) minutes as required by the Labor Code during the relevant time period.

20 88. On a regular and consistent basis, meal periods were interrupted because Defendant
21 required Plaintiffs and the Proposed Class to be available by phone to respond to text messages or
22 emails during meal periods. As such, when meal periods were provided, they were not a full thirty
23 (30) minutes in length (short) and/or were interrupted. As a result, Defendant failed to provide
24 Plaintiffs and the Proposed Class compliant meal periods.

25 89. Further, Defendant from time to time failed to provide Plaintiffs and the Proposed
26 Class members with a second off-duty meal period for some workdays in which these employees
27 were required by Defendant to work ten (10) hours of work. Defendant also engaged in the practice
28 of rounding the meal period times to avoid paying penalties to Plaintiffs and the other Proposed

1 Class Members. Plaintiffs and the other Proposed Class Members therefore forfeit meal breaks
2 without additional compensation and in accordance with Defendant's corporate policy and
3 practice.

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

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

17 **VIII.**

18 **FOURTH CAUSE OF ACTION**

19 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

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

21 **LABOR CODE § 226.7**

22 92. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
23 incorporates by reference all previous paragraphs.

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

27 94. Defendant failed to maintain an accurate policy informing Plaintiff and the
28 Proposed Class of their rights with respect to rest periods.

1 95. Defendant failed to provide Plaintiffs and members of the Proposed Class with
2 uninterrupted rest breaks of not less than ten (10) minutes as required by the Labor Code during
3 the relevant time period. These employees from time to time were denied their first rest periods
4 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
5 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
6 (8) hours, and a first, second, and third rest period of at least ten (10) minutes for some shifts
7 worked of ten (10) hours or more from time to time. On a regular and consistent basis, rest periods
8 were interrupted because Defendant required Plaintiffs and the Proposed Class to be available by
9 phone to respond to text messages or emails during rest periods.

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

17 97. As a result, Defendant failed to provide Plaintiffs and the Proposed Class compliant
18 rest periods.

19 98. Additionally, the applicable California Wage Order requires employers to provide
20 employees with off-duty rest periods, Which the California Supreme Court defined as time during
21 which an employee is relieved from all work related duties and free from employer control. In so doing,
22 the Court held that the requirement under California law that employers authorize and permit all
23 employees to take rest period means that employers must relieve employees of all duties and relinquish
24 control over how employees spend their time which includes control over the locations where
25 employees may take their rest period. Employers cannot impose controls that prohibit an employee
26 from taking a brief walk - five minutes out, five minutes back. Here, Defendant's policy restricted
27 Plaintiffs and other Proposed Class Members from unconstrained walks and is unlawful based on
28 Defendant's rule which states Plaintiffs and other Proposed Class Members cannot leave the work

1 premises during their rest period.

2 99. Further, Plaintiffs and the Proposed Class were not compensated with one (1) hour
3 of wages for each compliant rest period as required by Labor Code § 226.7 and *Ferra v. Loews*
4 *Hollywood Hotel, LLC*. Here, when rest period premiums are provided, Defendant has had a
5 consistent policy of paying rest period premiums at the base rate and not the blended rate in
6 violation of Labor Code §§ 226.7.

7 100. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Class are entitled to
8 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
9 at trial.

10 **IX.**

11 **FIFTH CAUSE OF ACTION**

12 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

13 **VIOLATION OF LABOR CODE §§ 2800, 2802**

14 101. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
15 incorporates by reference all previous paragraphs.

16 102. Labor Code § 2800 provides that an employer shall in all cases indemnify his
17 employee for losses caused by the employer's want of ordinary care.

18 103. Labor Code § 2802 provides that an employer shall indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
21 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
22 unlawful.

