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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CVRI2302492

TRACY PRYOR, AMANDA BRIGHT, on
behalf of themselves and all others similarly
situated

PLAINTIFFS,

v.

JOHN F. KENNEDY MEMORIAL
HOSPITAL, INC., a California Corporation;
and DOES 1 through 100, inclusive

DEFENDANTS.

Case No.: ~~5:23-cv-01328-JGB-SP~~

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. **Failure to Provide Meal Periods;**
2. **Failure to Provide Rest Periods;**
3. **Failure to Provide Accurate Wage Statements;**
4. **Failure to Reimburse Business Expenses;**
5. **Unlawful Wage Violations;**
6. **Unfair Competition**
7. **Private Attorneys General Act**

DEMAND FOR JURY

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I. INTRODUCTION

This is an action brought by Plaintiff TRACY PRYOR and Plaintiff AMANDA BRIGHT (“Plaintiffs”), on behalf of themselves and all others similarly situated, against JOHN F. KENNEDY HOSPITAL, a California Corporation (“JFK”), and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiffs seek damages, attorneys’ fees and costs of suit. Plaintiffs are informed and believes, and on that basis alleges, as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants failure to compensate Defendants’ hourly shift, non-exempt employees, who are members of SEIU Local 121RN, in compliance with California law. As more fully described herein, Defendants failed and continue to fail to provide legally compliant meal and rest breaks as well as engages in other Labor Code violations.

2. Plaintiffs seek among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiffs seek to represent the following Class:

All current and former hourly non-exempt employees of Defendants who were SEIU Local 121RN members during their employment with Defendants for the period of May 9, 2019 through the date of class certification (“the Class”).

3. This Court is the proper court and this action is properly filed in Riverside County and in this judicial district because Defendants do business in Riverside County and because Defendants’ obligations and liability arise therein.

4. Plaintiffs are current or former hourly non-exempt employee for Defendants and members of SEIU Local 121RN.

5. Plaintiffs are informed and believe, and thereon allege that JFK is a California corporation.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 100 are unknown to Plaintiffs, who therefore sues the DOE Defendants by fictitious names. Plaintiffs will amend this Complaint to show their true names

and capacities when they have been ascertained.

7. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiffs are informed and believe, and thereon allege, that at all times material hereto Defendants were and are the agents of each other.

8. Plaintiffs are informed and believe, and thereon allege, that Defendant DOES 1 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of Defendant Employers, and were acting on behalf of Defendant Employers in the payment of wages to Plaintiff.

9. At all relevant times alleged herein Plaintiffs were employed by Defendants, and Plaintiffs held a position with Defendants in Riverside County, State of California.

III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

10. Plaintiffs and the Class work and/or worked as hourly, non-exempt employees for Defendants and are also SEIU Local 121RN members.

11. Throughout the period of May 9, 2019 through the date of class certification (“Class Period”), Plaintiffs and all Class members were and are employees of Defendants, entitled to all of the protections afforded to employees under the Labor Code and applicable IWC Wage Orders.

12. Defendants’ primary business is the operation of a hospital. This work is performed in part by Plaintiffs and the Class members.

13. During the relevant time period, Defendants failed to pay all earned minimum wages and overtime wages owed due to Defendant’s unlawful rounding practice.

14. Throughout the Class Period, Defendants used an illegal rounding practice that failed to pay California non-exempt hourly employees for all hours worked, meaning the time during which Plaintiffs and the Class members were subject to the control of Defendants, including all the time Plaintiffs and the Class members were suffered or permitted to work,

whether or not required to do so.

15. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class members damages including, but not limited to, loss of wages and compensation.

16. Defendants are liable to Plaintiffs and the Class for failing to provide legally compliant meal and rest periods, and failure to pay all wages owed upon termination, and unfair competition.

17. Plaintiffs are members of and seek to be the representatives for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under, Defendant's unlawful employment practices as alleged herein.

18. Throughout the Class Period, Defendants failed to authorize and permit legally compliant meal breaks. Plaintiffs and Class members were assigned to and required to work shifts lasting over five (5) hours and were not provided nor allowed to take a timely, thirty (30) minute uninterrupted off-duty meal break without exemption. Plaintiffs and Class members were assigned to and/or required to work shifts lasting over ten (10) hours without a second, timely, thirty (30) minute uninterrupted off-duty meal break without exemption.

