

Carolyn Hunt Cottrell (SBN 166977)
Caroline N. Cohen (SBN 278154)
Andrew Weaver (SBN 318935)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
ccohen@schneiderwallace.com
aweaver@schneiderwallace.com

Assigned for All Purposes
Judge William Claster
Dept. CX104

*Attorneys for Plaintiff, on behalf the putative
Class Members, the State of California and the
Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

CLAIRYTHA FACIO, on behalf of herself, the
putative Class Members, the State of California
and the Aggrieved Employees,

Plaintiff,

vs.

KPC HEALTHCARE, INC., ORANGE COUNTY
GLOBAL MEDICAL CENTER, INC. and DOES
1-100, INCLUSIVE,

Defendants.

Case No. 30-2023-01338916-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF:**

- (1) Failure to Pay Minimum Wages (Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1 and 1198);**
- (2) Failure to Pay Overtime Wages (Labor Code § 510);**
- (3) Failure to Provide and/or Make Available Meal Periods (Labor Code §§ 226.7 and 512);**
- (4) Failure to Authorize and Permit and/or Make Available Rest Periods (Labor Code § 226.7);**
- (5) Failure to Reimburse for Necessary Business Expenditures (Labor Code § 2802);**
- (6) Failure to Provide Timely and Accurate Itemized Wage Statements (Labor Code §§ 226, 226.3 and 226.6);**
- (7) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);**
- (8) Penalties Pursuant to § 2699(a) of the Private Attorneys General Act; and**
- (9) Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

DEMAND FOR JURY TRIAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2. This is a class and representative action against Defendants to challenge its policies and practices of: (1) failing to pay Plaintiff, putative Class Members, and Aggrieved Employees minimum wage for all hours worked; (2) failing to pay Plaintiff, putative Class Members and Aggrieved Employees overtime wages; (3) failing to authorize and permit Plaintiff, putative Class Members, and Aggrieved Employees to take meal breaks as required under California law and failing to pay premium compensation for non-compliant meal breaks; (4) failing to authorize and permit Plaintiff, putative Class Members, and Aggrieved Employees to take rest breaks as required under California law and failing to pay premium compensation payment for non-compliant rest periods; (5) failing to reimburse Plaintiff, putative Class Members, and Aggrieved Employees for business expenditures as required under California law; (6) failing to provide Plaintiff, putative Class Members and Aggrieved Employees accurate, itemized wage statements; (7) failing to timely pay Aggrieved Employees all wages owed upon separation from employment; and (8) unfair business practices.

4. Defendants are also liable for violation the Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.* (“UCL”).

///

PARTIES

6. Plaintiff, the putative Class Members and Aggrieved Employees are current and former non-exempt hourly workers employed by Defendants as healthcare workers, including but not limited to phlebotomy technicians in the State of California.

7. Plaintiff Facio is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California.

8. Plaintiff Facio has been employed by Defendants as a phlebotomy technician in Orange, California from approximately November 11, 2021 to the present.

9. Plaintiff is informed, believes, and based thereon alleges that Defendant KPC Healthcare is a Nevada corporation headquartered in Santa Ana, California. Defendant KPC Healthcare is registered to do business in California, does business in the State of California and employs and/or employed hourly, non-exempt employees, including Plaintiff, putative Class Members, and Aggrieved Employees in the State of California. Defendant KPC Healthcare may be served with process by serving it registered agent, Corporation Service Company which will do business in California as CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150 N, Sacramento, CA 95833.

10. Plaintiff is informed, believes, and based thereon alleges that Defendant Orange County Global is a California corporation headquartered in Santa Ana, California. Defendant Orange County Global is registered to do business in California, does business in the State of California and employs and/or employed hourly, non-exempt employees, including Plaintiff, putative Class Members, and Aggrieved Employees in the State of California. Defendant Orange County Global may be served with process by serving its registered agent, Corporation Service Company which will do business in California as CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150 N, Sacramento, CA 95833.

11. Defendants employ and/or employed Plaintiff, putative Class Members and Aggrieved Employees because Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff, putative Class Members, and Aggrieved Employees.

1 12. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
2 and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as
3 agents and/or employees, and/or under the direction and control of each of the other, and that said acts
4 and failures to act were within the course and scope of said agency, employment, and/or direction and
5 control.

6 13. Plaintiff is informed, believes, and thereon alleges, that each and all of the acts and
7 omissions alleged herein were performed by, and/or are attributable to, Defendants, acting as the agent
8 or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all
9 Defendants were in accordance with, and represent, the official policy of Defendants.

10 14. At all relevant times, Defendants, acted within the scope of such agency or
11 employment, or ratified each and every act or omission complained of herein. At all relevant times,
12 Defendants, and each of them, aided and abetted the acts and omissions of each and all the other
13 Defendants in proximately causing the damages herein alleged.

