

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Jasmine J. Badawi (Bar No. 335433)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
Ingrid Maria Dickson

FILED
Superior Court of California
County of Alameda

08/17/2023

Chad Flake, Executive Officer/Clerk of the Court

By: C. Huang Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

INGRID MARIA DICKSON, an
individual, on her own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BERKELEY THERAPY INSTITUTE,
INC. a California non-profit corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23CV036358

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. Labor
Code §§ 510, 511, 558, 1194, 1198);**
- 2. FAILURE TO PAY MINIMUM WAGES
DUE TO ROUNDING (Cal. Labor Code §§
1194, 1197, 1197.1, 1198, 1199);**
- 3. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS (Cal. Labor Code
§§ 226.7, 512);**
- 4. FAILURE TO PROVIDE REST
PERIODS (Cal. Labor Code § 226.7);**
- 5. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. Labor Code
§226);**
- 6. FAILURE TO MAINTAIN ACCURATE
RECORDS (Cal. Labor Code §1174(d));**
- 7. FAILURE TO PAY WAGES ON
TERMINATION AND/OR
RESIGNATION (Cal. Labor Code §§201-
203);**
- 8. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. Labor Code §2802);**
- 9. UNLAWFUL DEDUCTION OF WAGES
(Cal. Labor Code §221);**

- 1 **10. FAILURE TO PAY ALL SICK LEAVE**
2 **WAGES WHEN DUE (Cal. *Labor Code***
3 **§§201-204, 218, 218.5, 233, 245, 246 et**
4 **seq.);**
5 **11. ILLEGAL VACATION POLICY (Cal.**
6 ***Labor Code* §227.3);**
7 **12. FAILURE TO PAY FOR ALL HOURS**
8 **WORKED (Cal. *Labor Code* §§200, 204,**
9 **223, 226, 500, 510, 1197, 1198);**
10 **13. FAILURE TO ALLOW INSPECTION OF**
11 **EMPLOYMENT RECORDS (Cal. *Labor***
12 ***Code* §1198.5);**
13 **14. UNFAIR COMPETITION (Cal. *Bus. & Prof.***
14 ***Code* §§17200 et seq.; and**
15 **15. PRIVATE ATTORNEY GENERAL ACT**
16 **(PAGA)**

17 **DEMAND FOR A JURY TRIAL**

18 All allegations in this First Amended Complaint are based upon information and belief
19 except for those allegations which pertain to the Plaintiff named herein and her counsel. Each
20 allegation has evidentiary support or is likely to have evidentiary support after a reasonable
21 opportunity for further investigation and discovery.

22 INGRID MARIA DICKSON ("Plaintiff") alleges the following:

23 1. This is a class action brought under California law by an individual who was
24 employed by Berkeley Therapy Institute, Inc. (along with DOES 1 through 100, collectively
25 "Defendant"). Plaintiff brings this action on behalf of herself and others similarly situated to
26 recover wages from Defendant due to Defendant's systematic failure to pay overtime, failure to
27 pay minimum wages due to rounding, failure to provide meal and rest breaks (or pay the statutory
28 compensation due), failure to maintain records and to provide accurate itemized wage statements,
failure to maintain accurate records, failure to pay wages on termination and/or resignation,
failure to reimburse business expenses, unlawfully deducting wages, failure to pay all sick leave
wages when due, illegal vacation policy, failure to pay for all hours worked and failure to allow
inspection of employment records.

1 2. Plaintiff has worked as an employee for Defendant's mental health clinic in
2 Berkeley, California and remotely from Emeryville, California since September 2022. While
3 working, Plaintiff and members of the Class have been forced to endure stressful and illegal
4 workplace conditions created by Defendant's efforts to maximize profits and tightly control labor
5 costs.

6 3. Plaintiff, like her co-workers whom Defendant also employed during the
7 applicable limitations period, spend their workdays as Administrators and other nonexempt
8 hourly employees, under illegal and highly regimented circumstances. That regimen results from
9 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes
10 by not paying for all labor costs, failing to pay overtime, failing to pay minimum wages due to
11 rounding, failing to pay training time, failing to provide meal and rest breaks (or pay the statutory
12 compensation due), failing to maintain records and to provide accurate itemized wage statements,
13 failing to maintain accurate records, failing to pay wages on termination and/or resignation,
14 failing to reimburse business expenses, unlawfully deducting wages, failing to pay all sick leave
15 wages when due, failing to pay vacation wages, failing to pay for all hours worked, failing to
16 allow inspection of employment records and by using other unlawful stratagems to ensure that
17 labor costs remain artificially low.

18 4. Plaintiff brings this class action to recover, among other things, wages and
19 penalties from unpaid wages earned and due, including but not limited to, premium overtime
20 wages, minimum wages, late and missed meal/rest break wages, wages due to discharged or
21 quitting employees, penalties for failure to maintain required records and to provide accurate
22 itemized wage statements, to maintain accurate records, to pay wages on termination and/or
23 resignation, to reimburse business expenses unlawfully deducting wages, failure to pay all sick
24 leave wages when due, illegal vacation policy, failure to pay for all hours worked and failure to
25 allow inspection of employment records and interest, attorneys' fees, costs.

26 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
27 herself and all members of the class, to compensate these workers for the unpaid wages and to
28

1 protect current and future workers of Defendant from being subjected to similar wage theft and
2 otherwise unlawful working conditions.

3 6. Plaintiff also brings an action seeking relief for Defendant's violations of
4 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
5 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
6 business practices, as well as injunctive relief.

7 JURISDICTION AND VENUE

8 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
9 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
10 *Professions Code* §§ 17200 *et seq.* Plaintiff Ingrid Maria Dickson brings this Complaint on her
11 own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

12 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
13 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
14 herein, occurred in the County of Alameda and because Defendant owned and operated their
15 businesses in the County of Alameda.

