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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SACRAMENTO**

12 DOROTHEA BOWENS, individually and on  
behalf of all current and former similarly  
13 situated and/or Aggrieved Employees of  
Defendants in the State of California,

14 Plaintiff,

15 v.

16 TRESTLES LLC DBA CITY CREEK CARE  
17 CENTER/CITY CREEK POST ACUTE, a  
California limited liability company; and DOES  
18 1 THROUGH 50, inclusive,

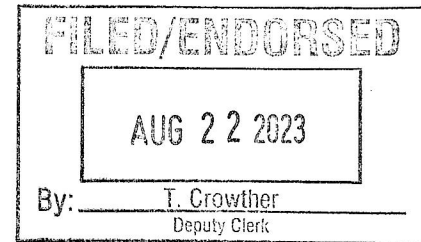
19 Defendants.  
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Case No.: 23CV003757

**FIRST AMENDED CLASS ACTION [Cal.  
Code Civ. P. § 382] AND PAGA  
REPRESENTATIVE ACTION [Labor Code §  
2698 et seq.] COMPLAINT**

**[Cal. Code Civ. P. § 382]**

- (1) **FAILURE TO PROVIDE MEAL PERIODS** (Labor Code §§ 226.7, 512, and 1198);
- (2) **FAILURE TO PROVIDE REST PERIODS** (Labor Code §§ 226.7 and 1198);
- (3) **FAILURE TO PAY MINIMUM AND REGULAR WAGES** (Labor Code §§ 1194, 1197, and 1198);
- (4) **FAILURE TO PAY OVERTIME WAGES** (Labor Code §§ 510, 1194, and 1198);
- (5) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS** (Labor Code § 226);
- (6) **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT** (Labor Code §§ 204 and 210);



- (7) **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES (Labor Code §§ 201, 202, and 203);**
- (8) **FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (Labor Code § 2802);**
- (9) **FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code § 1174);**
- (10) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (Business & Professions Code § 17200 et seq.); and**
- (11) **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code § 2698 et seq.)**

**DEMAND FOR JURY TRIAL**

Plaintiff DOROTHEA BOWENS ("Plaintiff") brings this individual, class, and PAGA action on behalf of herself and all persons similarly situated and/or all other Aggrieved Employees against Defendants TRESTLES LLC DBA CITY CREEK CARE CENTER/CITY CREEK POST ACUTE, and DOES 1 THROUGH 50, inclusive ("Trestles" or "Defendants"), on the following grounds:

**INTRODUCTION**

1. Plaintiff brings this class and individual action against Defendants for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission ("IWC") Wage Orders; on information and belief, IWC Wage Order No. 5-2001.

2. Plaintiff also brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code sections 2698 et seq., "PAGA") on behalf of herself and all other persons who are or were employed as non-exempt employees of Defendants and who worked in the State of California during the relevant time period (referred to herein as "Aggrieved Employees").

1           3.       Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their  
2 employment-related costs at their facilities in order to increase their level of productivity and profits by  
3 systematically violating California wage and hour laws and IWC Wage Orders and engaging in unlawful  
4 and unfair business practices.

5           4.       Defendants have engaged in a systematic pattern of wage and hour violations toward  
6 Plaintiff and other similarly situated and/or Aggrieved Employees by denying specific rights afforded to  
7 them under California law, including the California Labor Code and rules promulgated by the IWC Wage  
8 Orders, including, but not limited to:

- 9                   a.       Failing to provide the opportunity for meal periods and/or timely pay premium  
10 wages for non-compliant meal periods;
- 11                   b.       Failing to authorize and permit rest periods and/or timely pay premium wages for  
12 non-compliant rest periods;
- 13                   c.       Failing to timely pay minimum and regular wages;
- 14                   d.       Failing to timely pay overtime wages;
- 15                   e.       Failing to timely pay all wages due and owing upon separation of employment  
16 and/or the required waiting time penalties;
- 17                   f.       Failing to reimburse for necessary business expenses;
- 18                   g.       Failing to furnish accurate itemized wage statements;
- 19                   h.       Failing to maintain accurate records; and
- 20                   i.       Engaging in unlawful, unfair, and/or fraudulent business practices.

21           5.       Plaintiff brings this lawsuit seeking injunctive relief, declaratory judgment, restitution and  
22 monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of  
23 all similarly situated and/or Aggrieved Employees to recover, among other things, unpaid wages and  
24 benefits, unreimbursed expenses, interest, penalties, liquidated damages, attorney's fees and costs  
25 pursuant to California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3,  
26 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, California  
27 Business & Professions Code sections 17200 et seq., California Code of Civil Procedure section 1021.5,  
28 and the provisions of IWC Wage Order No. 5-2001, as well as civil penalties recoverable under PAGA.

6. All allegations in this First Amended Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and her counsel, which are based upon personal knowledge. Each allegation in this First Amended Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

7. Plaintiff reserves the right to name additional representatives throughout the State of California.

### **PARTIES**

8. Plaintiff is, and at all relevant times was, a resident of Sacramento, California in the County of Sacramento. At all relevant times, Plaintiff was employed by Defendants in Sacramento.

9. Defendants' conduct, as herein alleged, occurred in the County of Sacramento and in the State of California. Plaintiff is informed and believes and thereon alleges that Defendants are, and at all relevant times were, authorized to do business and do in fact conduct business in the State of California, and were employers as defined in and subject to the California Labor Code and IWC Wage Orders.

10. Trestles LLC DBA City Creek Care Center/City Creek Post Acute is organized in the State of California and, on information and belief, has its headquarters located in Rocklin, California. Defendants are authorized to do business and are conducting business in the State of California.

11. The true names and capacities of Does 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore brings this complaint against such Doe Defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated as a Doe is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other similarly situated and/or Aggrieved Employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such Doe Defendants. Plaintiff will seek leave of the Court to amend this complaint to allege the true names and capacities of such Doe Defendants if and when ascertained.

12. Defendants operate skilled nursing facilities that provide short-term and long-term skilled nursing, rehabilitation services, and other health and social services.

13. At all relevant times, Defendants employed Plaintiff and, on information and belief, other similarly situated and/or Aggrieved Employees, and exercised control over their wages, hours, and working conditions, and suffered or permitted them to work.

1 14. Upon information and belief, Defendants are and were responsible for the policies and/or  
2 practices applicable to Plaintiff during her employment and applicable to other similarly situated and/or  
3 Aggrieved Employees.

4 15. On information and belief, Defendants denied Plaintiff and other similarly situated and/or  
5 Aggrieved Employees specific rights afforded to them under the Labor Code and the IWC Wage Orders.

6 16. Plaintiff was employed by Defendants in Sacramento, California, and was subject to  
7 various employment policies and/or practices implemented by Defendants applicable to all employees in  
8 the State of California.

9 17. Plaintiff is informed and believes that at all relevant times, Defendants, whether named or  
10 fictitious, were the agents, employees, or other persons acting on behalf of every other Defendant and, in  
11 participating in the acts alleged in this complaint, acted within the scope of such agency or employment,  
12 or ratified the acts of the other.

13 18. Each Defendant acted and/or ratified, in all respects pertinent to this action, as the agent of  
14 the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,  
15 and the acts of each Defendant are legally attributable to the other Defendants.

16 19. Each Defendant, whether named or fictitious, was the alter ego of the other Defendants at  
17 all relevant times herein.

18 20. On information and belief, a unity of interest and ownership between each Defendant exists  
19 such that all Defendants acted as a single employer.

## 20 JURISDICTION AND VENUE

21 21. This Court has subject matter jurisdiction to hear this case because Plaintiff is informed  
22 and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the  
23 minimum jurisdictional limits of the Superior Court.

24 22. Venue as to each Defendant is proper in this Court because Defendants maintain offices,  
25 transact business, and/or have an agent in Sacramento County, and Defendants are otherwise within this  
26 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein arose in  
27 Sacramento County and have a direct effect on Plaintiff and other similarly situated and/or Aggrieved  
28 Employees within the State of California and within Sacramento County. Defendants employ numerous

23. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

## GENERAL ALLEGATIONS

24. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

25. Plaintiff was employed by Defendants from approximately October 5, 2022, through and including February 17, 2023, at City Creek Care Center located in Sacramento, California. During her employment, Plaintiff performed work for Defendants as an Admissions Coordinator. Her job duties included performing tasks related to the patient intake process and communicating with patient medical insurance providers.

