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Attorneys for Plaintiff ERIKA SANCHEZ on behalf
of herself and others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

ERIKA SANCHEZ, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

EISENHOWER MEDICAL CENTER, a
California corporation; and DOES 1 to 10,
inclusive,

Defendant.

CASE NO. CVRI2301244

[Assigned to Hon. ~~Christopher B. Harmon~~, Dept. 10]
Harold W. Hopp

**SECOND AMENDED CLASS ACTION AND
PAGA COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain**

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Accurate Records;

- 6. Failure to Provide Sick Pay in Violation of Labor Code Section 246;
- 7. Failure to Provide COVID-19 Supplemental Paid Sick Leave at the Regular Rate in Violation of Labor Code section 248;
- 8. Waiting Time Penalties Pursuant to Labor Code sections 201 and 203;
- 9. Failure to Reimburse Business Expenses in Violation of Labor Code section 2802; and
- 10. Violations of Business & Professions Code section 17200 *et seq.*
- 11. Civil Penalties Pursuant to PAGA, Labor Code §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, ERIKA SANCHEZ (hereinafter “Plaintiff”) hereby submits her Second Amended
2 Complaint against Defendant EISENHOWER MEDICAL CENTER, a California corporation; and
3 DOES 1 to 10 (hereinafter referred to as “Defendant”) on behalf of herself and the class of all other
4 similarly situated current and former employees of Defendant as follows:

5 **NATURE OF THE CASE**

6 1. This is a class action and Private Attorneys’ General Act (“PAGA”) representative
7 action arising out of Defendant’s failure to provide their non-exempt employees with all wages and
8 rest periods in compliance with the applicable wage order and/or the California Labor Code, by
9 failing to pay overtime and sick pay wages at the regular rate, by failing to reimburse business
10 expenses, and by failing to comply with the applicable wage order and/or the Labor Code in
11 regards to the payment of wages.

12 2. Eisenhower Medical Center is a hospital headquartered at 39000 Bob Hope Drive,
13 Rancho Mirage, California. At all relevant times, Defendant issued and maintained uniform,
14 standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid
15 employees in California, including Plaintiff and others similarly situated, regardless of their
16 location or position.

17 3. Defendant has maintained practices across its locations which have failed and
18 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendant
19 has a company-wide policy of subjecting Plaintiff and other non-exempt employees to work off-
20 the-clock before and after every shift. Defendant requires Plaintiff and other non-exempt
21 employees to use their work badge to open the front doors of the facility, walk to their workspace
22 and wait for the computer to start up prior to clocking in. The same procedure occurs when
23 Plaintiff and other non-exempt employees clock out at the end of their shifts. Specifically, they
24 clock out, shut down the computers and then walk several minutes to the exit doors. Defendants
25 could have easily compensated Plaintiff and other non-exempt employees for this off-the-clock
26 time, or provided time clocks by the entrances, but failed to do so. Defendants also subjected
27 Plaintiff and other non-exempt employees to off-the-clock Covid-19 tests.

28 4. Defendant also has a policy of failing to pay overtime, sick pay wages, and Covid-

1 19 supplemental pay at the regular rate. Rather, Defendant fails to incorporate non-discretionary
2 payments such as declined dental and medical payments into Plaintiff's and other non-exempt
3 employees' regular rate of pay. This resulted in Defendant paying Plaintiff and other non-exempt
4 employees at their base rate of pay.

5 5. Defendant also failed to provide rest breaks in compliance with California law, as
6 Defendant puts significant pressure on Plaintiff and other non-exempt employees, and frequently
7 does not permit employees to take rest breaks. Plaintiff's meal breaks were also frequently late.

8 6. Moreover, Defendant also failed to reimburse Plaintiff and other non-exempt
9 employees for business related expenses, including but not limited to face masks.

10 7. In light of the foregoing, Defendant failed to provide Plaintiff and other non-exempt
11 employees with compliant wage statements and failed to timely pay final wages upon termination
12 or separation from employment.

13 8. Plaintiff brings Causes of Action One through Ten (the "class claims") as a class
14 action on behalf of herself and other similarly situated individuals who have worked for Defendant
15 in California, at any time from four-years prior to the filing of the initial complaint, through the
16 resolution of this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings
17 the class claims pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 246, 248, 500,
18 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, the applicable wage order and under Business &
19 Professions Code sections 17200-17208, for unfair competition due to Defendant's unlawful,
20 unfair and fraudulent business acts and practices.

21 9. Plaintiff brings Cause of Action Eleven as a proxy of the State of California on
22 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
23 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
24 Development Agency (LWDA) for violations of applicable provisions of the California Labor
25 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
26 on behalf of himself and other current or former employees pursuant to procedures outlined in
27 California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
28 action on behalf of other aggrieved employees for violation of any other Labor Code provision that

1 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
2 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
3 per pay period for each subsequent violation.

4 10. On March 10, 2023, Plaintiff provided written notice to the LWDA and by certified
5 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
6 violated, including the facts and theories to support the alleged violations. More than 65 calendar
7 days have passed since the date notice was provided to the LWDA and Defendant. Accordingly,
8 Plaintiff has satisfied the administrative prerequisites under California Labor Code Section
9 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code
10 identified in this Second Amended Complaint.