19. Throughout the Class Period, Defendants failed and continue to fail to pay for meal period violations at the correct regular rate of pay.

20. Throughout the Class Period, Defendants failed to authorize and provide paid, net 10-minute, duty-free rest periods compliant with the provisions of the California Labor Code and applicable Wage Order. Plaintiffs and Class members were assigned to and required to work shifts lasting over four (4) hours and were not provided nor allowed to take a non-captive paid ten-minute uninterrupted rest break during each four (4) hour work period, or major fraction thereof, at the direction of Defendants and/or with Defendants knowledge and acquiescence. Plaintiffs and the Class members were required to be on-duty during rest periods and respond to work via remote communication devices.

21. Throughout the Class Period, Defendants failed and continue to fail to pay for rest period violations at the correct regular rate of pay.

22. Throughout the Class Period, Defendants have engaged in numerous efforts to

1 collect or receive wages already paid to the Class under the allegation of past erroneous
2 overpayments. During the Class Period, Defendants have unilaterally collected and received
3 wages already paid to Class member under the allegation of recouping erroneous prior
4 overpayments. Plaintiffs and the Class members are and/or could be subject to Defendants'
5 unlawful policy and practice herein.

6 23. The wage statements provided by Defendants failed to provide accurate
7 information as to the correct hourly rate for corresponding hours worked, total hours worked,
8 the net wages earned, the gross wages earned, meal period premium payments and rest period
9 premium payments per pay period.

10 24. The underpayment of wages, Labor Code violations, and Wage Order violations
11 upon Plaintiffs and the Class are a consequence of Defendants' unlawful policies and practices
12 which were centrally devised, implemented, communicated, and applied to Plaintiffs and the
13 Class.

14 25. Because of Defendants' unlawful conduct, Plaintiffs and the Class have been and
15 continue to be systematically deprived of their earned wages to which they are entitled by law
16 and deprived of other benefits of the Labor Code and applicable IWC Wage Orders, to the
17 detriment of herself and the public at large.

18 **CLASS DEFINITION AND CLASS ALLEGATIONS**

19 26. Plaintiffs bring this action on behalf of themselves and on behalf of all others
20 similarly situated, pursuant to California Code of Civil Procedure §382, and as a member of the
21 Class defined as follows:

22 All current and former hourly non-exempt employees of Defendants who were
23 SEIU Local 121RN members during their employment with Defendants for the
24 period of May 9, 2019 through the date of class certification ("the Class").

25 **Sub-Class 1**

26 All current and former hourly non-exempt employees of Defendants who were
27 SEIU Local 121RN members during their employment with Defendants for the
28 period of May 9, 2019 through the date of class certification who worked at
least one (1) day subject to Defendants' rounding policy and practice.
("Rounding" Sub-Class).

1 **Sub-Class 2**

2 All current and former hourly non-exempt employees of Defendants who were
3 SEIU Local 121RN members during their employment with Defendants for the
4 period of May 9, 2019 through the date of class certification who worked at
5 least one shift of more than 6 hours. (“Meal Period” Sub-Class).

6 **Sub-Class 3**

7 All current and former hourly non-exempt employees of Defendants who were
8 SEIU Local 121RN members during their employment with Defendants for the
9 period of May 9, 2019 through the date of class certification who worked at
10 least one shift of 3.5 hours or more. (“Rest Period” Sub-Class).

11 **Sub-Class 4**

12 All current and former hourly non-exempt employees of Defendants who were
13 SEIU Local 121RN members during their employment with Defendants for the
14 period of May 9, 2019 through the date of class certification who were provided
15 a wage statement. (“Pay Stub” Sub-Class).

16 27. Plaintiffs reserve the right to amend or otherwise alter the class definition
17 presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in
18 response to facts learned through discovery, legal arguments advanced by Defendants or
19 otherwise.

20 28. Further, this action is brought for the benefit of the public, who are entitled to
21 restitution of those funds improperly withheld by Defendants.

22 29. This action has been brought and may be properly maintained as a class action
23 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

24 30. **Numerosity:** Members of the Class are so numerous that their individual joinder
25 is impracticable. It is possible to ascertain the number of former and current employees who are
26 members of the proposed class, but they are so numerous that joinder is impracticable. The
27 proposed Class includes future employees (persons who are hired by defendant within the class
28 period, but who are not now class members as current or former employees) whose joinder is
29 currently impossible. The precise number of Class members and their addresses can be
30 determined by Defendants’ business records and will become known to Plaintiffs through
31 discovery. Class members may be notified of the pendency of this action by mail, e-mail, the

internet, or published and posted notice.

31. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed classes. Defendants employed Plaintiffs during the statutory period, and Plaintiffs have been subjected to Defendants' unlawful employment practices, as alleged in this Complaint.

32. **Adequacy of Class Representative:** Plaintiffs will fairly and adequately protect the interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and Plaintiffs have retained competent and experienced counsel. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

33. **Common Questions of Law and Fact:** Common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual members of the proposed Class:

- a. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and the members of the Class the full amount of minimum wages and/or overtime wages based on Defendants' unlawful time rounding system;
- b. Whether Defendants improperly retained, appropriated or deprived Plaintiffs and the Class members of the use of monies or sums to which they were legally entitled;
- c. Whether Defendants improperly collected or received any part of wages already paid to the Class members;
- d. Whether Defendants engaged in unfair business practices;
- e. Whether Defendants were participants in the alleged unlawful conduct;
- f. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiffs and the members of the Class paid rest periods in violation of IWC Wage Order No. 5-2001 and Labor Code §226.7 by requiring Plaintiffs and Class members to remain on-duty Defendant's property during paid rest breaks;
- g. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiffs and the members of the Class paid meal periods in violation of IWC Wage Order No. 5-2001 and Labor Code §§ 226.7, 512 by failing to timely

1 provide the required number of 30-minute uninterrupted meal periods to
2 Plaintiffs and Class members;

- 3 h. Whether Defendants engaged in unfair practice and violated California Business
4 and Professions Code §17200 by failing to compensate Plaintiffs and the
5 members of the Class their full amount of overtime and minimum wages;
- 6 i. Whether Defendants engaged in an unlawful rounding policy and/or practice;
- 7 j. Whether Defendants failed to provide accurate wage statements to Plaintiffs and
8 the members of the Class; and
- 9 k. The nature and extent of class-wide injury and measure of damages for the
10 injury.

11 34. **Superiority and Substantial Benefit:** A class action is the superior method for
12 the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes
13 that are generally applicable to the members of the proposed plaintiffs class and sub-classes.
14 Damages suffered by each Class member may be relatively small given the burden and expense
15 of individual prosecution of the complex and expensive litigation necessitated by Defendants'
16 conduct. Further, it would be virtually impossible for the Class members to redress the wrongs
17 done to them on an individual basis. Even if Class members could afford such individual
18 litigation, the court system could not. By contrast, the class action device presents far fewer
19 management difficulties, and provides the benefits of a single adjudication, economies of scale,
20 and comprehensive supervision by a single court.

21 35. Plaintiffs know of no difficulty that will be encountered in the management of
22 this litigation that would preclude its maintenance as a class action. Plaintiffs are informed and
23 believes, and on that basis alleges, that the amount of money due each Class member as economic
24 damages is ascertainable from Defendants' records or may readily be determined by other means.

25 36. The Classes should also be certified because:

- 26 a. The prosecution of separate actions by individual Class members
27 would create a risk of inconsistent or varying adjudications with
28 respect to individual Class members, which would establish
incompatible standards of conduct for Defendants;

- 1 b. The prosecution of separate actions by individual Class members
2 creates the risk of adjudication with respect to them, which would,
3 as a practical matter, be dispositive of the interests of the other Class
4 members not parties to the adjudications, or would substantially
5 impair or impede their ability to protect their interests; and
6 c. Defendants have acted or refused to act on grounds generally
7 applicable to the Class, and/or general public, thereby making
8 appropriate final and injunctive relief with respect to the Classes as
9 a whole.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 5-2001**

13 (Against all Defendants)

14 37. Plaintiffs restate and incorporate by reference each and every allegation contained
15 in paragraphs 1 through 36, inclusive, as though fully set forth herein.

16 38. Labor Code §226.7 requires an employer to pay one additional hour of
17 compensation, at the regular rate of pay, per day for each meal period the employer fails to
18 provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiffs allege that
19 Defendants failed to provide legally compliant meal periods to Plaintiffs and the Class members;
20 in addition to impeding, discouraging, and/or dissuading employees from taking legally
21 compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes
22 per five (5) hours work period. Plaintiffs and the Class members consistently worked over six
23 (6) hours or ten (10) hours in a shift without the requisite, timely, number of meal periods due to
24 Defendants' policy of discouraging, dissuading and/or impeding Plaintiffs from taking meal
25 periods.