23 104. On a regular and consistent basis, Defendant required Plaintiffs and the Proposed
24 Class to incur mileage on their personal vehicles for work purposes. This necessary travel included
25 transporting COVID-19 tests to FedEx. Because Defendant did not provide a vehicle or other
26 transportation to workers so they could complete this travel, Plaintiffs and the Proposed Class used
27 their own vehicles to travel from location to location in the middle of their scheduled shifts.
28 Defendant did not reimburse Plaintiffs and the Proposed Class for their vehicle use for travel

1 between Defendant's job site and FedEx facility during the course of a work shift, in violation of
2 California law.

3 105. On a regular and consistent basis, Defendant has also failed to reimburse Plaintiffs
4 and the Proposed Class the cost of using their personal cell phones and computers for business
5 related purposes. Defendant required that Plaintiffs and the Proposed Class be available by cell
6 phone and answer/use their cell phones to perform their job duties. These computers were also
7 necessary for the completion of Plaintiffs' and the Proposed Class's job duties and Defendant did
8 not reimburse Plaintiffs and the Proposed Class for using their personal computers.

9 106. On a regular and consistent basis, Plaintiffs and the Proposed Class were required
10 to purchase their own uniforms, such as medical scrubs and shoes, for business related purposes.

11 107. These cell phones, computers and uniforms were not provided by Defendant, and
12 Defendant failed to reimburse Plaintiffs and the Proposed Class for the costs associated with using
13 these personal cell phones and computers and purchasing their own uniforms.

14 108. As a result of the unlawful acts of Defendant, Plaintiffs and the Proposed Class
15 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
16 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

17 **X.**

18 **SIXTH CAUSE OF ACTION**

19 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

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

21 109. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
22 incorporates by reference all previous paragraphs.

23 110. Labor Code § 226(a) requires Defendants to provide each employee with an
24 accurate wage statement in writing showing nine pieces of information, including, the following:
25 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
27 provided that all deductions made on written orders of the employee may be aggregated and shown
28 as one item; (5) net wages earned, (6) the inclusive dates of the period for which the employee is

1 paid, (7) the name of the employee and the last four digits of his or her social security number of
2 an employee identification number other than a social security number; (8) the name and address
3 of the legal entity that is the employer; (9) all applicable hourly rates in effect during the pay period
4 and the corresponding number of hours worked at each hourly rate by the employee.

5 111. During the relevant time period, Defendants knowingly and intentionally failed to
6 comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed
7 Class members. These deficiencies include, among other things, the failure to correctly state the
8 gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
9 number of hours worked at each hourly rate by Plaintiffs and the Proposed Class members.

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

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

20 114. Further, Plaintiffs and the Proposed Class are issued wage statements that do not
21 include accurate meal and rest premiums as a result of the claims alleged above.

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

24 116. An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
27 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
28 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and

1 reasonable attorneys' fees.

2 **XI.**

3 **SEVENTH CAUSE OF ACTION**

4 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

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

6 117. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
7 incorporates by reference all previous paragraphs.

8 118. Numerous members of the Proposed Class including the Plaintiffs are no longer
9 employed by Defendant. They were either fired or quit Defendant's employ.

10 119. Additionally, at all times during the term of Plaintiffs' employment with Defendant,
11 Plaintiffs and the Proposed Class earned and accrued vested vacation and holiday time on the date
12 of their termination pursuant to Defendant's uniform vacation policies and applicable California
13 law. The amount of vacation pay Plaintiffs and the Proposed Class members earned and
14 accumulated is evidenced by Defendant's business records. Defendant also underpaid accrued
15 vested vacation wages to Plaintiffs and the other Proposed Class members by failing to pay such
16 wages at the regular rate of pay and more specifically the final rate of pay that included all non-
17 discretionary incentive compensation. Rather than pay vacation wages at the regular rate of pay,
18 Defendant underpaid vacation wages to Plaintiffs and the other Proposed Class members at their
19 base rates of pay, instead of including all of Plaintiffs' and the Proposed Class members' non-
20 discretionary incentive compensation into the vacation wage payment calculations. Defendant
21 failed to specify in Defendant's written vacation policy the rate at which Plaintiff and the other
22 Proposed Class members would be paid vacation upon leaving employment with Defendant. As a
23 result of Defendant's unlawful practice, policy, and procedure, to deny paying the Plaintiffs and
24 the other members of the Proposed Class all of their vested vacation and holiday time, Defendant
25 failed to pay the Plaintiffs and the members of the Proposed Class all vested vacation time as
26 wages due upon employment termination, in Violation of the California Labor Code, Sections 201,
27 202, 203 and 227.3.