26. During her employment, Plaintiff typically worked from approximately 8:30 or 9:00 a.m. until 4:00 or 4:30 p.m. but was not required to clock in and out for her shifts or for meal periods. At all relevant times, Plaintiff was misclassified as an exempt employee and was paid a salary of \$70,000.

27. Defendants willfully misclassified Plaintiff and other similarly situated and/or Aggrieved Employees as exempt employees when they were truly acting as non-exempt employees. Plaintiff and, on information and belief, other similarly situated and/or Aggrieved Employees primarily performed non-managerial tasks, did not direct the work of two or more employees, and did not exercise discretion or independent judgment in performing any of their duties. All work was completed pursuant to standardized procedures and/or had to be approved by supervisors. Plaintiff and, on information and belief, other similarly situated and/or Aggrieved Employees did not have the authority to hire or fire employees.

28. As a direct result of Defendants' scheme of purposefully misclassifying Plaintiff and other employees as exempt employees, Defendants denied, and continue to deny, Plaintiff and other similarly situated and/or Aggrieved Employees the specific rights afforded to them under the Labor Code and IWC Wage Order No. 5-2001. Specifically, Defendants failed, and continue to fail, to timely pay all minimum, regular, and/or overtime wages; failed, and continue to fail, to provide Plaintiff and other similarly situated

1 and/or Aggrieved Employees with meal and rest periods and/or timely pay them premium wages; failed  
2 to timely pay Plaintiff and other similarly situated and/or Aggrieved Employees all wages due and owing  
3 during and upon separation of employment and/or pay the required waiting time penalties; failed, and  
4 continue to fail, to provide Plaintiff and other similarly situated and/or Aggrieved Employees with  
5 accurate itemized wage statements; failed, and continue to fail, to maintain accurate employment records;  
6 and failed, and continue to fail, to reimburse Plaintiff and other similarly situated and/or Aggrieved  
7 Employees for necessary business expenses.

8         29. Defendants had and have a policy and practice of not timely paying Plaintiff and other  
9 similarly situated and/or Aggrieved Employees all minimum, regular, and overtime wages for all time  
10 actually worked or spent under the control of Defendants on the day designated in advance as the regular  
11 pay day. Because Plaintiff and other similarly situated and/or Aggrieved Employees misclassified as  
12 exempt were not required to track their hours worked, Plaintiff and other employees did not earn at least  
13 minimum wages for all hours worked or spent under the control of Defendants. Furthermore, Plaintiff and,  
14 on information and belief, other similarly situated and/or Aggrieved Employees regularly worked in  
15 excess of eight hours in a workday and/or forty hours in a workweek but were not paid any overtime  
16 wages. For instance, Plaintiff and other similarly situated and/or Aggrieved Employees were required to  
17 respond to emails, pull reports, and complete other tasks while at home before and/or after completing a  
18 scheduled shift, including submitting a census report every morning prior to 9:00 a.m. which required  
19 work to be performed either the previous evening following a shift or in the morning prior to a scheduled  
20 shift. Despite performing this work outside of their regularly scheduled shifts, Plaintiff and other similarly  
21 situated and/or Aggrieved Employees were not separately compensated for this time. Thus, Plaintiff  
22 contends that she and other similarly situated and/or Aggrieved Employees were not timely paid all  
23 minimum, regular, and/or overtime wages for all hours worked or spent under the control of Defendants,  
24 in violation of California law.

25         30. Furthermore, Defendants had and have a policy and practice of paying non-discretionary  
26 bonuses to employees, including to Plaintiff. Upon information and belief, Defendants failed to consider  
27 the amount of any non-discretionary bonuses when calculating each employee's regular rate of pay for the  
28 purposes of paying overtime wages. For example, Plaintiff was paid various "admissions bonuses" based

1 on admitting a threshold number of patients who had certain types of insurance. Defendants failed to  
2 include these non-discretionary bonuses in the regular rate of pay for the purpose of calculating each  
3 employee's overtime rate of pay. Employees were therefore not paid all overtime wages rightfully owed.

4 31. Defendants had and have a policy and practice of not providing Plaintiff and, on  
5 information and belief, other similarly situated and/or Aggrieved Employees with the opportunity to take  
6 thirty-minute, off-duty, uninterrupted meal periods that were free from Defendants' control when they  
7 worked more than six hours in a day. Plaintiff also alleges that Defendants had and have a policy and/or  
8 practice of not providing Plaintiff and other employees with the opportunity to take a second thirty-minute,  
9 off-duty, uninterrupted meal period that was free from Defendants' control when they worked more than  
10 ten hours in a day. Plaintiff and, on information and belief, other similarly situated and/or Aggrieved  
11 Employees, were required to work through meal periods and/or were required to skip meal periods, be  
12 interrupted, or take meal periods of fewer than thirty minutes because Defendants had and have a policy  
13 and practice of assigning workloads that cannot reasonably be completed within each employee's  
14 scheduled hours.

15 32. For the same reasons, Plaintiff and, on information and belief, other similarly situated  
16 and/or Aggrieved Employees were not authorized or permitted by Defendants to take an off-duty,  
17 uninterrupted, ten-minute rest period for every four hours worked or major fraction thereof. Thus, Plaintiff  
18 contends that she and other similarly situated and/or Aggrieved Employees were never provided with a  
19 legally compliant rest period.

20 33. Although Plaintiff and, on information and belief, other similarly situated and/or Aggrieved  
21 Employees did not receive legally compliant meal and rest periods, Plaintiff and, on information and  
22 belief, other similarly situated and/or Aggrieved Employees did not receive premium wages equivalent to  
23 an additional hour of pay at their regular rate of pay for each day they were not provided a compliant meal  
24 or rest period.

25 34. Defendants had and have a policy and practice of failing to reimburse Plaintiff and, on  
26 information and belief, other similarly situated and/or Aggrieved Employees for necessary business  
27 expenses incurred in the discharge of their duties. For instance, Plaintiff and, on information and belief,  
28 other similarly situated and/or Aggrieved Employees were required to use their personal cell phones

1 before, during, and after work hours to complete necessary business tasks such as communicating with  
2 their supervisors and calling patient medical insurers to complete onboarding tasks for new patients.  
3 Despite incurring necessary business-related expenses, such as costs related to cell phone usage, Plaintiff  
4 and, on information and belief, other similarly situated and/or Aggrieved Employees were not reimbursed  
5 by Defendants for these necessary business expenses.

6 35. Defendants had and have a policy and practice of not furnishing Plaintiff and, on  
7 information and belief, other similarly situated and/or Aggrieved Employees with accurate, itemized wage  
8 statements. As a result of the foregoing illegal policies and practices, Defendants did not furnish Plaintiff  
9 and, on information and belief, other similarly situated and/or Aggrieved Employees with itemized wage  
10 statements that accurately reflected the information required by California law including, but not limited  
11 to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, the  
12 corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and  
13 the net wages earned. Due to Defendants' failure to furnish accurate, itemized wage statements, Plaintiff  
14 and other similarly situated and/or Aggrieved Employees were unable to promptly and easily determine,  
15 for example, the gross and net wages earned during the pay period and the total hours worked during each  
16 pay period.

17 36. Defendants had and have a policy and practice of not maintaining accurate employment  
18 records. The illegal policies and practices, such as those described herein, including Defendants' failure  
19 to record all hours worked by its employees, have resulted in Defendants' failure to maintain accurate  
20 records reflecting Plaintiff's and other similarly situated and/or Aggrieved Employees' actual time worked  
21 and actual wages earned and paid, among other things, in violation of California law.

22 37. Defendants had and have a policy and practice of not timely paying Plaintiff and other  
23 former employees all wages due and owing during and upon separation of employment and/or the required  
24 waiting time penalties for the late payment of wages. For instance, Plaintiff contends that despite her  
25 employment with Defendants ending on or about February 17, 2023, she was not immediately paid all  
26 wages due and owing including, but not limited to, unpaid minimum, regular, overtime, and/or premium  
27 wages. Plaintiff also contends that, to date, she has not received these wages owed nor the required waiting  
28 time penalties. Plaintiff further contends, based on information and belief, that other former employees

1 were also not timely paid all wages due and owing upon separation of employment and/or the required  
2 waiting time penalties.