11 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
12 engaged in, among other things a system of willful violations of the Labor Code and the applicable
13 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
14 employees the above stated rights and benefits.

15 **PARTIES**

16 12. Plaintiff, Erika Sanchez is an individual over the age of eighteen (18) and is now,
17 and/or at all relevant times mentioned in this Second Amended Complaint was, a resident and
18 domiciliary of the State of California. During the relevant time period, Plaintiff worked for
19 Defendant in Rancho Mirage, California from approximately March 2012 through approximately
20 November 18, 2022. Plaintiff worked as a patient account representative and earned approximately
21 \$18.16 per hour. Plaintiff's job duties included but were not limited to, entering patient charges
22 into the computer system and verifying insurance.

23 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant
24 Eisenhower Medical Center is a California corporation. Plaintiff is further informed and believes
25 that at all times relevant hereto, Defendant has transacted, and continues to transact, business
26 throughout the State of California.

27 14. Plaintiff is informed and believes, and based upon such information and belief
28 alleges, that Defendant is, now and/or at all times mentioned in this Second Amended Complaint

1 was in some manner legally responsible for the events, happenings and circumstances alleged in
2 this Second Amended Complaint.

3 15. Plaintiff is further informed and believes, and based upon such information and
4 belief alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others
5 similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
6 complaints, injuries and/or damages alleged in this Second Amended Complaint.

7 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
8 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
9 individuals, and partnerships, licensed to do business and actually doing business in the State of
10 California.

11 17. Plaintiff does not know the true names or capacities, whether individual, partner or
12 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
13 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Second
14 Amended Complaint when the true names and capacities are known. Plaintiff is informed and
15 believes and based thereon alleges that each of said fictitious Defendants were responsible in some
16 way for the matters alleged herein and proximately caused Plaintiff and members of the general
17 public and class to be subject to the illegal employment practices, wrongs and injuries complained
18 of herein.

19 18. At all times herein mentioned, each of said Defendants participated in the doing of
20 the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
23 within the course and scope of said agency and employment.

24 19. Plaintiff is informed and believes and based thereon alleges that at all times material
25 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
26 venturer of, or working in concert with each of the other co-Defendants and were acting within the
27 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
28 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining

Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

20. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

21. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

22. The members of the Classes (as defined below), including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Second Amended Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

23. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the California Constitution and Code of Civil Procedure section 410.10.

24. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for injunctive relief, including restitution of earned wages, arising from Defendant's unfair competition under Business & Professions Code section 17203 and 17204. The Court also has jurisdiction over Plaintiff's and the Class' claims pursuant to the applicable provisions. The Court also has jurisdiction over Plaintiff's and the Aggrieved Employees' claims for penalties pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698 *et. seq.*

25. The Court has jurisdiction over Defendant because they are authorized to do business in the State of California and are registered with the California Secretary of State. Defendant does sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the advertising, marketing and

1 sale of goods and services, to render the exercise of jurisdiction over Defendant by the California
2 court consistent with traditional notions of fair play and substantial justice.

3 26. Venue is proper in Riverside County because the acts which give rise to this
4 litigation occurred in this county and because Defendant has employed class members in this
5 county and transacts business in this county.

6 **FACTUAL ALLEGATIONS**

7 27. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

8 28. Defendant has engaged in, and continues to engage in, unfair business practices in
9 California by practicing, employing and utilizing the employment practices and policies outlined
10 above.

11 29. As a direct result of the wage and hour violations herein alleged, Plaintiff and
12 members of the Classes have suffered, and continue to suffer substantial losses related to the use
13 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
14 to compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective
15 damage in amounts according to proof at the time of trial.

16 ***Defendant's Failure to Pay Overtime Wages***

17 30. During the Class Period, upon information and belief, Defendant had, and continues
18 to have, a company-wide policy of discouraging and impeding Plaintiff and members of the
19 Classes from recording hours worked that were outside of their scheduled shifts to limit the amount
20 of overtime employees could accrue. On information and belief, this policy of limiting overtime,
21 led Plaintiff and members of the Classes to work off-the-clock before and after their scheduled
22 shift times. Plaintiff would use a work badge to open the front door to the facility and then would
23 walk approximately two minutes up the stairs to her workstation. She would then have to start up
24 the computer, wait for the software to load and then was able to clock-in. This process could take
25 anywhere from a couple minutes to several minutes if the computer needed an additional reboot.
26 Plaintiff was required to undergo the same process when clocking out. Specifically, she would
27 clock out, wait for the system and computer to shut down, walk down the stairs to the front doors.
28 Defendant did not compensate Plaintiff for this time.

1 31. Plaintiff and members of the Classes also had to undergo off-the-clock Covid tests.
2 This occurred during the Covid-19 pandemic and was done off-the-clock prior to when Plaintiff
3 and members of the Classes were permitted to clock in.

4 32. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day
5 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
6 premium pay. Furthermore, even when overtime was paid for other time worked, Defendant failed
7 to incorporate dental payments, medical payments, and other remuneration into Plaintiff and
8 members of the Classes' regular rate.

9 33. Therefore, Plaintiff and members of the Classes were not paid overtime wages for
10 all of the overtime hours they actually worked.