28 120. Similarly, Defendant underpaid waiting time penalties to Plaintiffs and other

1 Proposed Class Members at their base rates of pay, instead of including all of Plaintiffs' and the
2 Proposed Class Members' non-discretionary compensation into the waiting time penalty
3 calculations. This failure by Defendant is believed to be the result of Defendant's unlawful, unfair
4 and deceptive refusal to provide compensation for earned, accrued and vested vacation and holiday
5 time, as well as the corresponding waiting time penalties that were paid. Defendant perpetrated
6 this unlawful, unfair and deceptive practice to the detriment of the Plaintiffs and the members of
7 the Proposed Class. Defendant's uniform practice and policy of failing to pay the Proposed Class
8 Members for all vested vacation and holiday time accumulated at employment termination violated
9 and continues to Violate Section 227.3 of the California Labor Code.

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

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

19 **XII.**

20 **EIGHTH CAUSE OF ACTION**

21 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

22 **FAILURE TO PAY SICK PAY WAGES UNDER LABOR CODE §§ 201-204, 210, 233,**

23 **246**

24 123. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
25 incorporates by reference all previous paragraphs.

26 124. Cal Lab. Code § 233 provides that an employer must permit an employee to use
27 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate
28 of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for

1 use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave
2 is used as paid sick time, an employee has a vested right to sick pay wages, Which an employer
3 must calculate and compensate based on one o two calculations: (i) “Paid sick time for nonexempt
4 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
5 Which the employee uses paid sick time, Whether or not the employee actually works overtime in
6 that workweek,” Or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing
7 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
8 worked in the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218
9 and 233, employees may sue to recover underpaid sick pay wages as damages.

10 125. As a matter of policy and practice, Defendant pays sick pay wages to Plaintiffs and
11 the other members of the Proposed Class at the incorrect rate of pay. Plaintiffs and the other
12 members of the Proposed Class regularly use accrued sick leave in the workweeks in which they
13 also earn non—hourly remuneration. As a matter of policy and practice, Defendant pays sick pay
14 wages to Plaintiffs and the other members of the Proposed Class at the base hourly pay, as opposed
15 to the regular rate of pay, Which would consider all non-hourly remuneration in addition to base
16 hourly wages, or the rate resulting from dividing the employee’s total wages, not including
17 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior
18 90 days of employment. As a result, Defendant underpaid sick pay wages to Plaintiffs and the
19 other members of the Proposed Class.

20 126. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
21 during each calendar month and are to be paid no later than the payday for the next regular payroll
22 period. Consistent With Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that,
23 upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the
24 payday for the next regular payroll period after accrued sick leave is used as paid sick time.
25 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
26 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code § 202
27 provides that an employee is entitled to receive all unpaid wages n0 later than 72 hours after an
28 employee quits his or her employment, unless the employee has given 72-hour notice of his or her

1 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.
2 The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if
3 an employer willfully fails to pay wages owed in accordance With Cal. Lab. Code §§ 201-202,
4 then the wages of the employee shall continue as a penalty from the due date, and at the same rate
5 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab.
6 Code § 210 provides penalties for Violations Of Cal. Lab. Code § 204 and untimely payments
7 during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover
8 applicable penalties.