26 39. Pursuant to Labor Code §512 and the applicable Wage Order, employees are
27 entitled to a meal period of at least thirty (30) minutes, uninterrupted, per five (5) hour work
28 period.

 40. Section 11 of Wage Order 5-01 applies to Plaintiffs and the Class member, and
 provides, in pertinent part, that if an employer fails to provide an employee a legally compliant

meal 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 meal period was not provided.

41. During the relevant time period, Defendants failed to authorize and permit the required number of timely uninterrupted meal breaks without exemption. Plaintiffs and the Class were routinely required to work shifts over 8 hours without a timely meal period, any meal period, and/or a 30-minute uninterrupted meal period at the direction of Defendants and/or with Defendants knowledge or acquiescence. Plaintiffs and the Class were routinely required to work shifts over 12 hours without timely meal periods, 2 meal periods, and/or a 30-minute uninterrupted meal periods at the direction of Defendants and/or with Defendants knowledge or acquiescence.

42. Defendants failed to provide, impeded and/or discouraged Plaintiffs and the Class from taking meal breaks of not less than thirty (30) minutes as required by the Labor Code, and WO 5-01 §11.

43. By its actions in requiring Plaintiffs and the Class to work through meal periods and/or its failure to relieve Plaintiffs and the Class of their duties for off-duty meal periods, Defendants violated California Labor Code §226.7 and §11 of IWC Wage Order No. 5-2001, and are liable to Plaintiffs and the Class.

44. Pursuant to Labor Code §226.7, Plaintiffs and the Class are entitled to damages in an amount equal to one (1) hour of pay at no less than the regular rate of compensation per missed meal break per day, in a sum to be proven at trial.

45. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs and the Class Members seek recover of pre-judgment interest on all amounts recovered herein.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 5-2001

(Against all Defendants)

46. Plaintiffs restate and incorporate by reference each and every allegation contained

1 in paragraphs 1 through 36, inclusive, as though fully set forth herein.

2 47. Labor Code §226.7(b) provides that “An employer shall not require an employee
3 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
4 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
5 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

6 48. Labor Code §516 provides that the Industrial Welfare Commission “may adopt
7 or amend working condition orders with respect to break periods, meal periods, and days of rest
8 for any workers in California consistent with the health and welfare of those workers.”

9 49. Section §12 of the IWC Wage Order No. 5-2001 states: “Every employer shall
10 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
11 the middle of each work period. The authorized rest period time shall be based on the total hours
12 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
13 thereof. However, a rest period need not be authorized for employees whose total daily work
14 time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted
15 as hours worked for which there shall be no deduction from wages.”

16 50. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an employer
17 to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period
18 the employer failed to provide pursuant to the Labor Code and/or applicable Wage Order.

19 51. Plaintiffs and the Class members worked over four (4) hours per shift and/or over
20 six (6) hours per shift.

21 52. Plaintiffs and the Class members were entitled to a non-captive, duty-free, paid
22 rest period of not less than ten (10) minutes for every four hours worked or major fraction thereof.

23 53. During the relevant time period, Defendants failed to provide legally compliant
24 non-captive ten (10) minute paid rest periods to Plaintiffs and the Class member by requiring the
25 rest periods to be taken on-call subject to Defendants’ contacting Plaintiffs and the Class via
26 communication devices to respond to work.

27 54. In violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257,
28 Defendants failed to relinquish control over how Plaintiffs and the Class members spent their

1 rest breaks.

2 55. As such, as a matter of Defendants' established company policy, Defendants
3 failed to authorize and permit all required paid rest periods established by Labor Code §§226.7
4 and 516 and Section 12 of the applicable Wage Order.

5 56. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members
6 have been deprived of legally compliant paid rest breaks and are entitled to recover damages
7 under Labor Code §226.7(b) and §12 of IWC Wage Order No. 5-2001 in the amount of one
8 additional hour of compensation at their regular rate of pay for each day a paid rest break was
9 not provided.

10 57. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs and the Class
11 Members seek recover of pre-judgment interest on all amounts recovered herein.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

14 **Violation of Labor Code §226**

15 (Against all Defendants)

16 58. Plaintiffs restate and incorporate by reference each and every allegation contained
17 in paragraphs 1 through 36, inclusive, as though fully set forth herein.