3 38. Defendants have engaged in unfair business practices in California, and willingly and  
4 knowingly employed the patterns and practices alleged in this complaint in violation of Business and  
5 Professions Code sections 17200 et seq.

6 39. All policies and practices of Defendants applicable to Plaintiff were also applicable to all  
7 other similarly situated and/or Aggrieved Employees she seeks to represent throughout the relevant time  
8 period. Upon information and belief, employees who were properly classified as non-exempt employees  
9 suffered from the same policies and practices as those employees who were wrongfully classified as  
10 exempt employees. Plaintiff further contends, based on information and belief, that she and all other  
11 similarly situated and/or Aggrieved Employees suffered, and will continue to suffer, the same or similar  
12 violations of law described herein. Furthermore, Plaintiff contends that Defendants are jointly and  
13 severally liable for the claims asserted herein, because at all relevant times, Defendants exercised control  
14 over the wages, hours and working conditions of Plaintiff and all similarly situated and/or Aggrieved  
15 Employees.

16 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) REPRESENTATIVE**  
17 **ACTION DESIGNATION**

18 40. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
19 paragraphs above, as though fully set forth herein.

20 41. By and through this representative action, Plaintiff intends to represent the following  
21 Aggrieved Employees:

22 All current and former non-exempt employees of Defendants in California  
23 during the period commencing on the date that is within one year and sixty-  
24 five days prior to the filing of this Complaint through and including the last  
date of trial (hereinafter the “PAGA Period”).

25 42. The Aggrieved Employees are all “employees” as the term is used in the Labor Code and  
26 the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

27 43. A more precise definition of Aggrieved Employees may be determined after further  
28 investigation and discovery. Plaintiff reserves her right to redefine the group of Aggrieved Employees as

1 permitted by California law.

2 44. Pursuant to Labor Code section 2698 et seq., any provision of the Labor Code that provides  
3 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,  
4 commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered  
5 through a civil action brought by an aggrieved employee on behalf of herself and other current or former  
6 employees pursuant to the procedures specified in Labor Code section 2699.3.

7 45. Pursuant to the PAGA, all civil penalties recovered must be allocated 75% to the LWDA  
8 and 25% to the aggrieved employees, pursuant to Labor Code section 2699(i).

9 46. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed  
10 notice of her claims with LWDA, Defendants were Plaintiff's and all other Aggrieved Employees'  
11 employers or persons acting on behalf of the Aggrieved Employees' employers, either individually or as  
12 an officer, agent, or employee of another person, within the meaning of Labor Code sections 558(a) and  
13 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California  
14 state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated  
15 damages pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor  
16 Code section 203.

17 47. Plaintiff is an "aggrieved employee" under the PAGA because she was employed by the  
18 alleged violators, Defendants, and experienced one or more of the alleged violations committed against  
19 her, and therefore is properly suited to represent the interests of aggrieved employees. (See *Huff v.*  
20 *Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751-761; *Carrington v. Starbucks Corp.*  
21 (2018) 30 Cal. App. 5th 504, 519.)

22 48. Plaintiff alleges that all other Aggrieved Employees are also "aggrieved employees" under  
23 the PAGA as Defendants employed them and all Aggrieved Employees experienced one or more of the  
24 alleged violations outlined herein.

25 49. Pursuant to Labor Code section 2698 et seq., Plaintiff has exhausted her administrative  
26 remedies because she complied with the notice requirements outlined in Labor Code section 2699.3. On  
27 May 10, 2023, Plaintiff submitted notice to the California Labor and Workforce Development Agency  
28 ("LWDA") and to Defendants informing them of Defendants' alleged Labor Code violations pursuant to

1 the PAGA. A true and correct copy of the May 10, 2023, written notice is attached hereto as **Exhibit 1**  
2 and is incorporated herein by reference.

3 50. Pursuant to the PAGA, the LWDA had 65 days to provide notice of whether it intended to  
4 investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate  
5 the alleged violations. Plaintiff thus has the right to pursue, and does pursue, the asserted claims under  
6 PAGA in a representative capacity pursuant to Labor Code section 2698 et seq.

7 51. As set forth herein, Defendants have committed, and continue to commit, numerous  
8 violations for which the Labor Code and applicable IWC Wage Order entitle Plaintiff, in her representative  
9 capacity, to recover, on behalf of herself, all other Aggrieved Employees, the state of California, and the  
10 general public, civil penalties as well as attorneys' fees and costs from Defendants for their alleged  
11 violations as described herein.

12 52. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee  
13 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor  
14 Code provisions for which a civil penalty is not specifically provided. Plaintiff and other Aggrieved  
15 Employees are entitled to, and therefore seek, the civil penalties described in Labor Code section 2699(f)  
16 for the violations of law described herein.

17 53. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action  
18 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As  
19 such, Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is  
20 entitled to, and therefore seeks, attorneys' fees and costs.

21 **CLASS ACTION DESIGNATION**

22 54. Plaintiff brings this class action pursuant to California Code of Civil Procedure section 382  
23 on behalf of all persons similarly affected by Defendants' violations of the Labor Code.

24 55. Plaintiff seeks to represent the following putative class:

25 **Non-Exempt Class:** "All current and former non-exempt employees of  
26 Defendants who worked for Defendants in the State of California during the  
27 time period commencing four years prior to the date of filing of this complaint  
through the present (the "Class Period")."

28 56. Plaintiff also seeks to represent the following subclasses:

**Misclassified Non-Exempt Subclass:** “All members of the Non-Exempt Class who were improperly classified as exempt employees.”

**Waiting Time Penalties Subclass:** “All members of the Non-Exempt Class whose employment with Defendants ended at any time from three years prior to the filing of the complaint through the present.”

57. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to modify the Class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

58. Plaintiff seeks to recover on behalf of the Class and Subclasses all remedies available to the extent permitted by law, including, but not limited to, wages, damages, penalties, interest, attorney’s fees, costs, any other monies due and owing, and injunctive relief.

59. This case is appropriately suited for a class action pursuant to Section 382 of the California Code of Civil Procedure because the following requirements are met:

a. Numerosity: The potential Class as defined is significant in size because Plaintiff is informed and believes and thereon alleges that at all relevant times Defendants employed numerous similarly situated employees who were subject to Defendants’ uniform and common wage and hour policies and practices, and the unlawful employment policies and practices alleged herein. Based on the size of the potential Class, joinder of all employees individually would be impractical.

b. Commonality: This action involves questions of law and fact common to the potential Class because the action involves Defendants’ systematic course of illegal conduct with respect to violations of the California Labor Code and IWC Wage Order No. 5-2001 and implementing company-wide policies and/or practices which were uniformly applied to all members within the Class. These questions include, but are not limited to:

i. Whether Defendants failed to permit employees to take a duty-free, thirty-minute meal period before the commencement of the sixth hour of work;

ii. Whether Defendants failed to permit employees to take a second duty-free, thirty-minute meal period before the commencement of the eleventh hour

- of work;
- iii. Whether Defendants failed to permit employees to take off-duty rest periods of at least ten minutes for every four hours worked, or major fraction thereof;
- iv. Whether Defendants failed to pay one additional hour of pay at each employee's regular rate of compensation when they were not provided with compliant and timely meal and rest periods;
- v. Whether Defendants failed to timely pay at least minimum and/or all regular wages owed for all hours or fractions of an hour worked and/or under the control of Defendants;
- vi. Whether Defendants failed to timely pay all overtime wages for all applicable hours and/or fractions of hours worked or under the control of Defendants;
- vii. Whether Defendants failed to provide employees with accurate itemized wage statements showing, among other things, the correct number of hours worked, and the correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each rate;
- viii. Whether Defendants failed to pay members of the Waiting Time Penalties Subclass all wages due and owing upon separation of employment and/or the required waiting time penalties;
- ix. Whether Defendants failed to indemnify employees for necessary business expenses incurred in direct consequence of the discharge of their duties; and
- x. Whether Defendants failed to maintain accurate records.
- c. Typicality: Plaintiff's claims are typical of the claims of the Class because Plaintiff was subjected to the same violations of her rights under California law and seeks the same type of damages, restitution, and other relief on the same theories and legal grounds as those of the Class Members she seeks to represent. Plaintiff is a

member of the Class she seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately represent the interests of all members of the potential Class because it is in her best interest to prosecute the claims alleged herein to obtain full compensation due to her and the Class for all back pay, benefits, and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff's interests are not in conflict with those of the putative Class Members. Plaintiff's counsel is competent and experienced in litigating employment law class actions and other complex litigation matters, including wage and hour cases such as this.

e. Superiority of Class Action: Class treatment is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recover by reason of Defendants' illegal policies and/or practices as alleged herein. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **FAILURE TO PROVIDE MEAL PERIODS**

**(Violation of Labor Code §§ 226.7, 512, 1198, and the "Meal Periods" Section**

**of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

60. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

61. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are and/or were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

62. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as “non-exempt” employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

63. Labor Code section 226.7(a) provides: “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

64. Labor Code section 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes,” and “may not employ an employee for a work period of more than 10 hours without providing the employee with a second meal period of not less than 30 minutes.”

65. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

66. IWC Wage Order 5-2001 section 11(A) states:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

67. IWC Wage Order 5-2001 section 11(B) goes on to state: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

68. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, regularly worked in excess of five hours a day without being provided a meal period before the

1 end of the fifth hour of work, and regularly worked in excess of ten hours a day without being provided a  
2 second meal period before the end of the tenth hour of work, as required by Labor Code sections 226.7(a),  
3 512(a), and IWC Wage Order 5-2001 section 11.

4 69. Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass,  
5 were required to work through meal periods, and/or were required to skip meal periods, be interrupted, or  
6 take breaks of fewer than thirty minutes if necessitated by the employee's workload.

7 70. Furthermore, due to Defendants' misclassification of Plaintiff and members of the  
8 Misclassified Non-Exempt Subclass as exempt employees, Defendants did not provide them with the  
9 opportunity to take meal periods.

10 71. Because Defendants failed to provide proper and timely meal periods, they are liable to  
11 Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, for one hour of  
12 additional premium pay at the regular rate of compensation for each workday that the proper and timely  
13 meal periods were not provided, pursuant to Labor Code section 226.7 and IWC Wage Order 5-2001  
14 section 11(B).

15 72. Defendants have failed thus far to pay Plaintiff and the Non-Exempt Class, including the  
16 Misclassified Non-Exempt Subclass, all the premium compensation mandated by Labor Code section  
17 226.7 and IWC Wage Order 5-2001 section 11(B) for missed, late, short, interrupted, or otherwise non-  
18 compliant meal periods.

19 73. Labor Code section 218.5 states:

20 In any action brought for the nonpayment of wages...the court shall award  
21 reasonable attorney's fees and costs to the prevailing party if any party to the  
22 action requests attorney's fees and costs upon the initiation of the action.  
23 However, if the prevailing party in the court action is not an employee,  
24 attorney's fees and costs shall be awarded pursuant to this action only if the  
25 court finds that the employee brought the court action in bad faith.

26 74. Labor Code section 218.6 states:

27 In any action brought for the nonpayment of wages, the court shall award  
28 interest on all due and unpaid wages at the rate of interest specified in  
subdivision (b) of Section 3289 of the Civil Code, which shall accrue from  
the date that the wages were due and payable as provided in Part 1  
(commencing with Section 200) of Division 2.

75. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

76. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code section 218.5, 218.6, 226.7, 512, 1198, and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PROVIDE REST PERIODS**

**(Violation of Labor Code §§ 226.7, 1198, and Section 12 of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

77. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

78. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are and/or were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

79. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as "non-exempt" employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

80. Labor Code section 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

81. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

82. IWC Wage Order 5-2001 section 12(A) states:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

83. IWC Wage Order 5-2001 section 12(B) goes on to state: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

84. Defendants had and have a policy and/or practice of not authorizing and permitting Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, to take rest periods of at least ten minutes for every four hours worked, or major fraction thereof. Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, were required to work through rest periods and/or were required to skip rest periods, be interrupted, take rest periods of fewer than ten minutes in length, or otherwise take rest periods that were not free from Defendants' control because Defendants had and have a policy and practice of assigning workloads that cannot reasonably be completed within each employee's scheduled hours.

85. Due to Defendants' misclassification of Plaintiff and other similarly situated Misclassified Non-Exempt Subclass Members, Defendants did not provide Plaintiff and other similarly situated Misclassified Non-Exempt Subclass Members with rest breaks.

86. Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage Order, Defendants shall pay Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, one additional hour of pay at their regular rate of compensation for each day that rest periods were not authorized and permitted.

87. Through Defendants' conduct during the applicable statutory period, including the conduct alleged herein, Defendants violated Labor Code sections 226.7, 1198, and the applicable IWC Wage Order when they failed to authorize and permit full ten-minute, uninterrupted, duty-free rest periods for every four hours worked (or major fraction thereof), including during work periods in excess of three and a half consecutive hours, to Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass.

88. Defendants failed to pay Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, the rest period premium wages required under Labor Code section 226.7.

89. Labor Code section 218.5 states:

In any action brought for the nonpayment of wages...the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this action only if the court finds that the employee brought the court action in bad faith.

90. Labor Code section 218.6 states:

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

91. As a direct result, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

92. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit to the fullest extent permissible including those permitted pursuant to Labor Code sections 218.5, 218.6, 226.7, 1198, and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**THIRD CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM AND REGULAR WAGES**

**(Violation of Labor Code §§ 1194, 1197, 1198, and Section 4 of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

93. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

94. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass are and/or were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

95. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as “non-exempt” employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

96. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

97. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

98. IWC Wage Order 5-2001 section 4 provides that an employer may not pay employees less than the applicable minimum wage for all hours worked. “Hours worked” is defined as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

99. Defendants violated Labor Code sections 1197 and 1198 by having a policy and/or practice of not timely paying Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, all minimum and regular wages for all time actually worked or spent under the control of

Defendants on the day designated in advance as the regular pay day. Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, were required to complete tasks at home before and after the start of their shifts such as responding to emails, pulling reports, and completing other tasks. Additionally, Plaintiff was required to submit a census report every morning by 9:00 a.m., which would require her to complete work either the prior evening following her shift, or in the morning before the start of her shift.

100. Furthermore, due to Defendants' misclassification of Plaintiff and the Misclassified Non-Exempt Subclass as exempt employees, Defendants did not pay Plaintiff and the Misclassified Non-Exempt Subclass at least minimum wage for all hours worked or spent under the control of Defendants.

101. Labor Code section 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

102. Labor Code section 1194.2 states:

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

103. Labor Code section 218.5 states:

In any action brought for the nonpayment of wages...the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this action only if the court finds that the employee brought the court action in bad faith.

104. Labor Code section 218.6 states:

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

105. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

106. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible including those permitted pursuant to Labor Code sections 218.5, 218.6, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

#### **FOURTH CAUSE OF ACTION**

##### **FAILURE TO PAY OVERTIME WAGES**

**(Violation of Labor Code §§ 510, 1194, 1198, and Section 3 of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

107. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

108. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are and/or were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

109. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as "non-exempt" employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

110. Labor Code section 510 provides in pertinent part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one

workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

111. Labor Code section 1194 states in pertinent part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

112. Labor Code section 1198 states in pertinent part:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

113. IWC Wage Order 5-2001 section 3 provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

114. In California, overtime pay is computed based on the regular rate of pay. The regular rate of pay includes all different types of remuneration, including hourly earnings, salary, piecework earnings, commissions, and non-discretionary bonuses, and the value of meals and lodging.

115. Defendants had and have a policy and practice of failing to timely pay all overtime wages to Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, for all hours actually worked or time spent under the control of Defendants on the date designated in advance by Defendants as the regular pay day. Defendants failed to timely pay all overtime wages to Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, for all hours worked in excess of eight hours per day and/or forty hours per week on the payday for the next regular payroll period.

116. Defendants also paid Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, certain non-discretionary bonuses, and did not consider the amount of the non-discretionary bonuses into the calculation of each employee's regular rate of pay for the purposes of paying

overtime, and therefore did not pay overtime wages at the legal rate.

117. Defendants misclassified Plaintiff and the Misclassified Non-Exempt Subclass as exempt employees rather than as non-exempt employees, and thus failed to pay them overtime wages as required by law.

118. Labor Code section 218.5 states:

In any action brought for the nonpayment of wages...the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this action only if the court finds that the employee brought the court action in bad faith.