14 15. At all relevant times, Defendants have done business under the laws of the State of
15 California, have had places of business in California, including in this judicial district, and have
16 employed putative Class Members and Aggrieved Employees in this judicial district. At all relevant
17 times, Defendants are "person[s]" as defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code §
18 17201. Defendants are also "employer[s]" within the meaning of the Labor Code and IWC Wage
19 Orders.

20 **SUBJECT MATTER JURISDICTION AND VENUE**

21 16. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §395(a). Defendants
22 conduct business, have a jobsite, and employ Plaintiff and putative Class Members in the County, and
23 as a result, the causes of action asserted arose in whole or in part in the County.

24 17. This Court has jurisdiction over Plaintiff's claims pursuant to the California Labor
25 Code, Business and Professions Code, and IWC Wage Orders. This Court has jurisdiction over
26 Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendants
27 because Defendants are companies authorized to do business in California, in fact do business in the
28 State of California, and employ workers in the State of California.

FACTUAL ALLEGATIONS

18. Defendant KPC Healthcare Inc. is engaged in various healthcare services, and operates seven medical centers, including Defendant Orange County Global Medical Center, Inc.

19. Defendant Orange County Global is a hospital in Santa Ana, California.

20. Plaintiff has worked for Defendants as a phlebotomist in Santa Ana, California from approximately November 8, 2021 to the present. Plaintiff is classified as an hourly, non-exempt employee and is paid an hourly rate of \$23.77 paid bi-weekly.

21. Like Plaintiff, the putative Class Members and Aggrieved Employees are current and former non-exempt employees of Defendants in California. Plaintiff is informed, believes, and thereon alleges that the putative Class Members and Aggrieved Employees perform work similar to Plaintiff.

22. Although Plaintiff's shifts vary in length, Plaintiff usually works between eight and fourteen hours per shifts, three to seven shifts per week. Plaintiff's weekly hours vary, but on average, Plaintiff works approximately twenty-four to sixty hours per week or more. Such time is exclusive of all time worked off-the-clock, as alleged herein.

23. Plaintiff is informed, believes, and thereon alleges that Defendants employ, and have employed, hundreds of non-exempt hourly workers in the State of California, including but not limited to phlebotomists, radiology technicians, medical lab technicians, and other employees with similar job duties.

24. Plaintiff is informed, believes, and based thereon, alleges that putative Class Members and Aggrieved Employees are employed by Defendants in a similar manner throughout this County.

25. Putative Class Members and Aggrieved Employees perform their jobs under Defendants' supervision using materials and technology approved and supplied by Defendants.

26. Putative Class Members and Aggrieved Employees are required to follow and abide by Defendants' common work, time, and pay policies and procedures in the performance of their job duties.

27. At the end of each pay period, putative Class Members, and Aggrieved Employees receive wages from Defendants that are determined by common systems and methods that Defendants select and control.

1 28. Plaintiff is informed, believes, and thereon alleges that Defendants’ policies and
2 practices have at all relevant times been similar for Plaintiff, putative Class Members, and Aggrieved
3 Employees.

4 29. Defendants maintain a policy and/or practice of failing to properly compensate
5 Plaintiff, putative Class Members, and Aggrieved Employees for work related tasks performed while
6 “off-the-clock,” giving rise to minimum wage and overtime violations.

7 30. Throughout the relevant time period, Defendants fail to compensate for all hours
8 worked, including overtime and minimum wages, for the time spent working off-the-clock. Plaintiff,
9 putative Class Members, and Aggrieved Employees are required to undergo temperature checks before
10 clocking in. Plaintiff, putative Class Members, and Aggrieved Employees are required to wait in line
11 for up to ten minutes to complete a Covid-19 symptom screening and undergo a temperature check.
12 After completing the screening and undergoing a temperature check, Plaintiff, putative Class
13 Members, and Aggrieved Employees are then required to walk an additional three to five minutes to
14 the other side of the hospital to clock in. This is time under Defendants’ control that Plaintiff, putative
15 Class Members, and Aggrieved Employees are required to be compensated for. However, Defendants
16 fail to pay for any of this work time.

17 31. Additionally, Defendants fail to properly pay Plaintiff, putative Class Members, and
18 Aggrieved Employees overtime at their correct regular rate of pay. In addition to the overtime and
19 double overtime, Defendants also agree to pay Plaintiff and other full time putative Class Members
20 and Aggrieved Employees that work 80 hours a bonus for working beyond their tenth shift per pay
21 period. Specifically, Defendants agree to pay bonuses of at least \$75 for taking on extra shifts.
22 Defendants fail to compensate overtime wages based on the regular rate of pay, which varied from
23 pay period to pay period dependent on the Plaintiff’s, putative Class Members’, and Aggrieved
24 Employees’ bonus pay earnings.