18 59. California Labor Code §226 provides:

19 (a) Every employer shall, semimonthly or at the time of each payment of wages,
20 furnish each of his or her employees, either as a detachable part of the check, draft,
21 or voucher paying the employee's wages, or separately when wages are paid by
22 personal check or cash, an accurate itemized statement in writing showing (1) gross
23 wages earned, (2) total hours worked by the employee, except for any employee
24 whose compensation is solely based on a salary and who is exempt from payment
25 of overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
27 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
28 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 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

1 the employee...

2 60. Section 7(A) of the Wage Order requires accurate information pertaining to total
3 wages paid each payroll period, total hours worked in the payroll period and applicable rates of
4 pay, and incentive plan formula provided to the employees.

5 61. Labor Code §226(e) provides that an employee is entitled to recover the greater
6 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
7 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
8 penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
9 fees, for all pay periods in which the employer knowingly and intentionally failed to provide
10 timely and accurate itemized statements to the employees.

11 62. At all material times, Defendants knowingly and intentionally failed to provide
12 Plaintiffs and the Class members with wage statements reflecting the gross wages earned, net
13 wages earned, the total hours worked, the applicable hourly rates at the corresponding hours
14 worked, and/or list the meal and rest period premium payment on the wage statement.

15 63. Plaintiffs and the Class members suffered injury as a result of Defendants'
16 knowing and intentional failure to provide accurate itemized wage statements as Plaintiffs and
17 the Class member were owed but not paid premium compensation for all premium hours worked
18 and premium payments for rest and meal period violations which were not reflected on the wage
19 statements. Plaintiffs and the Class members suffered injury as a reasonable person could not
20 promptly and easily determine from the wage statements alone the accurate amount of gross
21 wages, applicable hourly rates at the corresponding hours worked, the net wages earned for the
22 pay period and/or the number of rest period premium payments on the wage statements.

23 64. Plaintiffs and the Class members are entitled to damages of statutory penalties
24 pursuant to Labor Code §226(e) for these violations, in an amount to be determined at trial.

25 65. Plaintiffs and the Class members are entitled to and seek costs and reasonable
26 attorneys' fees pursuant to Labor Code §226(e).

27 66. Plaintiffs further seek injunctive relief and reasonable attorneys' fees and costs
28 pursuant to Labor Code §226(h).

1 **FOURTH CAUSE OF ACTION**

2 **EXPENSE REIMBURSEMENT**

3 **Violation of Labor Code §2802, *et seq.***

4 67. Plaintiffs restate and incorporate by reference each and every allegation contained
5 in paragraphs 1 through 36, inclusive, as though fully set forth herein.

6 68. Pursuant to Labor Code §2802, “An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
9 the employer.”

10 69. Plaintiffs and the Class incurred necessary expenditures in direct consequence of
11 the discharge of their duties to Defendants, and/or their obedience to Defendants’ directions, for
12 which they have not been reimbursed including cell phone costs.

13 70. Defendants’ actions in requiring Plaintiffs and the Class to expend money in the
14 discharge of their duties, but failing to fully indemnify and reimburse for those expenses, is
15 unlawful under the laws and regulations of the State of California.

16 71. Defendants have wrongfully withheld indemnification for the expenses incurred
17 by Plaintiffs and the Class. In violation of California law, Defendants have systematically,
18 knowingly, and willfully refused to perform their obligations to indemnify and reimburse
19 Plaintiffs and the Class.

20 72. As a direct result, Plaintiffs and the Class have suffered, and continues to suffer,
21 substantial losses related to the use and enjoyment of such money, lost interest on such money,
22 and expenses and attorneys’ fees, expenses, and costs of suit.

23 73. Plaintiffs and the Class are entitled to recover, and seek, an award from
24 Defendants of the full amount of all unreimbursed necessary expenditures, plus interest on all
25 such amounts, injunctive relief, reasonable attorney’s fees and costs of suit, and all other
26 appropriate remedies provided by Labor Code §2802, or any other provision of the Labor Code,
27 and IWC Wage Orders.

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1 **FIFTH CAUSE OF ACTION**

2 **UNLAWFUL WAGE VIOLATIONS**

3 **(Violation of Labor Code §§ 218.5, 219, 221, and 224)**

4 (Against All Defendants)

5 74. Plaintiffs restate and incorporate by reference each and every allegation contained
6 in paragraphs 1 through 36, inclusive, as though fully set forth herein.