9 127. As alleged herein and as a matter of policy and practice, Defendant routinely
10 underpays sick pay wages and thus did not timely pay Plaintiffs and the other members of the
11 Proposed Class all owing and underpaid sick pay wages. As a result, Defendant violates Cal. Lab.
12 Code §§ 201-204, 210, 233, and 246, among other Labor Code provisions. Plaintiffs are informed
13 and believe that Defendant was advised by skilled lawyers and knew, or should have known, Of
14 the mandates of the Labor Code as it relates to Plaintiffs' allegations, especially since the
15 California Supreme Court has explained that "[c]ourts have recognized that 'Wages' also include
16 those benefits to which an employee is entitled as a part of his or her compensation, including
17 money, room, board, clothing, vacation pay, and Sickpay." *Murphy v. Kenneth Cole Prods., Inc.*,
18 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because Defendant willfully fails to timely pay
19 Plaintiffs and the other members of the Proposed Class all sick pay wages due, Defendant is
20 subject to applicable penalties.

21 128. Such a pattern, practice, and uniform administration of corporate policy is unlawful
22 and entitles Plaintiff and the other members of the Proposed Class to underpaid sick pay wages,
23 including interest thereon, applicable penalties, attorney's fees, and costs of suit.

24 **XIII.**

25 **NINTH CAUSE OF ACTION**

26 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

27 **FAILURE TO PAY TIMELY DURING EMPLOYMENT IN VIOLATION OF LABOR**

28 **CODE §§ 204, 210**

130. Pursuant to California Labor Code § 204, employees must be paid within a certain number of days of the close of the pay period.

131. During the relevant time period, Defendants failed to timely pay Plaintiffs and Class Members wages earned during the pay period.

132. Such a pattern, practice and uniform administration of corporate policy regarding timely payment of wages as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 210.

133. As a direct and proximate cause of these violations, Class Members have been damaged, in an amount to be determined at trial.

XIV.

TENTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

131. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

132. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of themselves, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and the Proposed Class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

133. Plaintiffs are each considered a “person” within the meaning of Business &

1 Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive
2 relief, restitution, and other appropriate equitable relief.

3 134. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
4 practices.

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

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

18 137. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
19 violation of § 17200, *et seq.* of the Business & Professions Code.

20 138. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
21 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
22 § 17200, *et seq.* of the Business & Professions Code.

23 139. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs and
24 others similarly situated have been damaged in a sum as may be proven.

25 140. Unless restrained, Defendant will continue to engage in the unlawful conduct as
26 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
27 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
28 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices

prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiffs and members of the Proposed Class the money Defendant has unlawfully failed to pay.

XV.

ELEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

141. Plaintiffs, on behalf of themselves and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

142. Defendant, in violation of the applicable sections of the California Labor Code and the requirements of the applicable Industrial Welfare Commission (“IWC”) Wage Order, intentionally, knowingly, and systematically failed to provide Plaintiffs and the other aggrieved employees suitable seating when the nature of these employees’ work reasonably permitted seating. Defendant violated Labor Code § 1198 and California Code of Regulations, Title 8, Section 11070(14), Wage Order 4-2001, Section 14 by failing to provide suitable seats.

143. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* use of Defendant’s violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.7, 233, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

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

- a. \$100 for the initial violation per employee per pay period.
- b. \$200 for each subsequent violation per employee per pay period.

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

146. Pursuant to Labor Code § 2699.3(a)(1), Plaintiffs uploaded a notice letter to the LWDA² and mailed a letter by certified mail to Defendant’s entity address, which is 2101 Forest

² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California

1 Avenue, Suite 220A, San Jose, CA 95128, as proscribed by the Code on January 19, 2023, June 5,
2 2023, and March 2, 2023, describing Defendant's conduct in violation of Labor Code §§ 201, 202,
3 203, 204, 210, 221, 226(a), 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
4 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802 (*see* Exhibit "1", "2" and "3.") Plaintiff
5 Martinez received a signed green return receipt from Defendant, indicating that it received
6 Plaintiff's notice letter. (*see* Exhibit "4.") Plaintiff also obtained an e-filing confirmation from the
7 LWDA confirming receipt of the notice (*see* Exhibit "5").