11 ***Defendant's Failure to Pay all Wages and Minimum Wages***

12 34. As stated above, during the relevant time period, as a result of Defendant's policy of
13 limiting the amount of overtime employees could accrue, coupled with being under Defendant's
14 control before and after their scheduled shift times, Plaintiff and members of the Classes were
15 forced to work off-the-clock.

16 35. Thus, Defendant did not pay at least minimum wages for all hours worked by
17 Plaintiff and members of the Classes. To the extent that these off-the-clock hours did not qualify
18 for overtime premium payment, Defendant did not pay at least minimum wages for those hours
19 worked off-the-clock.

20 ***Failure to Provide Compliant Meal Periods***

21 36. Plaintiff alleges that meal breaks were frequently late. As a result, Plaintiff and
22 members of the Classes were forced to work in excess of five (5) hours before taking a meal
23 period.

24 37. Plaintiff and members of the Classes did not sign valid meal period waivers on days
25 that they were entitled to meal periods and were not relieved of all duties.

26 ***Defendant's Failure to Provide Compliant Rest Breaks***

27 38. During the relevant time period, Defendant regularly failed to authorize and permit
28 Plaintiff and members of the Classes to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof.

2 39. Specifically, as a result of significant pressure from supervisors, Plaintiff and
3 members of the classes were unable to take rest breaks.

4 ***Defendant's Failure to Provide Compliant Wage Statements***

5 40. During the relevant time period, Defendant has knowingly and intentionally
6 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
7 statements. For example, Defendant issued uniform wage statements to Plaintiff and members of
8 the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
9 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
10 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
11 each hourly rate.

12 41. Because Defendant did not record the time Plaintiff and members of the Classes
13 spent working off-the-clock, Defendant did not list the correct amount of gross wages and net
14 wages earned by Plaintiff and members of the Classes in compliance with Labor Code sections
15 226(a)(1) and 226(a)(5), respectively.

16 42. For the same reason, Defendant failed to accurately list the total number of hours
17 worked by Plaintiff and members of the Classes and failed to list the applicable hourly rates of pay
18 in effect during the pay period and the corresponding accurate number of hours worked at each
19 hourly rate.

20 43. Because Defendant failed to provide the correct net and gross wages earned,
21 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
22 members of the Classes have been prevented from verifying, solely from information on the wage
23 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
24 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
25 time records to determine whether in fact they were paid correctly and the extent of underpayment,
26 thereby causing them injury.

27 ***Defendant's Failure to Provide Sick Pay at the Regular Rate***

28 44. Plaintiff received compensation, including "declined dental" and "declined medical"

1 in addition to her hourly wages while employed by Defendant. Those additional amounts should
2 have been included when calculating her regular rate of pay and used when paying overtime wages,
3 premium wages, and sick leave wages, but were not. Instead, Plaintiff and members of the Classes
4 were paid sick wages at their base rate of pay.

5 ***Defendant's Failure to Provide Covid-19 Supplemental Pay at the Regular Rate***

6 45. Defendant also breached the state mandate for Covid-19, as it did not provide pay
7 for Covid-19 supplemental pay at the regular rate.

8 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

9 46. Defendant willfully failed to pay Plaintiff and members of the Classes who are no
10 longer employed by Defendant the earned and unpaid wages set forth above, including but not
11 limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the time
12 of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

13 ***Defendant's Failure to Reimburse Business Expenses***

14 47. During the relevant time period, Defendant had a company-wide policy whereby
15 Plaintiff and members of the Classes were required to purchase their own face masks.

16 48. Although Defendant required Plaintiff and members of the Classes to purchase face
17 masks to carry out their work-related duties, Defendant failed to reimburse them for this cost.
18 Defendant could have provided Plaintiff and members of the Classes with face masks for use on
19 the job or provided a face mask allowance. Instead, Defendant passed these operating costs off
20 onto Plaintiff and members of the Classes.

21 ***Facts Regarding Willfulness***

22 49. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
23 was advised by skilled lawyers, other professionals, employees with human resources background
24 and advisors with knowledge of the requirements of California wage and hour laws and that at all
25 relevant times, Defendant knew or should have known, that the Plaintiff Class Members, including
26 Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of compensation
27 for each day that a meal and/or rest period was not provided and were and are entitled to receive
28 pay for all hours worked, accurate itemized wage statements, and final pay in a timely manner.

1 ***Unfair Business Practices***

2 50. Defendant has further engaged in, and continues to engage in, unfair business
3 practices in California by practicing, employing, and utilizing the unlawful employment practices
4 and policies outlined above.

5 51. As a direct result of the wage and hour violations herein alleged, Plaintiff and
6 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
7 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
8 seeking to compel Defendant to perform their obligations under state law, all to Plaintiff's and the
9 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

10 ***Plaintiff's Exhaustion of Administrative Remedies***

11 52. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
12 section 2699.3.

13 53. By letter dated March 10, 2023, required notice was provided to the Labor and
14 Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the
15 Labor Code alleged to have been violated, including the facts and theories to support the alleged
16 violations.

17 54. More than sixty-five (65) days have passed since the date the notice was mailed to
18 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that
19 it plans to investigate.