7 75. Labor Code §219(a) provides that: “Nothing in this article shall in any way limit
8 or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full
9 when or before due, but no provision of this article can in any way be contravened or set aside
10 by a private agreement, whether written, oral, or implied.”

11 76. Labor Code §218 provides that: “Nothing in this article shall limit the right of any
12 wage claimant to sue directly or through an assignee for any wages or penalty due him under
13 this article.”

14 77. Labor Code §218.5 authorizes attorney’s fees and costs to the prevailing
15 employees.

16 78. Labor Code §221 provides that: “It shall be unlawful for any employer to collect
17 or receive from an employee any part of wages theretofore paid by said employer to said
18 employee.” Labor Code §221 rights are nonnegotiable and cannot be waived by the parties.
19 *Sciborski v. Pac. Bell Directory*, 205 Cal.App.4th 1152, 1166 (2012).

20 79. Labor Code §224 prohibits deductions by employers not otherwise authorized by
21 state or federal law or expressly authorized in writing by the employee if for the benefit of the
22 employee.

23 80. These statutes, along with California’s fundamental public policy protecting
24 wages, prohibit employers from subjecting employees to unauthorized deductions, collections,
25 or recoupment of wages previously paid.

26 81. Plaintiffs are informed, believe and allege that Defendants’ policy and practice is
27 to unilaterally recoup wages previously paid to the Class under the allegation of prior erroneous
28 overpayments.

1 82. Plaintiffs are informed, believe and allege that Defendants' policy and practice
2 was and is to unlawfully deduct and recoup wages previously paid to Plaintiffs and Class
3 members without written authorization. Plaintiffs are informed, believe and allege that
4 Defendants have and are pressuring Class members to authorize Defendants to recoup alleged
5 erroneous overpayment of wages previously paid. Defendants' conduct violates Labor Code
6 §§221. Plaintiffs and the Class members are or could be subject to Defendants' unlawful policy
7 and practice herein.

8 83. As a proximate cause of the aforementioned violations, Class members have been
9 damaged in an amount equal to the unauthorized collection of wages paid and interest according
10 to proof at time of trial. The Class are entitled to recover the balance of unauthorized wages
11 owed, interest, and attorneys' fees and costs.

12 84. Plaintiffs seek injunctive relief to stop Defendants from the unauthorized
13 collection of previously paid wages and stop Defendants from pressuring/coercing/threatening
14 Class members into signing authorizations for Defendants to collect previously paid wages.
15 Plaintiffs also seek declaratory relief that Defendants conduct herein violates Labor Code §221.

16 **SIXTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **Violation of Business and Professions Code §§17200, *et seq.***

19 (Against all Defendants)

20 85. Plaintiffs re-allege and incorporate by reference each and every one of the
21 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
22 forth herein.

23 86. Beginning on an exact date unknown to Plaintiffs but believed to have occurred
24 at least since four (4) years before the filing of this action, Defendants have engaged in a pattern
25 and practice of acts of unfair competition in violation of B&PC §17200, including the practices
26 alleged herein.

27 87. Defendants, and each of them, are "persons" as defined by Business and
28 Professions Code §17201.

1 88. Plaintiffs seek to enforce important rights affecting the public interest. Plaintiffs
2 sue on their own behalf and on behalf of the current, former, and future employees of the
3 Defendants that were required to work minimum wage hours and overtime hours without
4 receiving the full amount of overtime compensation in violation of the Fair Labor Standards Act
5 and other state and/or federal laws and regulations.

6 89. Defendants required Plaintiffs and the Class to work shifts without legally
7 compliant meal and rest periods and as parties harmed by Defendants unfair business practices.

8 90. Plaintiffs and the Class members suffered injuries-in-fact and have lost money as
9 a result of the Defendants' unfair competition alleged herein.