8 147. As no letter evidencing the LWDA's intention to investigate was received by
9 Plaintiffs' Counsel within sixty-five (65) calendar days, Plaintiffs are entitled to commence a civil
10 action as though the LWDA had not chosen to investigate pursuant to Labor Code
11 §2699.3(a)(2)(A). Plaintiffs will also provide the LWDA with a filed-stamped copy of the Second
12 Amended Class and Representative Action Complaint immediately.

13 **RELIEF REQUESTED**

14 **WHEREFORE**, Plaintiff prays for the following relief:

15 1. For compensatory damages, according to proof at trial, including compensatory
16 damages for minimum and overtime compensation due Plaintiff and the other members of the
17 Proposed Class, from at least four (4) years prior to the filing of this action to the present as may
18 be proven, plus interest thereon at the statutory rate;

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

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

25 4. For compensatory damages in the amount of Plaintiff's and each member of the
26 Proposed Class's hourly wage at the appropriate regular rate of compensation for each non-

27
28

Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 compliant meal period from at least four (4) years prior to the filing of this action to the present as
2 may be proven;

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

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

8 7. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
9 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
10 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
11 an aggregate penalty of four thousand dollars (\$4,000);

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

14 9. For economic and/or special damages in an amount according to proof at trial;

15 10. An award of prejudgment and post judgment interest;

16 11. An order enjoining Defendant and its agents, servants, and employees, and all
17 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
18 overtime, meal periods, rest periods, reimbursement of out of pocket expenses, accurate itemized
19 wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202,
20 203, 204, 221, 226(a), 226.7, 233, 246, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802,
21 and IWC 4-2001;

22 12. For restitution for unfair competition pursuant to Business & Professions Code
23 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

24 13. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiffs
25 and all other Aggrieved Employees for Defendant's violation of Labor Code §§ 201, 202, 203,
26 204, 221, 226(a), 226.7, 233, 246, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802; Wage
27 Order 4-2001; and California Code of Regulations, Title 8, Section 11040;

28 14. An award providing for payment of costs of suit;

15. An award of attorneys' fees; and

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

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

DATED: April 17, 2024

KINGSLEY & KINGSLEY, APC; SMITH LAW;
BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP; AEGIS LAW FIRM, PC

By: _____

Eric B. Kingsley
Kelsey M. Szamet
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Aparajit Bhowmik
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Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Attorneys for Plaintiffs and the 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

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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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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

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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.

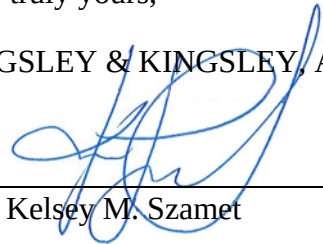
Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not 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"



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Facsimile: 949.379.6251
www.aegislawfirm.com

June 5, 2023

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for Mobile-Med Work Health Solutions, Inc.:
CT Corporation System
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203

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

Re: Jessica Saelor v. Mobile-Med Work Health Solutions, Inc.

Dear Labor and Workforce Development Agency; Mobile-Med Work Health Solutions, Inc.:

Please allow this correspondence to serve as written notice required by California Labor Code § 2699.3(a)(1) of the specific provisions of the Labor Code allegedly violated by Mobile-Med Work Health Solutions, Inc. and any other employers or person(s) acting on behalf of the employer as such phrase is used under Labor Code sections 558 and 558.1 ("Respondent"), and the facts and theories in support of said allegations. This firm represents Jessica Saelor ("Claimant"); we hereby notify you that Claimant intends to seek penalties against Respondent under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*, on Claimant's own behalf and all other aggrieved employees.

Specific Provisions of the Labor Code Allegedly Violated by Respondent

The specific provisions of the Labor Code allegedly violated by Respondent and the provisions under which Claimant submits this correspondence include the following: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

Facts and Theories Supporting the Allegations Against Respondent

Claimant and other aggrieved employees worked for Respondent in California as non-exempt employees. Claimant was employed by Respondent in California within the past year.