20 55. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
21 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of
22 California Labor Code identified in this Second Amended Complaint.

23 **CLASS ACTION ALLEGATIONS**

24 56. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

25 57. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
26 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
27 commonality, typicality, adequacy, predominance, and superiority requirements of those
28 provisions.

1 58. Plaintiff brings this suit as a class action on behalf of two classes of individuals
2 defined as follows (collectively the “Classes”):

3 59. Plaintiff Class: All persons who have been, or currently are, employed by Defendant
4 and who held, or hold, job positions which Defendant has classified as “non-exempt” employees in
5 the State of California, at any time since four years prior to filing this action, through the date
6 judgment is rendered in this action.

7 60. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
8 during the Class Period.

9 61. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
10 the class period hundreds of class members have been employed by Defendant as non-exempt
11 employees in the State of California. Because so many persons have been employed by Defendant
12 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
13 impossible and/or impracticable.

14 62. Common Questions of Law and/or Fact: Common questions of law and fact exist as
15 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
16 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
17 adjudication of Class Members’ claims are as follows:

- 18 a. Whether Plaintiff and Class Members are subject to and entitled to the
19 benefits of California wage and hour statutes;
- 20 b. Whether Defendant failed to pay Plaintiff and Class Members for all hours
21 worked;
- 22 c. Whether Defendant failed to pay Plaintiff and Class Members all overtime;
- 23 d. Whether Defendant had a standard policy of not providing compliant meal
24 breaks and premiums to Plaintiff and members of the Plaintiff Class;
- 25 e. Whether Defendant had a standard policy of not providing compliant rest
26 breaks and premiums to Plaintiff and members of the Plaintiff Class;
- 27 f. Whether Defendant had a standard policy of not providing Plaintiff and
28 members of the Plaintiff Class with sick pay at the regular rate;

- 1 g. Whether Defendant had a standard policy of not providing Plaintiff and
2 members of the Plaintiff Class with Covid-19 supplemental pay at the
3 regular rate
- 4 h. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff
5 and members of the Plaintiff Class with true and proper wage statements
6 upon payment of wages, in violation of Labor Code section 226;
- 7 i. Whether Defendant unlawfully and/or willingly failed to timely pay Plaintiff
8 and the Terminated Sub Class upon termination;
- 9 j. Whether Defendant failed to reimburse Plaintiff and members of the Plaintiff
10 Class for business-related expenses;
- 11 k. Whether Plaintiff and members of the Plaintiff Class sustained damages, and
12 if so, the proper measure of such damages, as well as interest, penalties,
13 costs, attorneys' fees, and equitable relief;
- 14 l. Whether Defendant's conduct as alleged herein violates the Unfair Business
15 Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

16 63. Typicality: The claims of the named Plaintiff are typical of the claims of the
17 members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their
18 non-exempt employees with meal and rest periods and all wages in compliance with the applicable
19 wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them
20 with proper wages and overtime, failing to reimburse them for work related expenses, failing to
21 provide sick pay at the regular rate of pay, and failing to provide them with compliant wage
22 statements has caused Plaintiff and the proposed Class to sustain the same or similar injuries and
23 damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the
24 proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and
25 damages arising from Defendant's common policies, practices, procedures, protocols, routines, and
26 rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for
27 the same type of losses, injuries, and damages as were suffered by other members of the proposed
28 class.

1 64. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
2 classes because she is a member of the class, and her interests do not conflict with the interests of
3 the members she seeks to represent. Plaintiff has retained competent counsel, experienced in the
4 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
5 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
6 adequately be protected by Plaintiff and her attorneys.

7 65. Superiority of Class Action: A class action is superior to other available methods for
8 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
9 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
10 to proceed on an individual basis, because this would potentially result in hundreds of individual,
11 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
12 contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable
13 allocation of recovery among those with equally meritorious claims. By contrast, the class action
14 device presents far fewer management difficulties, and provides the benefit of a single
15 adjudication, economics of scale, and comprehensive supervision by a single court.

16 66. The various claims asserted in this action are additionally or alternatively certifiable
17 under the provisions of the Code of Civil Procedure section 382 because:

- 18 a. The prosecution of separate actions by hundreds of individual class members
19 would create a risk of varying adjudications with respect to individual class
20 members, thus establishing incompatible standards of conduct for
21 Defendant, and
- 22 b. The prosecution of separate actions by individual class members would also
23 create the risk of adjudications with respect to them that, as a practical
24 matter, would be dispositive of the interest of the other class members who
25 are not a party to such adjudications and would substantially impair or
26 impede the ability of such non-party class members to protect their interests.

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1 **FIRST CAUSE OF ACTION**

2 **Unpaid Overtime**

3 **(By Plaintiff and Members of the Putative Class Against Defendant)**

4 67. Plaintiff incorporates herein by reference the allegations set forth above.

5 68. At all times relevant herein, which comprise of the time period not less than four (4)
6 years preceding the filing of this action, Defendant was required to compensate their hourly
7 employees for all overtime hours worked.