10 91. Defendants previously or continue to engage in unlawful, unfair, and/or
11 fraudulent business practices, as alleged in this Complaint, in violation of California's B&PC
12 §17200 *et seq.* by:

- 13 a. Failing and refusing to pay Plaintiffs and the Class members the full amount of
14 California minimum wage requirements and/or the full amount of minimum wage
15 and overtime compensation in violation of the Fair Labor Standards Act due to
16 unlawful and illegal rounding practices; and
- 17 b. Failing and refusing to provide Plaintiffs and the Class members legally
18 compliant non-captive, paid, ten-minute rest periods or premium payments, at the
19 regular rate of pay, in lieu thereof in violation of Labor Code §§226.7, 512 and
20 IWC Wage Order No. 5-2001;
- 21 c. Failing and refusing to provide Plaintiffs and the Class members legally
22 compliant, uninterrupted, meal breaks or premium payments, at the regular rate
23 of pay, in lieu thereof in violation of Labor Code §§226.7, 512 and IWC Wage
24 Order No. 5-2001;
- 25 d. Failing and refusing to provide Plaintiffs and the Class members reimbursements
26 in violation of Labor Code §§2802, *et seq.*;
- 27 e. Unlawfully collecting or receiving wages already paid to Class members in
28 violation of Labor Code §§221 and 224;

1 92. All of these allegations constitute unfair business practices and/or unlawful
2 business practices in violation of California B&PC §17200, *et seq.*

3 93. As a result of Defendants' unfair business practices, Defendants have reaped
4 unfair benefits and illegal profits at the expense of Plaintiff, the Class members, and others
5 similarly situated, and the members of the public. Defendants should be made to disgorge their
6 ill-gotten gains and to restore them to the Class, including Plaintiff.

7 94. Plaintiffs and the Class members seek full restitution of said monies, as necessary
8 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
9 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiffs
10 seek, on behalf of all current and former employees of Defendants, restitution of monies retained
11 by Defendants. Plaintiffs further seek, on behalf of themselves and the Class members, the
12 appointment of a receiver, as necessary, to establish the total restitutionary relief from
13 Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair,
14 unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory
15 provision specifically governing the type of claim at issue, the prejudgment interest rate is 10
16 percent. The acts complained of herein occurred, at least in part, within the last four (4) years
17 preceding the filing of the Complaint.

18 95. Plaintiffs are informed and believe and thereon allege that at all times herein
19 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
20 prohibited by California B&PC §17200, thereby depriving their employees and the Class
21 members, the minimum working condition, standards and conditions due to them under the
22 California labor laws and Industrial Welfare commission wage orders as specifically described
23 herein. Plaintiffs further seek an order requiring Defendants to identify by full name, telephone
24 number, and last known address employees who worked or still work for Defendants for the
25 Class members from four (4) years preceding the filing of the original Complaint through the
26 date of class certification. Plaintiffs further seek an order requiring Defendants to timely pay
27 restitution to all current and former employees, including back wages, and interest.

28 96. By and through its unfair, unlawful, and/or fraudulent business practices and acts

described herein, Defendants have obtained valuable services from Plaintiffs and all persons similarly situated, and has deprived Plaintiffs and all persons similarly situated of valuable rights and benefits guaranteed by law, all to their detriment.

97. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to and do seek such relief as may be necessary to restore to them the money and property which Defendants have acquired, or of which Plaintiffs and class members have been deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

98. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above described business practices are unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices.

99. Plaintiffs and the Class members request attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class and the public.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§2698, *et seq.*

(Against all Defendants)

100. Plaintiffs on behalf of themselves and on behalf of all other aggrieved employees herein re-alleges and incorporates each and every one of the allegations contained in the preceding paragraphs as if fully set forth herein.

101. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

102. Whenever the LWDA, or any of its departments, divisions, commissions, boards,

1 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
2 authorized to exercise the same discretion, subject to the same limitations and conditions to
3 assess a civil penalty.

4 103. Plaintiffs and Defendants' hourly non-exempt employees who are also SEIU
5 Local 121RN members who are are "aggrieved employees" as defined by Labor Code §2699, in
6 that they are all current or former employees of Defendants, and one or more of the alleged
7 violations was committed against them.

8 104. Plaintiffs gave written notice electronically to the LWDA, and by certified mail
9 to Defendants of the specific provisions of this code alleged to have been violated, including the
10 facts and theories to support the alleged violations as required by Labor Code §2699.3. More
11 than 65 days have lapsed since notice to the LWDA and the LWDA has not indicated that it
12 intends to investigate Defendants' Labor Code violations. Accordingly, Plaintiffs may
13 commence a civil action to recover civil penalties for herself and other current and former
14 employees under Labor Code §2699 pursuant to §2699.3.

15 105. Plaintiffs asserts all the claims in this Complaint against Defendants, individually
16 and on behalf of all aggrieved employees in their capacity as private attorney general and seeks
17 all applicable civil penalties available under the Labor Code.