25 32. As a result of these policies and/or practices, Plaintiff, putative Class Members, and
26 Aggrieved Employees are denied compensation for all hours worked, including minimum wages and
27 overtime.

28 ///

1 33. As a matter of common policy and/or practice, Defendants systematically require
2 Plaintiff, putative Class Members, and Aggrieved Employees to either take their meal break after the
3 fifth hour of work or skip their meal breaks. Due to chronic understaffing, Plaintiff, putative Class
4 Members, and Aggrieved Employees routinely work ten or more hours a day, yet Defendants do not
5 permit Plaintiff, putative Class Members, and Aggrieved Employees to take a second meal break as
6 mandated by law.

7 34. Further, as a matter of policy, Defendants routinely fail to make available or permit
8 Plaintiff, putative Class Members, and Aggrieved Employees to take state-mandated rest breaks of at
9 least ten minutes per every four hours of work. Due to chronic understaffing by Defendants, and the
10 high patient load, there are frequently not enough employees available to cover Plaintiff, putative Class
11 Members, and Aggrieved Employees' patients and enable them to take breaks. Ultimately, Plaintiff
12 putative Class Members, and Aggrieved Employees are given too much work and are too busy during
13 the day to have time to take bona fide rest breaks.

14 35. As a result of these policies and practices, Plaintiff, putative Class Members, and
15 Aggrieved Employees are systematically denied duty-free, uninterrupted, and timely 30-minute meal
16 periods during which they should be completely relieved of any duty, by the end of the fifth hour of
17 work, and again, by the tenth hour of work.

18 36. Similarly, Plaintiff, putative Class Members, and Aggrieved Employees are also
19 systematically denied duty-free, uninterrupted, and timely 10-minute rest breaks before the fourth hour
20 of work, and again, before the eighth hour of work.

21 37. Despite systematically failing to provide Plaintiff, putative Class Members and
22 Aggrieved Employees compliant meal breaks, Defendants do not always provide them with requisite
23 one hour of premium pay for each non-compliant meal break.

24 38. Plaintiff is informed, believes, and thereon alleges that all non-exempt hourly
25 employees of Defendants are subject to the same or similarly the same unlawful meal break policies
26 and practices.

27 ///

28 ///

1 39. Despite systematically failing to provide Plaintiff, putative Class Members and
2 Aggrieved Employees compliant rest breaks, Defendants do not provide them with requisite one hour
3 of premium pay for each non-compliant rest break.

4 40. Plaintiff is informed, believes, and thereon alleges that all non-exempt hourly
5 employees of Defendants are subject to the same or similarly the same unlawful rest break policies
6 and practices.

7 41. In addition, Defendants also fail to reimburse Plaintiff, putative Class Members, and
8 Aggrieved Employees for all necessary business expenditures. Defendants require Plaintiff, putative
9 Class Members, and Aggrieved Employees to use their personal cell phones to communicate
10 throughout the day. In practice, it is Plaintiff, putative Class Members and Aggrieved Employees who
11 pay out-of-pocket for the costs of using their cell phone even though it should be reimbursed under
12 California law.

13 42. Plaintiff is informed, believes, and based thereon, alleges that all non-exempt hourly
14 employees of Defendants are subject to the same or similarly the same unlawful business expenditures
15 policies and practices.

16 43. Defendants' failure to record all hours worked results in Defendants' failure to provide
17 Plaintiff, putative Class Members, and Aggrieved Employees with itemized accurate wage statements
18 as required by California law. Plaintiff, putative Class Members, and Aggrieved Employees receive
19 wage statements that do not reflect all hours worked, including overtime. Additionally, Plaintiff and
20 Aggrieved Employees received wage statements that do not reflect premium pay for non-compliant
21 meal breaks and rest periods.

22 44. Defendants' common course of wage-and-hour abuse results in routinely failing to
23 maintain true and accurate records of the hours worked by Plaintiff, putative Class Members and
24 Aggrieved Employees. As outlined above, Plaintiff, putative Class Members and Aggrieved
25 Employees do not receive one hour of premium pay for each missed meal and rest period and are not
26 paid for off-the-clock work during Covid-19 symptom screenings.

27 ///

28 ///

1 45. The wage statements Defendants provide are not accurate because they do not include
2 premium pay for non-compliant meal and rest periods in violation of California law, all hours actually
3 worked, or pay for such off-the-clock work.

4 46. Further, Defendants do not provide Aggrieved Employees who are former workers of
5 Defendants, including Plaintiff, with full payment of all wages during employment and following
6 separation from employment. At the time their employment ends, Aggrieved Employees are owed one
7 hour of premium pay for each noncompliant meal breaks and rest periods, whether their termination
8 was voluntary or involuntary; yet Defendants have failed to provide Aggrieved Employees with such
9 payments within the required time period. As a result, and pursuant to California Labor Code,
10 Defendants are subject to waiting time penalties.