119. Labor Code section 218.6 states:

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

120. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

121. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted pursuant to Labor Code sections 218.5, 218.6, 510, 1194, 1198, and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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**FIFTH CAUSE OF ACTION**

**FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

**(Violation of Labor Code § 226 and Section 7 of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

122. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

123. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are and/or were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

124. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as “non-exempt” employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

125. Labor Code section 226(a) provides in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (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 only 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 secured the services of 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... The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

126. Labor Code section 1198 states in pertinent part:

The maximum hours of work and the standard conditions of labor fixed by

the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

127. IWC Wage Order 5-2001 section 7(A) states in relevant part that every employer shall keep accurate information including, but not limited to “...(4) Total wages paid each payroll period...(5) Total hours worked in the payroll period and applicable rates of pay...”

128. Defendants did not furnish Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, with an accurate itemized wage statement at the time of each payment of wages. Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, did not receive wage statements reflecting the information required by Labor Code section 226 including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. For example, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, frequently remained on duty through meal periods when they were off the clock, or were required to work at home before and after their shifts when they were off the clock. Defendants’ wage statements therefore did not accurately display the correct amount of total hours worked. Defendants also failed to consider all non-discretionary bonus amounts into the calculation of the regular rate of pay for the purposes of paying overtime wages. Defendants’ wage statements therefore did not accurately display the correct applicable overtime rates for any overtime hours worked.

129. Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, suffered injuries as a result of Defendants’ intentional and knowing failure to provide and maintain the records required by Labor Code section 226(a). Defendants’ failure to furnish accurate itemized wage statements left Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, without the ability to know, understand, and question the hours worked and wages earned and due. As a direct result, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer substantial injuries, losses, and actual damages related to Defendants’ violations, including lost wages, lost interest on such wages, and expenses and attorney’s fees in seeking

1 to compel Defendants to fully perform their obligations.

2 130. Because Defendants misclassified Plaintiff and members of the Misclassified Non-Exempt  
3 Subclass, Defendants did not require Plaintiff and members of the Misclassified Non-Exempt Subclass to  
4 record their hours worked, including the accurate start and end times of each shift or the accurate start and  
5 end times of any meal periods that were taken. Defendants also improperly paid Plaintiff and members of  
6 the Misclassified Non-Exempt Subclass on a salary basis. Defendants therefore did not furnish Plaintiff  
7 and, on information and belief, members of the Misclassified Non-Exempt Subclass with accurate  
8 itemized wage statements that complied with the requirements of Labor Code section 226, because the  
9 wage statements did not include, among other things, the correct total regular and overtime hours worked,  
10 the correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding  
11 number of hours worked at each hourly rate.

12 131. Labor Code section 226(e)(1) states:

13 An employee suffering injury as a result of a knowing and intentional failure  
14 by an employer to comply with subdivision (a) is entitled to recover the  
15 greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
16 which a violation occurs and one hundred dollars (\$100) per employee for  
17 each violation in a subsequent pay period, not to exceed an aggregate penalty  
18 of four thousand dollars (\$4,000), and is entitled to an award of costs and  
19 reasonable attorney's fees.

20 132. Labor Code section 226(e)(2)(B) states:

21 An employee is deemed to suffer injury for purposes of this subdivision if the  
22 employer fails to provide accurate and complete information as required by  
23 any one or more of items (1) to (9), inclusive, of subdivision (a) and the  
24 employee cannot promptly and easily determine from the wage statement  
25 alone one or more of the following: (i) The amount of gross wages or net  
26 wages paid to the employee during the pay period or any of the other  
27 information required to be provided on the itemized wage statement pursuant  
28 to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...

24 133. Because Plaintiff's and, on information and belief, other Non-Exempt Class Members',  
25 including the Misclassified Non-Exempt Subclass, wage statements did not include, among other things,  
26 an accurate accounting of gross wages earned, total hours worked, or the applicable hourly rates, they  
27 have suffered injury.

28 134. Labor Code section 226(h) states: "An employee may also bring an action for injunctive

1 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's  
2 fees."

3 135. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt  
4 Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer injury  
5 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies  
6 and expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under  
7 state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional  
8 limitations of this Court.

9 136. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,  
10 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those  
11 permitted pursuant to Labor Code sections 226(e) and (h), and Code of Civil Procedure section 1021.5.

12 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT**

15 **(Violation of Labor Code §§ 204 and 210)**

16 **(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-**  
17 **Exempt Subclass, against all Defendants)**

18 137. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
19 paragraphs above, as though fully set forth herein.

20 138. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt  
21 Subclass, are and/or were "non-exempt" employees of Defendants in the State of California within the  
22 meaning of the Labor Code and IWC Wage Order 5-2001.

23 139. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt  
24 Subclass were misclassified as exempt employees when they should have been classified as "non-exempt"  
25 employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

26 140. Labor Code section 204 establishes an employee's fundamental right in the state of  
27 California to be paid wages in a timely manner for his or her work. Specifically, Labor Code section 204(a)  
28 states that all wages earned are due and payable twice during each calendar month on days designated in

1 advance by the employer as regular pay days.

2 141. Labor Code section 204(b)(1) adds that “all wages earned for labor in excess of the normal  
3 work period shall be paid no later than the payday for the next regular payroll period.”

4 142. Premium wages under Labor Code section 226.7 are wages that are due and payable in  
5 accordance with the Labor Code section 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40  
6 Cal.4th 1094, 1103-1114.)

7 143. Labor Code section 210 provides that, “every person who fails to pay the wages of each  
8 employee as provided in Section[ ]...204...shall be subject to” a civil penalty of \$100 for an initial  
9 violation and \$200 plus 25% of the amount unlawfully withheld for each subsequent violation.

10 144. Plaintiff contends that during the relevant time period, Defendants had a policy and/or  
11 practice of failing to timely pay Plaintiff and the Non-Exempt Class, including the Misclassified Non-  
12 Exempt Subclass, all minimum, regular and/or premium wages twice during each calendar month on the  
13 days designated in advance by Defendants as the regular paydays. For example, as described herein,  
14 Defendants did not pay Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt  
15 Subclass, meal period premium wages or rest period premium wages for each day that a compliant meal  
16 period or rest period was not provided. Defendants also required Plaintiff and the Non-Exempt Class,  
17 including the Misclassified Non-Exempt Subclass, to perform work from home outside of their scheduled  
18 shift times, such as preparing census reports that were due each morning.

19 145. Plaintiff further contends that Defendants had a policy and practice of failing to timely pay  
20 all overtime wages no later than the payday for the next regular payroll period. For instance, because  
21 Plaintiff and members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees  
22 and not required to track their hours worked, they were not paid any overtime wages when they worked  
23 more than eight hours in a day and/or more than forty hours in a week.

24 146. Plaintiff further alleges that due to Defendants’ failure to appropriately compensate  
25 Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, for all minimum,  
26 regular, overtime, and premium wages, Defendants failed to timely pay all wages due and owing to  
27 Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, within the time  
28 specified by Labor Code section 204.

1 147. Labor Code section 218.5 states:

2 In any action brought for the nonpayment of wages...the court shall award  
3 reasonable attorney's fees and costs to the prevailing party if any party to the  
4 action requests attorney's fees and costs upon the initiation of the action.  
5 However, if the prevailing party in the court action is not an employee,  
6 attorney's fees and costs shall be awarded pursuant to this action only if the  
7 court finds that the employee brought the court action in bad faith.

8 148. Labor Code section 218.6 states:

9 In any action brought for the nonpayment of wages, the court shall award  
10 interest on all due and unpaid wages at the rate of interest specified in  
11 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from  
12 the date that the wages were due and payable as provided in Part 1  
13 (commencing with Section 200) of Division 2.

14 149. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt  
15 Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer injury  
16 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies  
17 and expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under  
18 state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional  
19 limitations of this Court.

20 150. Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are  
21 entitled to, and now seek to recover, penalties as provided by Labor Code section 210.