8 69. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
9 Commission ("IWC") wage order require employers to pay employees working more than eight (8)
10 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½)
11 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than
12 forty (40) hours in a workweek. The applicable IWC wage order further provides that employers
13 are required to pay employees working more than twelve (12) hours in a day overtime
14 compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay
15 includes all remuneration for employment paid to, or on behalf of, the employee, including
16 nondiscretionary bonuses and incentive pay.

17 70. Defendant willfully failed to pay all overtime wages owed to Plaintiff and members
18 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
19 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
20 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
21 they worked were not recorded Plaintiff would use a work badge to open the front door to the
22 facility and then would walk approximately two minutes up the stairs to her workstation. She
23 would then have to start up the computer, wait for the software to load and then was able to clock-
24 in. This process could take anywhere from a couple minutes to several minutes if the computer
25 needed an additional reboot. Plaintiff was required to undergo the same process when clocking out.
26 Specifically, she would clock out, wait for the system and computer to shut down, walk down the
27 stairs to the front doors. Defendant did not compensate Plaintiff for this time.

28 71. Plaintiff and members of the Classes also had to undergo off-the-clock Covid tests.

1 This occurred during the Covid-19 pandemic and was done off-the-clock prior to when Plaintiff
2 and members of the Classes were permitted to clock in.

3 72. In addition to subjecting employees to work off the clock, Defendant also failed to
4 factor in “Declined Dental” and “Declined Medical” into Plaintiff’s and members of the Classes’
5 regular rate of pay.

6 73. Defendant knew or should have known that as a result of company-wide practices
7 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff
8 and members of the Classes were performing assigned duties off-the-clock before and after their
9 shifts and were suffered or permitted to perform work for which they were not paid. Because
10 Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40)
11 hours a week or more, some of this off-the-clock work qualified for overtime premium pay.
12 Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the
13 overtime hours they actually worked.

14 74. Defendant’s failure to pay Plaintiff and members of the Classes the balance of
15 overtime compensation, as required by California law, violates the provisions of Labor Code
16 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
17 attorney’s fees, costs, and interest thereon.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay All Wages**

20 **(By Plaintiff and Members of the Putative Class Against Defendant)**

21 75. Plaintiff incorporates herein by reference the allegations set forth above.

22 76. At all times relevant herein, which comprise the time period not less than four (4)
23 years preceding the filing of this action, Defendant was required to compensate their hourly
24 employees for all hours worked.

25 77. For at least the four (4) years preceding the filing of this action, Defendant failed to
26 compensate employees for all hours worked. Defendant implemented policies that actively
27 prevented employees from being compensated for all time worked by subjecting Plaintiff and
28 members of the Classes to work off-the-clock as mentioned above.

1 78. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
2 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
3 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
4 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
5 206.

6 79. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
7 time during which an employee is subject to the control of an employer and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so."

9 80. Defendant suffered or permitted Plaintiff and members of the Classes to work
10 portions of the day for which Defendant failed to compensate them. This includes time spent under
11 Defendant's control prior to clocking in and after clocking out. Plaintiff would use a work badge to
12 open the front door to the facility and then would walk approximately two minutes up the stairs to
13 her workstation. She would then have to start up the computer, wait for the software to load and
14 then was able to clock-in. This process could take anywhere from a couple minutes to several
15 minutes if the computer needed an additional reboot. Plaintiff was required to undergo the same
16 process when clocking out. Specifically, she would clock out, wait for the system and computer to
17 shut down, walk down the stairs to the front doors. Defendant did not compensate Plaintiff for this
18 time.

19 81. Plaintiff and members of the Classes also had to undergo off-the-clock Covid tests.
20 This occurred during the Covid-19 pandemic and was done off-the-clock prior to when Plaintiff
21 and members of the Classes were permitted to clock in.

22 82. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
23 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
24 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
25 ... including interest thereon, reasonable attorney's fees, and costs of suit."

26 83. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
27 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
28 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated

1 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

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

5 85. Plaintiff is informed and believes, and therefore alleges, that Defendant’s
6 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
7 spent performing their job duties.

8 86. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
9 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
10 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

11 87. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
12 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
13 wage order section 3; and Business & Professions Code.

14 88. During the applicable time period, Defendant has and continues to have a pattern
15 and practice of not providing its employees all wages, by failing to include all compensable time,
16 including time worked off-the-clock.

17 89. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
18 Class have been damaged in an amount according to proof at time of trial.

19 **THIRD CAUSE OF ACTION**

20 **Non-Compliant Meal Breaks**

21 **(By Plaintiff and Members of the Putative Class Against Defendant)**

22 90. Plaintiff hereby incorporates by reference each and every one of the allegations
23 contained in the preceding paragraphs as if the same were fully set forth herein.

24 91. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
25 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
26 not less than thirty (30) minutes without duty.

27 92. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
28 routinely failed to provide Plaintiff and the members of the Classes with such meal periods without

1 duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their
2 right to the same. Thus, Defendant failed to provide Plaintiff and the members of the Classes with
3 meal periods required by Labor Code sections 226.7, 512, 516 and the applicable IWC wage order
4 section 10, and categorically failed to pay any and all meal period wages due.

5 93. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
6 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at
7 the regular rate for each workday that the meal period is/was not provided to Plaintiff and any
8 member of the Classes, the cumulative sum of which is to be determined at trial.