11 47. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
12 has been widespread, repeated, and consistent as to all putative Class Members and Aggrieved
13 Employees throughout Defendants' operations in the State of California.

14 **CCP § 382 CLASS ACTION ALLEGATIONS**

15 48. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 49. Plaintiff brings causes of action as a class action on behalf of herself and all others
18 similarly situated pursuant to Civil Code of Procedure § 382. The California Class that Plaintiff seeks
19 to represent is defined as follows:

20 All current and former hourly, non-exempt workers employed by KPC
21 Healthcare, Inc. and/or Orange County Global Medical Center
22 throughout California any time starting four years prior to the filing of
23 this Complaint until resolution of this action.

24 50. This action has been brought and may properly be maintained as a class action under
25 Civil Code of Procedure § 382 there is a well-defined community of interest in the litigation and the
26 proposed putative class is easily ascertainable.

27 51. **Numerosity**: The potential members of the Class are so numerous that joinder of all
28 the members of the class is impracticable. Plaintiff is informed and believes that the number of putative
Class members exceeds 100. This volume makes bringing the claims of each individual member of

1 the Class before this Court impracticable. Likewise, joining each individual member of the Class as a
2 plaintiff in this action is impracticable. Furthermore, the identities of the Class will be determined
3 from Defendants' records, as will the compensation paid to each of them. As such, a class action is a
4 reasonable and practical means of resolving these claims. To require individual actions would
5 prejudice the Class and Defendants.

6 52. **Commonality**: There are questions of law and fact common to Plaintiff and the Class
7 that predominate over any questions affecting only individual members of the Class. These common
8 questions of law and fact include, but are not limited to:

- 9 a. Whether Defendants fail to compensate putative Class Members for all hours
10 worked, including minimum wages and overtime compensation, in violation of the
11 Labor Code and Wage Orders;
- 12 b. Whether Defendants have a policy and/or practice of requiring putative Class
13 Members to be in the control of Defendants, spend time primarily for the benefit
14 of Defendants, and work for Defendants off-the-clock and without compensation;
- 15 c. Whether Defendants fail to authorize and permit, make available, and/or provide
16 putative Class Members with compliant meal periods to which they are entitled in
17 violation of the Labor Code and Wage Orders;
- 18 d. Whether Defendants fail to authorize and permit, make available, and/or provide
19 putative Class Members with compliant rest periods to which they are entitled in
20 violation of the Labor Code and Wage Orders;
- 21 e. Whether Defendants fail to reimburse putative Class Members for necessarily
22 incurred business expenditures in violation of Labor Code;
- 23 f. Whether Defendants fail to provide putative Class Members with timely, accurate
24 itemized wage statements in violation of the Labor Code and Wage Orders;
- 25 g. Whether Defendants violate Business and Professions Code §§ 17200 *et seq.*, by:
26 (a) failing to compensate putative Class Members for all hours worked,
27 including at minimum wages and overtime compensation;
28 (b) failing to authorize and permit, make available, and/or provide putative

Class Members with compliant meal periods to which they are entitled;
(c) failing to authorize and permit, make available, and/or provide putative
Class Members with compliant rest periods to which they are entitled;
(d) failure to reimburse putative Class Members for necessarily incurred
business expenditures;
(e) failing to provide putative Class Members with timely, accurate itemized
wage statements.

h. The proper formula for calculating restitution, damages and penalties owed to
Plaintiff and the Class as alleged herein.

53. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Defendants' common course of conduct in violation of law as alleged herein caused Plaintiff and putative Class Members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

54. **Adequacy of Representation:** Plaintiff seeks relief for state law violations perpetrated by Defendants. In that sense, Plaintiff does not have any conflicts of interest with other putative Class Members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the putative Class Members.

55. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each proposed Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. 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.

56. In the alternative, the Class may be certified because the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication

1 with respect to individual members of the Class which would establish incompatible standards of
2 conduct for Defendants.

3 57. If each individual Class Member was required to file an individual lawsuit, Defendants
4 would necessarily gain an unconscionable advantage because Defendants would be able to exploit and
5 overwhelm the limited resources of each member of the Class with Defendants' vastly superior
6 financial and legal resources.

7 58. Requiring each individual Class Member to pursue an individual remedy would also
8 discourage the assertion of lawful claims by the putative Class Members who would be disinclined to
9 pursue these claims against Defendants because of an appreciable and justifiable fear of retaliation
10 and permanent damage to their lives, careers and well-being.