During the past year, Respondent failed to provide 30-minute uninterrupted meal periods within the appropriate time intervals to Claimant and other aggrieved employees as required by Labor Code section 512 and section 11 of the applicable Wage Order. Claimant and other aggrieved employees frequently worked shifts over five hours and did not receive lawful meal periods because they were discouraged from taking meal periods, were interrupted during their meal periods, were required to remain on call during meal periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all lawful meal periods, among other reasons. As a result, their meal periods were missed, late, short, and/or interrupted.

When Claimant and other aggrieved employees missed meal periods or if the meal periods were late, short, and/or interrupted, Respondent violated Labor Code sections 226.7 and 512, as well as section 11 of the applicable Wage Order, by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees for every day in which they suffered a meal period violation.

Respondent failed to authorize or permit paid 10-minute rest periods for every four hours or major fraction thereof worked because Claimant and other aggrieved employees were required or incentivized to work through their rest periods, discouraged from taking their rest periods, required to remain on call during rest periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all rest periods.

When Claimant and other aggrieved employees did not receive rest periods, Respondent violated Labor Code section 226.7 and section 12 of the applicable Wage Order by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees.

Respondent failed to pay Claimant and other aggrieved employees at least the legal minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Respondent's policy and practice of requiring Claimant and aggrieved employees to work off-the-clock, failing to pay wages using the appropriate regular rate of pay or the required minimum wage, and/or failing to pay for all recorded time, among other reasons. Respondent failed to pay Claimant and other aggrieved all minimum, regular, and overtime wages for these hours.

Claimant and other aggrieved employees incurred necessary business-related expenses as a direct consequence of the discharge of their job duties for the benefit of Respondent, such as cell phone and personal vehicle use. As such, Respondent violated Labor Code §§ 2800 and 2802 by failing to reimburse Claimant and other aggrieved employees for such expenses.

As a result of, and in addition to, these actions, Respondent violated Labor Code sections 226, and 226.3 by failing to provide itemized wage statements that accurately reported the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates

in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Specifically, the wage statements failed to list the correct hours, rates, and pay due to the above unpaid wage violations, among other violations.

Respondent violated Labor Code sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the hours worked daily by the aggrieved employees and the wages paid to aggrieved employees (due to the same underpayment of wages referenced above).

Furthermore, Respondent violated the Labor Code by failing to properly pay all these wages owed throughout aggrieved employees' employment and following the end of these workers' employment with Respondent due to the above violations (in violation of Labor Code sections 201, 202, 203, 204).

Based on these violations, Claimant seeks attorneys' fees, interest, and penalties under the Labor Code. Enclosed and incorporated by reference is the class action complaint Claimant intends to file on behalf of herself and all other aggrieved employees against Respondent. Claimant intends to amend the complaint to include a cause of action pursuant to Labor Code §§ 2698, *et seq.*, after the minimum required review period elapses and will file a conformed copy of the complaint after it has been filed with the court.

Thank you for your assistance on this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,
AEGIS LAW FIRM, PC



Jessica L. Campbell

Enclosure: Class Action Complaint

EXHIBIT "3"

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

March 2, 2023

CA 2915

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Mobile-Med Work Health Solutions, Inc.
Certified Mail #70223330000181663586
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Mobile-Med Work Health Solutions, Inc. in California, including any employees staffed with Mobile-Med Work Health Solutions, Inc. by a third party, and classified as non-exempt employees during the time period of March 2, 2022 until a date as determined by the Court. Our offices represent Plaintiff Ismael Ortega (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Mobile-Med Work Health Solutions, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2021 to February of 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT "4"

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

9590 9402 7019 1225 1700 16

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 "5"



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%7CTWFPbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%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: XXXXXXXXXX

Date: 1/19/2023

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436