9 94. Under the foregoing, California employers must provide meal periods and authorize
10 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
11 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
12 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
13 related duties,” including the duty to remain “on call,” and they must be “free from employer
14 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
15 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
16 (2012) 53 Cal.4th 1004, 1038-39.

17 95. When employees must either “remain at the ready and capable of being summoned
18 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
19 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
20 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
21 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

22 96. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
23 rest break cases that have affirmed California’s broad, protective standard for employees.¹

24
25
26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
27 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
28 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*.]”)

1 97. Moreover, as the mere existence of a facially lawful meal and rest break policy is
2 unavailing if there are practical constraints and pressures on employees to perform their duties in
3 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

4 98. Yet Defendant did and does not provide Plaintiff and members of the Classes with
5 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
6 the fifth hour of work and again by the tenth hour of work. Rather, Plaintiff alleges that meal
7 breaks were frequently late.

8 99. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the
9 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
10 a second meal period by the end of the tenth hour of work. Defendant has also failed to pay
11 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
12 duty meal period that they have been denied.

13 100. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
14 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
15 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
16 employee's "regular rate of pay" instead of their base hourly rate.

17 101. Defendant knew or should have known that because of its policies and/or practices,
18 that Plaintiff and members of the Classes were not actually relieved of all duties to take timely,
19 uninterrupted meal periods. Defendant further knew or should have known that it did not pay
20 Plaintiff and members of the Classes all meal period premiums when meal periods were missed,
21 late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide practice
22 and/or policy of not paying meal period premiums owed when compliant meal periods are not
23 provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not
24 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendant
25 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

26 102. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
27 costs, and interest thereon.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **Non-Compliant Rest Breaks**

3 **(By Plaintiff and Members of the Putative Class Against Defendant)**

4 103. Plaintiff hereby incorporates by reference each and every one of the allegations
5 contained in the preceding paragraphs as if the same were fully set forth herein.

6 104. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
7 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
8 the employee's regular rate for each workday that a meal or rest period is not provided. Labor Code
9 section 226.7 provides that no employer shall require an employee to work during any rest period
10 mandated by an applicable order of the IWC. The applicable IWC wage order provides that
11 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period" and that the "rest period time shall be based
13 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
14 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

15 105. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
16 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
17 and every four (4) hours or major fraction thereof worked during the workday.

18 106. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
19 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods
20 without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived
21 their right to the same. Thus, Defendant failed to provide Plaintiff and Class Members with rest
22 periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order
23 section 11 and categorically failed to pay any and all rest period wages due.

24 107. Specifically, as a result of significant pressure from supervisors, Plaintiff and
25 members of the classes were unable to take rest breaks.

26 108. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and
27 the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the
28 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff

1 and any member of the Classes, the cumulative sum of which is to be determined at trial.

2 109. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
3 for Defendant's failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
4 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

7 **(By Plaintiff and Members of the Putative Class Against Defendant)**

8 110. Plaintiff hereby incorporates by reference each and every one of the allegations
9 contained in the preceding paragraphs as if the same were fully set forth herein.

10 111. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires
11 employers to furnish each employee with a statement itemizing, among other things, the total hours
12 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

13 112. Labor Code section 226(e) provides that if an employer fails to comply with
14 providing an employee with properly itemized wage statements as set forth in section 226(a), then
15 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period
16 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
17 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
18 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
19 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
20 the employer fails to provide the employee a wage statement or fails to keep the required records
21 pursuant to section 226(a).

22 113. Defendant knowingly and intentionally failed to furnish Plaintiff and the members
23 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
24 the applicable IWC Wage order section 6(B).

25 114. Plaintiff is informed and believes, and thereon alleges, that Defendant knowingly
26 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
27 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
28 applicable hourly rates in effect during each respective pay period and the corresponding number

1 of hours worked at each hourly rate by each respective individual.

2 115. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
3 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
4 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
5 missing hours worked, and missed meal and rest-break premiums, as illustrated above.

6 116. As a result of not having kept accurate records, Plaintiff and the Class Members
7 suffered injuries in the form of confusion over whether they received all wages owed to them, and
8 difficulty and expense in reconstructing pay records in addition to other injuries which may come
9 to light during the discovery process.

10 117. Labor Code section 1198 provides that the maximum hours of work and the
11 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
12 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
13 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
14 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
15 accurate time records showing when the employee begins and ends each work period and meal
16 period.

17 118. During the relevant time period, Defendant failed, on a company-wide basis, to keep
18 accurate records of work and meal period start and stop times for Plaintiff and members of the
19 Classes, in violation of Labor Code section 1198.

20 119. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
21 to Labor Code section 226(e) for Defendant’s violations of Labor Code section 226(a).

22 120. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
23 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

24 **SIXTH CAUSE OF ACTION**

25 **Failure to Provide Sick Pay at the Regular Rate**

26 **(By Plaintiff and Members of the Putative Class Against Defendant)**

27 121. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
28 forth herein.

1 122. Sick pay must be compensated at the employee's regular rate of pay, for the
2 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
3 (Lab. Code § 246(1).)