11
12 **FIRST CAUSE OF ACTION**
13 **Failure to Pay Minimum Wages**
14 **Pursuant to Labor Code §§ 1182.11, 1182.12, 1194, 1197,**
15 **1197.1 and 1198**
16 **(On Behalf of Plaintiff and the Putative Class Against Defendants)**

17 59. Plaintiff re-alleges and incorporate the foregoing paragraphs as though fully set forth
18 herein.

19 60. During the applicable statutory period, California Labor Code Sections 1182.11,
20 1182.12 and 1197 as well as the IWC Wage Order No. 4-2001(4) were in full force and effect and
21 require that the putative Class Members receive the minimum wage for all hours worked at a rate not
22 less than \$12.00 per hour from January 1, 2019 to December 31, 2019; at a rate not less than \$13.00
23 per hour from January 1, 2020 to December 31, 2020; at a rate not less than \$14 per hour from January
24 1, 2021 to December 31, 2021; at a rate not less than \$15.00 per hour from January 1, 2022 to
25 December 31, 2022; and at a rate not less than \$15.50 per hour commencing on January 1, 2023.

26 61. Labor Code § 1197.1 provides, in relevant part:

27 (a) Any employer or other person acting either
28 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 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 Section 1194.2, and any applicable penalties imposed pursuant to Section 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 Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

62. California Labor Code §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.

63. IWC Wage Order 4-2001(2)(K) defines hours worked 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."

64. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

65. California Labor Code Section 1194.2 provides that, in any action under Section 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

66. Defendants willfully engaged in and continue to engage in a policy and practice of not compensating Plaintiff and putative Class Members for all hours worked, including minimum wage, or spent in Defendants' control. Defendants require Plaintiff and putative Class Members to work off-

1 the-clock without compensation. In other words, Plaintiff and putative Class Members are forced to
2 perform work for the benefit of Defendants without pay.

3 67. Plaintiff and putative Class Members are denied minimum wage and overtime
4 compensation, which they are lawfully owed pursuant to California Labor Code § 1182.12.
5 California's hourly minimum wage for employers with twenty-six (26) or more employees is currently
6 \$15.50 effective January 1, 2023.

7 68. Defendants regularly require Plaintiff and putative Class Members to complete work
8 off-the-clock, without compensation. For instance, on information and belief, Defendants instruct
9 Plaintiff and putative Class Members to wait in line and go through temperature checks and a Covid-
10 19 symptoms screening before the beginning of each shift, i.e., before clocking in. It takes Plaintiff
11 and putative Class Members up to ten minutes to go through the temperature check line, complete the
12 Covid-19 symptoms screening, undergo such temperature check before their shift starts. After
13 completing the screening and undergoing a temperature check, Plaintiff and putative Class Members
14 are required to walk an additional three to five minutes to the other side of the hospital to clock in.
15 This time is compensable as a matter of law.

16 69. As a result, Defendants fail to track Plaintiff and putative Class Members' actual hours
17 worked, and consequently fail to pay Plaintiff and putative Class Members for all hours worked,
18 including minimum wage. In violation of California law, Defendants knowingly and willfully refuse
19 to perform their obligations to provide Plaintiff and putative Class Members with at least minimum
20 wage compensation for all time worked.

21 70. Therefore, Defendants committed, and continue to commit, the acts alleged herein
22 knowingly and willfully, and in conscious disregard of the Plaintiff and putative Class Members'
23 rights. Plaintiff and putative Class Members are thus entitled to recover nominal, actual, and
24 compensatory damages, plus interest, attorneys' fees, expenses, and costs of suit.

25 71. Defendants' unlawful compensation scheme denies Plaintiff and the putative Class
26 Members the minimum wages to which they are entitled under the law. As explained above, Plaintiff
27 and putative Class Members are routinely subject to Defendants' control without pay and perform work
28 for which they are not compensated even at the statutory minimum wage, as determined by the IWC.

1 72. Under California Labor Code Section 218.6 and Civil Code Section 3287(a), Plaintiff
2 and putative Class Members are entitled to recover pre-judgment interest on wages earned, but not
3 paid every pay period.

4 73. As a direct and proximate result of the unlawful acts and omissions of Defendants,
5 Plaintiff and members of the putative Class have been deprived of minimum wages in an amount to
6 be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
7 interest thereon, attorneys' fees, and costs of suit under California Labor Code Sections 1194, 1194.2
8 and 1197.1.

9 74. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

10
11 **SECOND CAUSE OF ACTION**
12 **Failure to Pay Overtime Wages**
13 **Pursuant to Labor Code § 510**
14 **(On Behalf of Plaintiff and Putative Class Against All Defendants)**

15 75. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 76. Defendants did not compensate Plaintiff and putative Class Members with the
18 appropriate overtime rate, as required by California law.