22 151. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,  
23 penalties, interest, attorney's fees and costs, and injunctive relief to the fullest extent permissible including  
24 those permitted pursuant to Labor Code section 218.5 and 218.6, and Code of Civil Procedure section  
25 1021.5.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

27 ///

28 ///

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SEVENTH CAUSE OF ACTION

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF  
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

**(Violation of Labor Code §§ 201, 202, and 203)**

**(By Plaintiff individually and on behalf of the Waiting Time Penalties Subclass against all  
Defendants)**

152. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

153. Plaintiff and similarly situated Waiting Time Penalties Subclass members are and/or were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

154. Plaintiff and, on information and belief, members of the Waiting Time Penalties Subclass were misclassified as exempt employees when they should have been classified as “non-exempt” employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

155. Labor Code section 201(a) states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

156. Labor Code section 202(a) states:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

157. Labor Code section 203(a) states, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.8, 201.8, 201.9, 202, and 205.5, 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

1 shall not continue for more than 30 days.

2 158. Defendants failed to timely pay Plaintiff and Waiting Time Penalties Subclass members all  
3 minimum, regular, overtime, and/or meal and rest period premium wages within the time required upon  
4 separation of employment. Defendants also did not pay Plaintiff and Waiting Time Penalties Subclass  
5 members the required waiting time penalties for the late payment of wages.

6 159. Upon information and belief, Waiting Time Subclass Members who were properly  
7 classified as non-exempt employees suffered the same violations as Plaintiff and Waiting Time Subclass  
8 Members who were misclassified as exempt.

9 160. As a direct result of Defendants' violations alleged herein, Plaintiff and Waiting Time  
10 Penalties Subclass members have suffered and continue to suffer substantial losses related to the use and  
11 enjoyment of such wages, including lost interest on such monies and expenses, and attorney's fees in  
12 seeking to compel Defendants to fully perform their obligations under state law, all to their respective  
13 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

14 161. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible  
15 including those permitted pursuant to Labor Code section 203 and Code of Civil Procedure section 1021.5.

16 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

19 **(Violation of Labor Code § 2802 and Section 9 of IWC Wage Order 5-2001)**

20 **(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-**  
21 **Exempt Subclass, against all Defendants)**

22 162. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
23 paragraphs above, as though fully set forth herein.

24 163. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt  
25 Subclass are and/or were "non-exempt" employees of Defendants in the State of California within the  
26 meaning of the Labor Code and IWC Wage Order 5-2001.

27 164. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt  
28 Subclass were misclassified as exempt employees when they should have been classified as "non-exempt"

employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

165. Labor Code section 2802(a) provides:

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.

166. Labor Code section 2802(c) states that “[f]or purposes of [section 2802], the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by [section 2802].”

167. IWC Wage Order 5-2001 section 9(B) states in pertinent part: “When 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...”

168. Defendants required Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, to use their personal cell phones in the discharge of their job duties without providing reimbursement. For example, Plaintiff was required to use her personal cell phone before, during, and after her scheduled shifts to complete necessary business tasks, such as communicating with supervisors and calling insurance companies to complete onboarding tasks for new facility patients.

169. Plaintiff and, on information and belief, the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, suffered losses including, but not limited to, the costs of using their personal cell phones. Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, incurred these costs in direct consequence of the discharge of their duties, as they were instructed by Defendants to use their personal cell phones for work-related purposes.

170. As a direct result of Defendants’ violations alleged herein, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies, and expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

171. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available remedies including, but not limited to, the unpaid balance of the indemnification from Defendants' violations, interest thereon permitted by Labor Code section 2802(b), reasonable attorney's fees and costs of suit, injunctive relief, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor Code section 2802 and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

## **NINTH CAUSE OF ACTION**

### **FAILURE TO MAINTAIN ACCURATE RECORDS**

**(Violation of Labor Code § 1174 and Section 7 of IWC Wage Order 5-2001)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

172. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

173. Plaintiff and members of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, are and/or were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and IWC Wage Order 5-2001.

174. Plaintiff and, on information and belief, other members of the Misclassified Non-Exempt Subclass were misclassified as exempt employees when they should have been classified as "non-exempt" employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

175. Labor Code section 1174 states that every person employing labor in this state shall:

Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

176. The "Records" section of IWC Wage Order 5-2001 likewise states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and the applicable rates of pay.

177. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

178. As set forth herein, Defendants violated these requirements by failing to accurately record the hours worked by Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, including, but not limited to, failing, to record the proper beginning and end time of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay for each hour worked, and the total wages earned and paid.

179. Furthermore, due to Defendants' misclassification of Plaintiff and the Misclassified Non-Exempt Subclass as exempt employees, Defendants did not keep any of the required records regarding Plaintiff and the Misclassified Non-Exempt Subclass.

180. As a direct result of Defendants' violations alleged herein, Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

181. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available remedies including the civil penalties available under Labor Code section 1174.5, reasonable attorney's fees and costs of suit, injunctive relief, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor Code sections 1174, 1174.5, and Code of Civil Procedure section 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

#### **TENTH CAUSE OF ACTION**

#### **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

**(Violation of Business and Professions Code § 17200 et seq.)**

**(By Plaintiff individually and on behalf of the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, against all Defendants)**

182. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

183. Business and Professions Code section 17200 states:

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

184. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in unlawful, unfair, or fraudulent business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the IWC Wage Orders. Defendants' use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

185. Defendants' violations of the Labor Code and the IWC Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) provide compliant meal periods and rest periods; (ii) pay all minimum, regular, and overtime wages, as well as meal and rest period premiums; (iii) reimburse necessary business expenses; (iv) furnish accurate itemized wage statements; (v) timely pay wages during employment; (vi) timely pay wages upon separation of employment and/or pay the required waiting time penalties; and (vii) maintain accurate records.

186. Plaintiff is informed and believes, and on that basis alleges that, at all times herein mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair business practices prohibited by Business and Professions Code section 17200 et seq., including those set forth in the preceding paragraph, thereby depriving Plaintiff and the Non-Exempt Class, including the Misclassified Non-Exempt Subclass, of the minimum working conditions and standards due, including those under the Labor Code and applicable IWC Wage Order.

187. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as alleged herein.

188. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

189. Plaintiff is informed and believes, and on that basis alleges, that the illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this complaint, they will continue to fail to pay the wages and compensation required to be paid and will fail to comply with other requirements of the Labor Code and IWC Wage Order 5-2001.

190. As a direct and proximate result of Defendants' conduct, Defendants have received and will continue to receive monies that rightfully belong to members of the general public who have been adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other monies.

191. Plaintiff is entitled to and does seek any and all available remedies including restitution and recovery of reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5, Business and Professions Code section 17200 et seq., the substantial benefit doctrine, and/or the common fund doctrine.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**ELEVENTH CAUSE OF ACTION**

**CLAIMS FOR CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS GENERAL ACT OF 2004**

**(Labor Code § 2698 et seq.)**

**(By Plaintiff, in her representative capacity, on behalf of all Aggrieved Employees against all  
Defendants)**

192. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

193. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failing to timely pay all minimum and/or regular wages during employment, in violation of Labor Code sections 204, 1194, 1197, 1198, and Section 4 of IWC Wage Order No. 5-2001;
- b. Failing to timely pay all overtime wages during employment, in violation of Labor Code sections 204, 510, 1194, 1198, and Section 3 of IWC Wage Order No. 5-2001;
- c. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment, in violation of Labor Code sections 226.7, 512, 1198, and Section 11 of IWC Wage Order No. 5-2001;
- d. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment, in violation of Labor Code sections 226.7, 1198, and Section 12 of IWC Wage Order No. 5-2001;
- e. Failing to timely pay all wages during employment, in violation of Labor Code section 204;
- f. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, in violation of Labor Code sections 201, 202, and 203;
- g. Failing to reimburse for necessary business expenses, in violation of Labor Code section 2802 and Section 9 of IWC Wage Order No. 5-2001;
- h. Failing to furnish accurate itemized wage statements, in violation of Labor Code section 226 and Section 7 of IWC Wage Order No. 5-2001; and
- i. Failing to maintain accurate employment records in violation of Labor Code section 1174 and Section 7 of IWC Wage Order No. 5-2001.

194. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure

1 to pay each employee, and for each subsequent violation, or any willful or intentional violation, \$200 for  
2 each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other  
3 penalty. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees,  
4 is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 210 for Defendants'  
5 violations of Labor Code section 204.

6 195. For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil  
7 penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each  
8 violation in a subsequent citation, in addition to any other penalty provided by law. Plaintiff, in her  
9 representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore  
10 seeks, the civil penalty imposed by Labor Code section 226.3 for Defendants' violations of Labor Code  
11 section 226.