4 123. Defendant failed to pay Plaintiff and members of the Class sick pay at the correct
5 rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts
6 were not included when calculating sick pay wages. Plaintiff received compensation, including
7 "Declined Dental" and "Declined Medical", in addition to her hourly wages while employed by
8 Defendant, which was not factored into her sick pay wages. By failing to pay Plaintiff and Class
9 Members for sick pay at the correct rate, Defendant willfully violated Labor Code section 246.

10 124. Defendant's unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff
11 seeks to represent of sick pay in amounts to be determined at trial, and they are entitled to recover
12 these amounts with interest, attorneys' fees, and costs.

13 **SEVENTH CAUSE OF ACTION**

14 **Provide COVID-19 Supplemental Paid Sick Leave**

15 **(By Plaintiff and Members of the Putative Class Against Defendant)**

16 125. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth
17 above as if fully set forth herein.

18 126. Labor Code section 248.2 (b)(3) states:

- 19 a. Each hour of COVID-19 supplemental paid sick leave shall be compensated at a
20 rate equal to the following:
- 21 i. For nonexempt covered employees, by the highest of the following:
- 22 ii. Calculated in the same manner as the regular rate of pay for the workweek in
23 which the covered employee uses COVID-19 supplemental paid sick leave,
24 whether or not the employee actually works overtime in that workweek.
- 25 iii. Calculated by dividing the covered employee's total wages, not including
26 overtime premium pay, by the employee's total hours worked in the full pay
27 periods of the prior 90 days of employment.
- 28 iv. The state minimum wage.

1 v. The local minimum wage to which the covered employee is entitled.

2 b. COVID-19 supplemental paid sick leave for exempt covered employees shall be
3 calculated in the same manner as the employer calculates wages for other forms
4 of paid leave time.

5 127. Defendant failed to comply Labor Code section 248 because it paid Covid-19
6 supplemental pay at the base rate of pay rather than at Plaintiff's and members of the Classes
7 regular rate of pay.

8 128. Defendant is liable to Plaintiff and the members of the Plaintiff Class alleged herein
9 for the unpaid supplemental COVID-19 sick pay.

10 129. Wherefore, Plaintiff and the members of the Plaintiff Class request relief as
11 hereinafter provided.

12 **EIGHTH CAUSE OF ACTION**

13 **Waiting Time Penalties**

14 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

15 130. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
16 forth herein.

17 131. At all times, relevant herein, Defendant was required to pay their employees all
18 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
19 section 201-203.

20 132. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the
21 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
22 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

23 133. Labor Code sections 201 and 202 provide that if an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
25 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
26 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
27 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
28 entitled to his or her wages at the time of quitting.

134. On information and belief, Defendant has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

135. Specifically, Defendant willfully failed to pay Plaintiff and members of the Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

136. Plaintiff and members of the Terminated Sub Class are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

NINTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

(By Plaintiff and Members of the Putative Class Against Defendant)

137. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

138. Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.

139. The applicable IWC wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

140. During the Class Period a company-wide policy whereby it required Plaintiff and members of the Classes to purchase their own face masks.

141. Although Defendant required Plaintiff and members of the Classes to buy face masks to carry out their work-related duties, Defendant failed to reimburse them for this cost.

Defendant could have provided Plaintiff and members of the Classes with masks for use on the job or provided a face mask allowance. Instead, Defendant passed these operating costs off onto Plaintiff and members of the Classes. Thus, Defendant had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of Labor Code section 2802.

142. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees, costs, and interest thereon.

TENTH CAUSE OF ACTION

Violation of California

Business and Professions Code Section 17200 et seq.

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

143. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

144. Business and Professions Code section 17200 defines unfair competition to include, "unlawful, unfair or fraudulent business practices."

145. Plaintiff and all proposed Class Members are "persons within the meaning of Business and Professions Code section 17204, who have suffered injury in fact and have lost money or property as a result of Defendant's unfair competition.

146. Defendant has been committing, and continues to commit, acts of unfair competition by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint, including, but not limited to:

- a) violations of Labor Code sections 510, 1198;
- b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- d) violations of Labor Code sections 226, 1174;
- e) violations of Labor Code sections 201 and 202;
- f) violations of Labor Code section 246;

- g) violations of Labor Code section 248;
- h) violations of Labor Code section 1198;
- i) violations of Labor Code section 2802.

147. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct has also enabled Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

148. Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

149. Plaintiff seeks a court order enjoining Defendant from the unlawful, unfair, and/or fraudulent activity alleged herein.

150. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

151. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to herself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

152. Plaintiff seeks restitution for herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

ELEVENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendant)

153. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

1 154. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
2 California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the
3 proposed Class Members.

4 155. At all times set forth herein, California Labor Code § 2699(a) has provided that any
5 provision of law under the California Labor Code that provides for a civil penalty to be assessed
6 and collected by the Labor and Workforce Development Agency (LWDA) for violations of the
7 California Labor Code may, as an alternative, be recovered through a civil action brought by an
8 aggrieved employee on behalf of himself and other current or former employees pursuant to
9 procedures outlined in California Labor Code § 2699.3.

10 156. At all times set forth herein, the PAGA has also provided that for the violation of
11 any Labor Code provision that does not itself contain a civil penalty, there are established civil
12 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
13 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

14 157. A civil action under PAGA may be brought by an "aggrieved employee," any
15 person that was employed by the alleged violator and against whom one or more of the alleged
16 violations was committed.