19 77. Labor Code § 510 provides, in pertinent part, that:

20 Eight hours of labor constitutes a day's work. Any work in excess of
21 eight hours in one workday and any work in excess of 40 hours in any
22 one workweek and the first eight hours worked on the seventh day of
23 work in any one workweek shall be compensated at the rate of no less
24 than one and one-half times the regular rate of pay for an employee. Any
25 work in excess of 12 hours in one day shall be compensated at the rate
26 of no less than twice the regular rate of pay for an employee. In addition,
27 any work in excess of eight hours on any seventh day of a workweek
28 shall be compensated at the rate of no less than twice the regular rate of
pay of an employee.

29 78. The IWC Wage Order 4-2001(3)(A)(1) state:

30 The following overtime provisions are applicable ... employees shall not
31 be employed more than eight (8) hours in any workday or more than 40
32 hours in any workweek unless the employee receives one and one-half
33 (1 ½) times such employee's regular rate of pay for all hours worked over
34 40 hours in the workweek. Eight (8) hours of labor constitutes a day's
35 work. Employment beyond eight (8) hours in any workday or more than
36 six (6) days in any workweek is permissible provided the employee is

compensated for such overtime at not less than: . . . One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and . . . [d]ouble the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

79. Labor Code § 1194(a) provides that:

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 attorneys' fees, and costs of suit.

80. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

81. Defendants regularly do not compensate Plaintiff and putative Class Members for their overtime hours. For instance, Plaintiff and putative Class Members do not receive overtime compensation for time spent waiting in temperature check lines and undergoing temperature checks, when the hours worked are in excess of eight (8) hours per day and forty (40) hours per week.

82. Defendants fail to properly pay Plaintiff and putative Class Members overtime at their correct regular rate of pay. In addition to the overtime and double overtime, Defendants also agree to pay Plaintiff and other full time putative Class Members that worked 80 hours a bonus for working beyond their tenth shift per pay period. Specifically, Defendants agree to pay bonuses of at least \$75 for taking on extra shifts. Defendants fail to compensate overtime wages based on the fluctuations from pay period to pay period dependent on the certain Plaintiff's and putative Class Members' bonus pay earnings. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiff and putative Class Members in amounts to be determined according to proof at time of trial.

83. Defendants are liable to Plaintiff and putative Class Members alleged herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

84. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Authorize and Permit and/or Make Available Meal Periods
Pursuant to Labor Code §§ 226.7 and 512
(On Behalf of Plaintiff and Putative Class Against All Defendants)

85. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

86. Defendants systematically fail to authorize, permit and/or make available compliant meal periods to Plaintiff and putative Class Members. Despite long workdays often lasting at least ten hours, Plaintiff and putative Class Members are systematically denied the opportunity to take a compliant meal break.

87. Plaintiff and putative Class Members are not always paid one hour of premium pay for the missed or non-compliant meal breaks. Due to chronic understaffing, Plaintiff and putative Class Members routinely work ten or more hours a day, yet Defendants do not permit Plaintiff and putative Class Members to take a second meal break as mandated by law.

88. As a result, Defendants do not provide Plaintiff and putative Class Members with duty-free, uninterrupted, and timely thirty-minute meal periods during which Plaintiff and putative Class Members should be completely relieved of any duty, by the end of the fifth hour of work, and again, by the end of the tenth hour of work.

89. Plaintiff and putative Class Members are not provided with one hour of premium pay for each instance they do not receive a compliant meal break.

90. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants to authorize and permit meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and the Wage Orders prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period [...] the employee is considered “on duty” and the meal [...] period is counted as time worked under the applicable Wage Orders.

1 91. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
2 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
3 employee one hour of pay at the employee's regular rate of compensation for each workday that the
4 meal period was not authorized and permitted.

5 92. Despite these requirements, Defendants have knowingly and willfully refused to
6 perform their obligations to authorize and permit and/or make available to Plaintiff and putative Class
7 Members the ability to take the off-duty meal periods to which they are entitled.

8 93. Defendants have also failed to pay Plaintiff and putative Class Members one hour of
9 pay for each day an off-duty meal period was denied. Defendants' conduct described herein violates
10 Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and putative
11 Class Members are entitled to compensation for the failure to authorize and permit and/or make
12 available meal periods, plus interest, attorneys' fees, expenses and costs of suit.

13 94. As a proximate result of the aforementioned violations, Plaintiff and putative Class
14 Members have been damaged in an amount according to proof at time of trial.

15 95. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

16
17 **FOURTH CAUSE OF ACTION**
18 **Failure to Authorize and Permit and/or Make Available Rest Periods**
19 **Pursuant to Labor Code § 226.7**
20 **(On Behalf of Plaintiff and Putative Class Against All Defendants)**

21 96. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 97. Defendants systematically fail to authorize, permit and/or make available compliant
24 rest periods to Plaintiff and putative Class Members. Despite long workdays often lasting at least ten
25 hours, Plaintiff and putative Class Members are systematically denied the opportunity to even take
26 one compliant rest break.