12 196. For violations of Labor Code sections 510 and 512, in addition to any other recovery  
13 provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid  
14 employee for the initial violation, and \$100 per pay period for each underpaid employee for each  
15 subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision  
16 regulating hours and days of work in any order of the IWC. Plaintiff, in her representative capacity on  
17 behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty  
18 imposed by Labor Code section 558 for Defendants' violations of Labor Code sections 510 and 512.

19 197. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to  
20 maintain accurate and complete records in accordance with subsection (d) of Labor Code section 1174.  
21 This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that  
22 would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).  
23 Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled  
24 to, and therefore seeks, the civil penalty imposed by Labor Code section 1174.5 for Defendants' violations  
25 of Labor Code sections 1174(d).

26 198. Labor Code section 1197.1 imposes on any employer who pays or causes to be paid to any  
27 employee a wage less than the minimum wage fixed by an applicable state or local law a civil penalty of  
28 \$100 for any initial violation that is intentionally committed for each underpaid employee for each pay

1 period for which the employee is underpaid, and \$250 for each subsequent violation for the same specific  
2 offense for each underpaid employee for each pay period for which the employee is underpaid regardless  
3 of whether the initial violation is intentionally committed. The civil penalties provided for in section  
4 1197.1 are in addition to any other penalty provided by law. Plaintiff, in her representative capacity on  
5 behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty  
6 imposed by Labor Code section 1197.1 for Defendants' failure to pay at least minimum wage for all hours  
7 worked.

8 199. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee  
9 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor  
10 Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor  
11 Code sections 201, 202, 203, 204, 226.7, 510, 512, 1194, 1197, 1198, and 2802. Plaintiff, in her  
12 representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore  
13 seeks, the civil penalty imposed by Labor Code section 2699(f).

14 200. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action  
15 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As  
16 such, Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is  
17 entitled to, and therefore seeks, attorneys' fees and costs.

18 201. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved  
19 Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code  
20 sections 218.5, 226(e), 1194, 2699(g)(1), and 2802, as well as Code of Civil Procedure section 1021.5 and  
21 the "common fund" theory, the "substantial benefit" theory, and the "catalyst" theory.

22 202. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved  
23 Employees, requests further relief as described in the below prayer for relief.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 26 a. For general damages;
- 27 b. For special damages;
- 28 c. For an award of liquidated damages to the extent permissible by Labor Code section

- 1194.2;
- d. For reasonable attorney's fees, costs of suit, and interest to the extent permitted by law including, but not limited to, pursuant to Code of Civil Procedure section 1021.5, and Labor Code sections 218.5, 218.6, 226, 1102.5, 1194, 1197.1, 2699(g)(1), and 2802;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699(f), and any other applicable law;
- g. For restitution as provided by Business and Professions Code section 17200 et seq.;
- h. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code section 17200 et seq.;
- i. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, minimum wages, regular wages, overtime wages, premium wages, waiting time penalties, and other penalties according to proof, including interest thereon, to the extent permissible by law;
- j. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code section 226.7 and the applicable Industrial Welfare Commission Wage Order;
- k. For injunctive relief as provided by the Labor Code including, but not limited to, Labor Code section 226(h), and Business and Professions Code section 17200 et seq.;
- l. For indemnification of all losses incurred as a result of employment with Defendant, with interest;

- 1 m. For pre- and post-judgement interest to the extent permitted by law including, but  
2 not limited to, Labor Code sections 218.6 and 1194;
- 3 n. For a declaratory judgment that Defendants violated Labor Code sections 201, 202,  
4 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1,  
5 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as sections 1,  
6 3, 4, 7, 9, 11, and 12 of IWC Wage Order No. 5-2001; and
- 7 o. An award of such other and further relief as this Court deems proper and just.

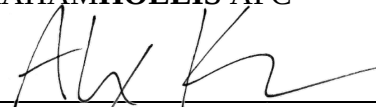
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial by jury to the extent authorized by law.

10 Respectfully submitted,

11 Dated: August 21, 2023

12 GRAHAM HOLLIS APC

13 Bv: 

14 GRAHAM S.P. HOLLIS  
15 VILMARIE CORDERO  
16 HALI M. ANDERSON  
17 NATHAN J. REESE  
18 ALEX M. KUNER

19 Attorneys for Plaintiff Dorothea Bowens  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**

May 10, 2023

**Attorneys at Law**

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San Diego, California 92103  
619.692.0800 voice  
619.692.0822 fax

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Alex Kuner  
akuner@grahamhollis.com  
619.546.4309 direct

**VIA ONLINE ELECTRONIC FILING**

California Labor And Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**VIA CERTIFIED MAIL**

Trestles LLC  
599 Menlo Drive, Suite 200  
Rocklin, CA 95765

Trestles LLC  
c/o Ryan Williams, Agent for Service of Process  
599 Menlo Drive, Suite 200  
Rocklin, CA 95765

**Re: Dorothea Bowens' Wage and Hour Claims Against Trestles  
LLC DBA City Creek Care Center/City Creek Post Acute**

Dear Labor and Workforce Development Agency and Trestles LLC:

Please be advised that Dorothea Bowens ("Claimant") has retained our firm to represent her for claims against her former employer, Trestles LLC DBA City Creek Care Center/City Creek Post Acute ("Trestles" or the "Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against her and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant intends to file a civil action to enforce her rights under the Labor Code and seeks compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment.

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Nora Steinhagen

Alyssa Smith\*

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

\*Provisionally Licensed Lawyer

### **FACTUAL BACKGROUND**

The following factual information is based upon the limited investigation Claimant has been able to conduct to date. Claimant reserves the right to amend this notice should additional information come to light at a later date.

Trestles LLC dba City Creek Care Center is a limited liability company that operates skilled nursing facilities that provide short term and long-term skilled nursing, rehabilitation services, and other health and social services. The Company is headquartered and has its principal place of business in Rocklin, California.

Claimant was employed with the Company as an admissions coordinator at City Creek Care Center in Sacramento, California from approximately October 5, 2022, to February 17, 2023. As an admissions coordinator, Claimant was paid a salary of \$70,000 per year. In this position, the Company classified Claimant as an “exempt” employee, ineligible to receive overtime pay or to enjoy the protections of the applicable IWC Wage Order. Claimant would typically work from 8:30 or 9:00 a.m. until 4:00 or 4:30 p.m. but was not required to clock in and out for her shifts. Claimant primarily performed non-managerial tasks and did not exercise discretion or independent judgment in performing any of her duties. Accordingly, Claimant should have been classified as a “non-exempt” employee. Claimant therefore alleges that the Company misclassified her and, on information and belief, other aggrieved employees as “exempt” when in fact Claimant and other aggrieved employees should have been classified as “non-exempt” employees, entitled to the full protections of both the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

As a result of its misclassification of Ms. Bowens and other aggrieved employees as “exempt” employees, Trestles denied Ms. Bowens and, on information and belief, other aggrieved employees in California specific rights afforded to them under the California Labor Code and the applicable IWC Wage Order. For example, the Company failed to provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums, failed to timely pay them all minimum, regular, and overtime wages owed, failed to reimburse them for all business expenses, failed to maintain accurate records, failed to issue accurate itemized wage statements, and failed to timely pay all wages due during and upon separation of employment. Upon information and belief, aggrieved employees classified as non-exempt also suffered these same violations.

During her employment with Trestles, Claimant never took a meal period or rest period, nor was she ever paid a meal period or rest period premium wage for all the days a meal period or rest period was missed. Due to the workload and staffing constraints, Claimant and, on information and belief, other aggrieved employees would often be required to continue working at all times without taking breaks, regardless of whether they were on a meal period, rest period, or otherwise off the clock.

The Company also failed to pay Claimant and all other aggrieved employees the correct amount of minimum, regular, and overtime wages owed because the Company did not require Claimant and, on information and belief, other aggrieved misclassified employees to clock in or out, so the Company did not keep track of all hours worked. Claimant was also required to respond to emails, pull reports, and complete other tasks while at home after completing her usual shifts. For example, Claimant was required to submit a census report every morning by 9:00 a.m., which would require her to work either the prior

evening following her shift, or in the morning before her shift. Upon information and belief, non-exempt aggrieved employees were also not paid for all hours worked.