17 158. Defendant has been committing, and continues to commit, violations of the
18 California Labor Code, including, but not limited to:

- 19 a. violations of Labor Code sections 510, 1198;
- 20 b. violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2,
21 1197, 1198;
- 22 c. violations of Labor Code sections 226.7, 512, 516, and 1198;
- 23 d. violations of Labor Code sections 226, 1174;
- 24 e. violations of Labor Code sections 201 and 202;
- 25 f. violations of Labor Code section 246;
- 26 g. violations of Labor Code section 248;
- 27 h. violations of Labor Code section 1198;
- 28 i. violations of Labor Code section 2802.

1 159. Plaintiff was employed by Defendants and the alleged violations have been
2 committed against her during her time of employment and she is, therefore, an aggrieved
3 employee. Plaintiff and other employees are “aggrieved employees” as defined by California
4 Labor Code §2699(c) in that they are all current or former employees of Defendant, and one or
5 more of the alleged violations were committed against them.

6 160. Pursuant to California Labor Code § 2699.3, aggrieved employees, including
7 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have
8 been met:

- 9 a. The aggrieved employee shall give written notice (hereinafter “Employee’s
10 Notice”) to the LWDA and the employer of the specific provisions of the
11 California Labor Code alleged to have been violated, including the facts and
12 theories to support the alleged violations;
- 13 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer
14 and the aggrieved employee by certified mail that it does not intend to
15 investigate the alleged violations sixty (60) calendar days of the postmark date
16 of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA
17 Notice is not provided within sixty-five (65) calendar days of the postmark date
18 of the Employee’s Notice, the aggrieved employee may commence a civil action
19 pursuant to California Labor Code §2699 to recover civil penalties in addition to
20 any other penalties to which the employee may be entitled.

21 161. By letter dated March 10, 2023, required notice was provided to the Labor and
22 Workforce Development Agency (“LWDA”) and Defendant, of the specific provisions of the
23 Labor Code alleged to have been violated, including the facts and theories to support the alleged
24 violations.

25 162. More than sixty-five (65) days have passed since the date the notice was mailed to
26 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that
27 it plans to investigate. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of

1 California Labor Code identified in this Second Amended Complaint.

2 163. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to
3 recover civil penalties for Defendant's violations of the Labor Code during the applicable
4 limitations period.

5 164. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself
6 and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, the Class Members, and the Aggrieved Employees pray for
9 judgment as follows:

- 10 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 11 2. For an order that counsel for Plaintiff be appointed class counsel
- 12 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
13 Sub-Class;
- 14 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
15 Sub Class;
- 16 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
17 and disgorgement of all profits from the unlawful business practices of Defendant;
- 18 6. An order appointing Plaintiff's counsel as class counsel;
- 19 7. Prejudgment and post judgment interest on all sums awarded;
- 20 8. For compensatory damages;
- 21 9. For statutory penalties pursuant to Labor Code sections 200, 226, 226.3, 226.7;
- 22 10. For civil penalties pursuant to Labor Code § 2699(a) and 2699(f),
- 23 11. For interest accrued to date;
- 24 12. For costs of suit and expenses incurred herein pursuant to Labor Code sections
25 226,1194 and 2699 (g)(1);
- 26 13. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226 and 2699
27 (g)(1) and Code of Civil Procedure section 1021.5, and/or other applicable law; and
- 28 14. A declaratory judgment that Defendant has knowingly and intentionally violated the

1 following provisions of law;

2 a. Labor Code sections 510, 1198 for failing to pay overtime;

3 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223, for
4 failing to pay all wages;

5 c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant
6 meal and rest breaks;

7 d. Labor Code sections 226, 1174 for failing to provide compliant wage
8 statements;

9 e. Labor Code sections 201 and 202 for failing to pay wages at termination;

10 f. Labor Code section 246 for failing to pay sick pay at the regular rate;

11 g. Labor Code section 248 for failing to Covid-19 pay at the regular rate;

12 h. Labor Code section 2802 for failing to reimburse business expenses;

13 i. Business & Professions Code sections 17200-08 for violating the provisions set
14 forth herein above.

15 15. For all such other and further relief that the Court may deem just and proper.

16 DATED: August 10, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

17
18
19 By: _____



Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Emilie MacLean, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff and others similarly
situated

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27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: August 10, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC



By: _____

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Emilie MacLean, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff and others similarly
situated

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On August 10, 2023, I served the foregoing documents described.

1) SECOND AMENDED COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☐ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(VIA PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the addressee.

☒ **(BY ELECTRONIC FILING SERVICE PROVIDER)** Per the agreement of the parties, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me. My email address is mvalle@bradleygrombacher.com. Said document(s) were served by email on August 10, 2023. The names and email addresses of the persons served are set forth in the service list. I did not receive, under a reasonable period of time, any indication that the email did not go through.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed August 10, 2023, at Westlake Village, California.

Maria Valle
Maria Valle

SANCHEZ v. EISENHOWER MEDICAL CENTER
RIVERSIDE SUPERIOR COURT CASE NO. CVRI2301244

Service List

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Eisenhower Medical Center