27 98. Plaintiff and putative Class Members are not paid one hour of premium pay for their
28 missed or non-compliant rest breaks. Due to chronic understaffing by Defendants, and the high patient
load, there are frequently not enough employees available to cover Plaintiff and putative Class
Members' patients and enable them to take breaks.

1 99. As a result, Defendants do not provide Plaintiff and putative Class Members with duty-
2 free, uninterrupted, and timely ten-minute rest periods during which Plaintiff and putative Class
3 Members should be completely relieved of any duty, by the end of the fourth hour of work, and again,
4 by the end of the eighth hour of work.

5 100. Labor Code § 226.7(b) and the applicable Wage Orders require Defendants to authorize
6 and permit rest periods to their employees. Labor Code § 226.7 and the Wage Orders require
7 employers to authorize and permit employees to take ten minutes of net rest time per four hours or
8 major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless
9 the employee is relieved of all duty during the ten-minute rest period, the employee is considered “on
10 duty” and the rest period is counted as time worked under the applicable Wage Orders.

11 101. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer must pay
12 an employee who is denied a required rest period one hour of pay at the employee’s regular rate of
13 compensation for each workday that the rest period was not authorized and permitted and/or not made
14 available.

15 102. Despite these requirements, Defendants have knowingly and willfully refused to
16 perform their obligations to authorize and permit and/or make available to Plaintiff and putative Class
17 Members the off-duty rest periods to which they are entitled.

18 103. Defendants also fail to pay Plaintiff and putative Class Members one hour of pay for
19 each day an off-duty rest period was denied. Defendants’ conduct described herein further violates
20 Labor Code §§ 226.7. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and putative Class
21 Members are also entitled to compensation for the failure to authorize and permit and/or make
22 available rest periods, plus interest, attorneys’ fees, expenses and costs of suit.

23 104. As a proximate result of the aforementioned violations, Plaintiff and putative Class
24 Members have been damaged in an amount according to proof at time of trial.

25 105. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION
Failure to Reimburse Business Expenditures
Pursuant to Labor Code § 2802
(On Behalf of Plaintiff and Putative Class Against All Defendants)

106. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

107. Defendants do not reimburse Plaintiff and putative Class Members for necessary business expenditures.

108. Labor Code § 2802 provides, in relevant part:

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. ... For the 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.

109. Defendants fail to reimburse Plaintiff and putative Class Members for all necessary business expenditures. Defendants requires Plaintiff and putative Class Members use their personal cell phones to communicate throughout the day. In practice, it is Plaintiff and putative Class Members who pay out-of-pocket for the costs of using their cell phone even though it should be reimbursed under California law. As a proximate result of this violation, Plaintiff and putative Class Members have been damaged in an amount according to proof at time of trial. Plaintiff and the putative Class Members are also entitled to recover penalties, interest, attorney’ fees, expenses, costs of suit, and/or other relief pursuant to statute.

110. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
Pursuant to Labor Code §§ 226, 226.3, and 226.6
(On Behalf of Plaintiff and Putative Class Against All Defendants)

111. Plaintiff realleges and incorporate the foregoing paragraphs as though fully set forth herein.

112. Defendants do not provide Plaintiff and putative Class Members with accurate itemized wage statements as required by California law.

113. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

114. The IWC Wage Orders establishes this requirement. (See IWC Wage Order 4-2001(7)(B).)

115. Labor Code § 226.3 provides, in relevant part:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

116. Labor Code § 226.6 provides, in relevant part:

Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court.

117. Labor Code § 226(e) provides:

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

118. Defendants do not provide timely, accurate itemized wage statements to Plaintiff and putative Class Members in accordance with Labor Code § 226(a) and the IWC Wage Orders. The wage statements Defendants provide to their employees, including Plaintiff and putative Class Members, do not accurately reflect premium payments for missed and noncompliant meal breaks and rest periods.

119. Defendants are liable to Plaintiff and the putative Class alleged herein for the amounts described above in addition to the civil penalties set forth below, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Labor Code § 226(e).

120. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Violation of California Business and Professions Code §§ 17200, *et seq.*
(On Behalf of Plaintiff and Putative Class Against All Defendants)

121. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

122. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

123. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

124. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

125. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 1182.11 1182.12, 1194, 1197, 1197.1, 1198, IWC Wage Order 4-2001 pertaining to payment of wages, including minimum wage, for all hours worked;
- b. violations of Labor Code § 510 and IWC Wage Order 4-2001 pertaining to overtime;
- c. violations of Labor Code §§ 226.7 and 512 and Wage Order 4-2001 pertaining to meal breaks;
- d. violations of Labor Code § 226.7 and Wage Order 4-2001 pertaining to rest breaks;
- e. violations of Labor Code § 2802 pertaining to reimbursement of business expenditures;
- f. violations of Labor Code § 226 regarding accurate, timely itemized wage statements.

126. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Business and Professions Code §§ 17200, *et seq.*

127. The acts and practices described above constitute unfair, unlawful, and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

128. Business and Professions Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

129. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and putative Class Members have suffered a loss of money and property, in the form of unpaid wages, which are due and payable to them.

///

130. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiff and putative Class Members are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of herself as well as others similarly situated. Plaintiff and putative Class Members seek and are entitled to unpaid wages, declaratory relief and all other equitable remedies owing to them.

131. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure §1021.5 and otherwise.

132. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of Plaintiff and All Aggrieved Employees against all Defendants)

133. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

134. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

135. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

136. Labor Code § 203 provides, in relevant part:

///

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employees
shall continue as a penalty from the due date thereof at the same rate
paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

4 137. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in
5 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

6 138. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
7 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
8 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
9 violation, or any willful or intentional violation, for each failure to pay each employee.

10 139. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
11 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
12 compliance with Labor Code §§ 201-202 and in the amounts established by Labor Code § 203.

13 140. Labor Code § 226(a) provides:

14 Every employer shall, semimonthly or at the time of each payment of
15 wages, furnish each of his or her employees, either as a detachable part
16 of the check, draft, or voucher paying the employee's wages, or
17 separately when wages are paid by personal check or cash, an accurate
18 itemized statement in writing showing (1) gross wages earned, (2) total
19 hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from
21 payment of overtime under subdivision (a) of Section 515 or any
22 applicable order of the Industrial Welfare Commission, (3) the number
23 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 his or her social security number, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

24 141. Labor Code § 226(e)(1) provides, in relevant part:

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

142. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

143. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1).

144. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation by Defendants of Labor Code § 225.5, 226.3, 256, and any other violation alleged herein that carries penalties under Labor Code § 2699(a).

145. Pursuant to Labor Code § 2699.3(a)(1) and (2), on May 8, 2023, Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. At least sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

146. Plaintiff seeks the aforementioned penalties on behalf of the State of California, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699.

147. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

148. Wherefore, Plaintiff requests relief as hereinafter provided.

NINTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of Plaintiff and All Aggrieved Employees against all Defendants)

149. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

150. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

151. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

152. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

153. IWC Wage Order 4-2001(2)(K) defines hours worked 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 for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.”

154. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

155. Labor Code § 510 provides, in relevant 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

156. Labor Code § 1182.12 provides, in relevant part:

...

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d). (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

...

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

....

157. Labor Code § 1197 provides:

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. This section does not change the applicability of local minimum wage laws to any entity.

158. Labor Code § 1194 provides, in relevant 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.

159. Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001 require Defendants to authorize, permit, and/or make available timely and compliant meal to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001 prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period, the employee is considered “on duty” and the meal period is counted as time worked under the applicable wage orders.

160. Labor Code § 226.7 and IWC Wage Order 4-2001 require Defendants to authorize and permit employees to take ten minutes of net rest period time per four hours, or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee is considered “on duty” and the rest period is counted as time worked under the applicable wage orders.

///

///

161. Labor Code § 2802 requires Defendants to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

162. Defendants' policies and practices result in meal and periods violations, and business expenditures reimbursement violations.

163. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each pay period in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for violations of Labor Code provisions including, but not limited to, Labor Code 204, 226.7, 512, 1198, 2802, IWC Wage Order 4-2001, and any other violation alleged herein does not carry penalties under Labor Code § 2699(a).

164. Pursuant to Labor Code § 2699.3(a)(1) and (2), on May 8, 2023, Plaintiff provided the LWDA with notice of her intention to file this claim. At least sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

165. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(1).

166. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

167. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
2. For a declaratory judgment that Defendants have violated the California Labor Code

and public policy as alleged herein;

3. For a declaratory judgment that Defendants have violated California Business and Professions Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;
4. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
5. For an order awarding Plaintiff and putative Class Members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, punitive damages, and all other sums of money owed to Plaintiff and putative Class Members, together with interest on these amounts, according to proof;
6. For an order awarding civil penalties to the full extent provided for by the PAGA;
7. For an order awarding Plaintiff and putative Class Members civil penalties pursuant to the California Labor Code, and provisions cited herein, with interest thereon;
8. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or other applicable law;
9. For all costs of suit;
10. For interest on any damages and/or penalties awarded, as provided by applicable law; and
11. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Carolyn H. Cottrell
Caroline N. Cohen
Andrew Weaver
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the putative Class,
the State of California and the Aggrieved Employees*

Date: July 26, 2023

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Date: July 26, 2023

De la

*Attorneys for Plaintiff, on behalf of the putative Class,
the State of California and the Aggrieved Employees*