18 106. Pursuant to Labor Code §2699, Plaintiffs, individually and on behalf of all
19 aggrieved employees, request and seek to recover from the Defendants; unpaid minimum and
20 overtime wages, rest period premiums, meal period premiums, unreimbursed expenses, wage
21 statement violations and waiting time penalties according to proof. Plaintiffs are further entitled
22 to attorneys' fees and costs pursuant to Labor Code §2699(g)(1), as well as all civil penalties,
23 including, but not limited to:

- 24 1) Penalties under Code of Regulations, Title 8 §11090 in the amount of \$50 for
25 each aggrieved employee per pay period for the initial violation, and \$200 for
26 each aggrieved employee per pay period for each subsequent violation;
27 2) Penalties under Labor Code §558, in addition to and entirely independent and
28 apart from other penalties provided under the Labor Code, in the amount of

\$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

3) Penalties under Labor Code §1197.1, in addition to and entirely independent and apart from other penalties provided in the Labor Code, for any initial violation that is intentionally committed, \$100 for each underpaid employee for each pay period for which the employee is underpaid; for each subsequent violation for the same specific offense, \$200 for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed; and

4) Penalties under Labor Code §2699(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

107. Any and all additional civil penalties and sums as provided by the Labor Code and/or other statutes.

108. Plaintiffs seek and are entitled to have 75% of all penalties obtained be allocated to the LWDA and 25% to aggrieved employees.

109. Further, Plaintiffs are entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §§2699(g)(1).

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiffs be appointed class representatives;
3. An order that counsel for Plaintiffs be appointed class counsel;

4. An order requiring Defendants to identify, by name, address, email and telephone number all current and former hourly non-exempt employees of Defendants who were SEIU Local 121RN members during their employment with Defendants for the period of May 9, 2019 through the date of class certification;
5. For recovery as authorized by Labor Code §226(e);
6. For restitution of all unpaid wages due Plaintiffs and each Class member;
7. For all applicable statutory penalties, in amounts to be proven at trial;
8. For general damages including compensatory damages according to proof;
9. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
10. For all applicable interest on damages, wages, and penalties due;
11. For injunctive relief to prevent further violations of the California Labor Code;
12. For declaratory relief that Defendants engaged in unfair practices;
13. For declaratory relief that Defendants violated Labor Code §§ 221, 224, 226 and 226.7, 512;
14. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
15. For repayment of all amounts of wages previously paid that Defendants recouped, collected or received;
16. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided;
17. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant meal break was not provided
18. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e), 218.5, and (h), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law;
19. On behalf of Plaintiffs and all other aggrieved employees and the LWDA, for all civil

penalties authorized by LC §2699, including but not limited to:

a) For civil penalties pursuant to LC §558 as follows:

i. For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

ii. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

d) For civil penalties per Code of Regulations, Title 8 §11090 in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

e) For civil penalties per Labor Code §1197.1, in the amount of:

i. \$100 for each underpaid employee for each initial pay period for which the employee was intentionally underpaid;

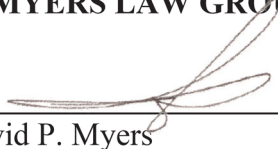
ii. \$200 for each underpaid employee for each subsequent pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed; and

20. For civil penalties under LC §2699(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, and;

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

Dated: 10/27/2023

THE MYERS LAW GROUP, A.P.C.

By: 
David P. Myers
Jason Hatcher
Attorneys for Plaintiffs Tracy Pryor, Amanda
Bright and all others similarly situated.

PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On October 27, 2023, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** by serving interested parties in this action by addressed as follows:

Michael S. Turner
mturner@hillfarrer.com
E. Sean McLoughlin
smcloughlin@hillfarrer.com
Hill, Farrer & Burrill LLP
One California Plaza
300 S. Grand Avenue, 37th Floor
Los Angeles, CA 90074

I am “readily familiar” with the firm’s practice of services of process. Under that practice, this document would be deposited:

(BY MAIL): with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

(BY UPS) Overnight Delivery with the envelope placed in or with a facility maintained by the overnight delivery carrier with fees paid for or provided for.

(BY PERSONAL SERVICE) I caused such envelope(s) to be personally served by messenger to the above addresses(s)
 X
(BY ELECTRONIC SERVICE) I served the document(s) described above by emailing to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. My email address is ymedina@myerslawgroup.com

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 27, 2023 at Rancho Cucamonga, California.



Yvonne Medina