Further, Claimant was required to use her personal cell phone during and before/after work hours to complete necessary business tasks such as communicating with her supervisor and calling insurance companies to complete her onboarding tasks for new patients. Claimant never received reimbursement for the required use of her personal cell phone for work related purposes. Upon information and belief, the Company did not reimburse any aggrieved employees for use of their personal cell phones despite routinely communicating with employees about work-related issues on their personal devices.

### **WILLFUL MISCLASSIFICATION OF INDIVIDUALS AS EXEMPT EMPLOYEES**

(The “Applicability of Order” section of the applicable IWC Wage Order)

Section 1 of the applicable IWC Wage Order provides the requirements necessary in determining whether an employee’s duties qualify for an exemption from the protections afforded in Sections 3 through 12 of the Order. According to the IWC Wage Order, an exempt employee means any employee “[w]ho is primarily engaged in duties which meet the test of the exemption.” Section 2 of the IWC Order defines “primarily” to mean more than one-half the employee’s work time.

The IWC Wage Order further provides:

Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer’s realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

Accordingly, to determine whether employees are properly classified as exempt employees, courts evaluate the realistic requirements of a job, as opposed to the job description. See *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 802 (1999). Substantial consideration is afforded to how an employee actually spends his or her time working. *Id.* Only where an employee spends more than 50% of their time working on exempt duties is he or she appropriately deemed an exempt employee. See e.g. *Ramirez v. ISB Mehta Corp.*, No. H042072, 2017 WL 750565 (Cal. Ct. App. Feb. 27, 2017) (holding that a restaurant manager who spent less than 50 percent of his workweek on non-exempt tasks is an exempt employee under California law).

As set forth above, Trestles violated the IWC Wage Order and the Labor Code by willfully misclassifying Claimant and other aggrieved employees as exempt employees. Claimant and, on information and belief, other aggrieved employees spent more than 50% of their work time on non-exempt duties and thus were non-exempt employees within the definition of the IWC Wage Order. Claimant did not exercise discretion or independent judgment in the execution of her tasks; all actions were completed pursuant to standardized procedures and/or had to be approved by her superiors.

Claimant will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 1197 states, "[t]he 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." Labor Code § 1197.1 provides that, "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203..." Section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 510 states, "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code § 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code § 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." Labor Code § 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation." The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise."

Labor Code § 1194(a) states, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid

balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 223 states, "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Labor Code § 225.5 provides that, "...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty" of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to timely pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as required by law. Because Claimant and other aggrieved employees were misclassified as exempt employees when they were actually acting as non-exempt employees, they did not receive proper protections and benefits of the laws governing the compensation for minimum wages, regular wages, and overtime wages. As a result, Trestles improperly paid Claimant and other aggrieved employees on a salary basis, failed to pay Claimant and other aggrieved employees for all hours suffered or permitted to work such as when Claimant would be required to complete tasks at home before and after her shifts, and failed to timely pay for all hours worked over eight hours in a day and/or over forty hours in a week. Upon information and belief, non-exempt aggrieved employees were also deprived of the same Labor Code protections and were also not compensated all minimum, regular, and overtime wages rightfully owed, because they were required to work through meal periods and rest periods, or otherwise required to perform work while off the clock. Thus, Claimant and other aggrieved employees were not timely compensated minimum, regular, and overtime wages owed and earned because they were not timely compensated for all hours suffered or permitted to work. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 204, 226.7, 512, 558, and the "Meal Periods" section of the applicable IWC Wage Order)

Labor code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally complies with the requirements of California Law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1036 (2012).) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.*, at 1040).

Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that

are due payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1103-1114 (2007).)

Labor Code § 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company misclassified Claimant and other aggrieved employees as exempt employees when they should have been classified as non-exempt and therefore subject to protections under the IWC Wage Orders and Labor Code, including the right to take meal breaks. However, the Company had and continues to have a policy and practice of failing to provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least thirty-minutes before the start of their sixth hour of work, and/or a second off-duty, thirty-minute meal period when they worked in excess of ten hours. Upon information and belief, employees who were properly classified as non-exempt suffered from the same policies and practices. Claimant and, on information and belief, other aggrieved employees were required to work through meal periods, and/or were required to skip meal periods, be interrupted, or take breaks of fewer than thirty minutes if necessitated by the employee’s workload. Consequently, Claimant and other aggrieved employees were entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Company. Claimant will pursue all available remedies against the Company, for its violations of the Labor Code on behalf of herself and all aggrieved employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR PAY PREMIUM  
WAGES FOR NON-COMPLIANT REST PERIODS**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 273 (2016).)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company misclassified Claimant and other aggrieved employees as exempt employees when they should have been classified as non-exempt and therefore subject to protections under the IWC Wage Orders and Labor Code, including the right to take rest breaks. However, the Company had and continues to have a policy and practice of failing to authorize and permit Claimant and, on information and belief, other aggrieved employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Upon information and belief, employees who were properly classified as non-exempt suffered from the same policies and practices. Claimant and, on information and belief, other aggrieved employees were required to work through rest periods, and/or were required to skip rest periods, be interrupted, or take breaks of fewer than ten minutes if necessitated by the employee's workload. Therefore, Claimant and other aggrieved employees were entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all aggrieved employees to the extent allowed by law.

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**FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

(Labor Code § 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, “[a]n 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.”

Additionally, the “Uniforms and Equipment” section of the applicable IWC Wage Order states that “When 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...”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and other aggrieved employees use their personal cell phones during and before/after work hours to complete necessary business tasks such as communicating with supervisors and calling insurance companies to complete onboarding tasks for new patients. These tasks were required to be completed in the discharge of their employment duties, and Claimant and, on information and belief, other aggrieved employees were not reimbursed for such use of their personal phones. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., 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.”

The “Records” section of the applicable IWC Wage Order requires an employer to “semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney's fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company misclassified Claimant and other aggrieved employees as exempt employees when they should have been classified as non-exempt and therefore subject to protections under the IWC Wage Orders and Labor Code, including the right to accurate wage statements that include all of the information required by section 226(a). Upon information and belief, employees who were properly classified as non-exempt suffered from these same policies and practices as well. The Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and overtime hours worked, the correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

#### **FAILURE TO MAINTAIN ACCURATE RECORDS**

(Labor Code §§ 1174, 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments."

The "Records" section of the applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and the applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay for each hour worked, and the total wages earned and paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

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**FAILURE TO TIMELY PAY ALL WAGES DUE**

(Labor Code §§ 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the “Minimum Wages” section of the applicable IWC Wage Order)

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.” The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 states, in pertinent part, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code § 203(a) states, in pertinent part, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 210 provides that, “every person who fails to pay the wages of each employee as provided in Section[...]...204...shall be subject to a penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Company misclassified Claimant and other aggrieved employees as exempt employees when they should have been classified as non-exempt and therefore subject to

protections under the IWC Wage Orders and Labor Code. Upon information and belief, employees who were properly classified as non-exempt suffered from these same policies and practices as well. The Company violated the aforementioned Labor Code sections by not timely paying to Claimant and other aggrieved employees all minimum and overtime wages and meal and/or rest break premium wages within the required time during and upon separation of their employment. As a result of the Company's failure to comply with these Labor Code provisions, the Company owes waiting time penalties to Claimant and other aggrieved employees, which it has not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND THE APPLICABLE  
IWC WAGE ORDER**

(Labor Code §§ 210, 255.5, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states:

Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and all aggrieved employees all minimum, regular, and overtime wages for all time actually worked; failing to provide meal and rest periods or paying meal and rest period premium wages in lieu thereof; failing to reimburse for all necessary business expenses; failing to furnish accurate itemized wage statements; failing to maintain accurate employee records; and failing to pay all waiting time penalties owed, as required under the Labor Code and the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of herself and all aggrieved employees to the extent allowed by law.

**ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES**  
(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 et seq.)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 et seq., among others, give employees, such as Claimant, the right to recover in a civil action the full amount of

damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney's fees, and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and all other aggrieved employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

### **CONCLUSION**

Based on the foregoing, the Company has violated, and will continue to violate, the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other aggrieved employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all aggrieved employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other aggrieved employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Kuner', with a stylized flourish at the end.

Alex Kuner