16 THE PARTIES

17 PLAINTIFF

18 9. At all times relevant hereto, Plaintiff was:

- 19 (a) An individual over age 18 and a resident of Alameda County, California;
- 20 (b) Employed as a non-exempt hourly employee for Defendant Berkeley
21 Therapy Institute ("Berkeley" or "Defendant") in Berkeley, California and
22 remotely in Emeryville, California;
- 23 (c) Did not receive overtime compensation required by *Labor Code* §§510
24 and 1194 and the applicable Wage Orders;
- 25 (d) Did not receive minimum wage compensation due to rounding as required
26 by *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage
27 Orders;

- 1 (e) Did not receive the meal periods required by *Labor Code* §266.7 and the
2 applicable Wage Orders;
- 3 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
4 applicable Wage Orders;
- 5 (g) Did not receive accurate itemized wage statements as mandated by *Labor*
6 *Code* §226;
- 7 (h) Was subject to Defendant's failure to maintain accurate records in
8 violation of Cal. *Labor Code* §1174(d);
- 9 (i) Was not paid wages on termination and/or resignation in violation of
10 *Labor Code* §§201-203;
- 11 (j) Did not receive reimbursement for business expenses as mandated by
12 *Labor Code* § 2802;
- 13 (k) Had her wages unlawfully deducted by Defendant in violation of *Labor*
14 *Code* §221;
- 15 (l) Was not paid sick leave wages when due in violation of Cal. *Labor Code*
16 §§201-204, 218, 218.5, 233, 245, 246 et seq.;
- 17 (m) Was not paid vacation wages when due in violation of Cal. *Labor Code*
18 §227.3;
- 19 (n) Was not paid for all hours worked in violation of Cal. *Labor Code* §§
20 §§200, 204, 223, 226, 500, 510, 1197, 1198; and
- 21 (o) Was not allowed to inspect her employment records in violation of Cal.
22 *Labor Code* §1198.5.

23 **DEFENDANT**

24 10. Plaintiff is informed and believes, and based on that information and belief,
25 alleges, Defendant Berkeley is, and at all times mentioned herein was:

- 26 (a) A California non-profit corporation, with a principal place of business at
27 1748 Martin Luther King Jr. Way Berkeley, California 94709. Berkeley
28

1 has been authorized to do business and has been doing business in the
2 County of Alameda;

3 (b) The former employer of Plaintiff and the current and former employer of
4 the putative Class members;

5 (c) Paid Plaintiff and all Class Members on an hourly basis;

6 (d) Failed to pay Plaintiff and all putative Class members premium overtime
7 wages;

8 (e) Failed to Plaintiff and all putative Class members minimum wages;

9 (f) Failed to provide Plaintiff and all putative Class members with meal and
10 rest periods, failed to provide Plaintiff and all putative Class Members
11 with accurate itemized wage statements;

12 (g) Failed to accurately maintain records;

13 (h) Did not properly pay wages on termination and/or resignation;

14 (i) Failed to reimburse business expenses;

15 (j) Unlawfully deducted wages;

16 (k) Failed to pay sick pay wages;

17 (l) Failed to pay vacation wages;

18 (m) Failed to pay for all hours worked; and

19 (n) Failed to allow inspection of personnel records. Each of these was a
20 violation of the *Labor Code*.

21 11. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
23 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
24 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names
25 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

26 12. Plaintiff is informed and believes, and based on that information and belief
27 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
28 reside in or are authorized to do, or are otherwise doing, business in the State of California.

Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in the County of Alameda. Each of the Defendants DOES 1 through 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acting with permission, authorization, and/or ratification and consent of the other Defendants.

13. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

14. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendant named in this Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendant's concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendant, represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

1 **A. The Definition of the Class**

2 16. The Class (“the Class”) is defined as follows:

3 (a) “All current and former employees of Defendant in California who were paid
4 hourly at any time during the period commencing on the date that is four (4)
5 years prior to the filing of this Complaint and continuing through the present
6 date (the “Class Period”).”

7 (b) “All persons who were employees of Defendant in California who were paid
8 hourly and left the employ of Defendant at any time during the period
9 commencing on the date that is within one (1) year prior to the filing of this
10 Complaint and continuing through the present date (the “Class Period”).”

11 17. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
12 amend or modify the Class description with greater specificity or further division into subclasses
13 or limitation to particular issues.

14 **B. Maintenance of the Action**

15 18. Plaintiff brings this action individually and on behalf of herself and as
16 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
17 17204 and *Code of Civil Procedure* § 382.

18 **C. The Class Requisites**

19 19. At all material times, Plaintiff was a member of the Class.

20 20. The Class action meets the statutory prerequisites for maintaining a class action
21 under Code of Civil Procedure § 382 in that:

22 (a) The persons who comprise the Class are so numerous that the joinder of all
23 those persons is impracticable and the disposition of their claims as a Class
24 will benefit the parties and the Court;

25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the Class and will apply
27 uniformly to every Class member;
28

- 1 (c) The claims of the representative Plaintiff are typical of the claims of each
2 Class member. Plaintiff, like all Class members, has sustained damages
3 arising from Defendant's violations of the laws of the State of California.
4 Plaintiff, and the Class members, were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
6 pattern of misconduct engaged in by the Defendant;
- 7 (d) The representative Plaintiff has, and will continue to, fairly and adequately
8 represent and protect the interests of the Class and has retained counsel who
9 are competent and experienced in class action litigation. There are no
10 material conflicts between the claims of the representative Plaintiff and the
11 Class members that would make class certification inappropriate. Counsel
12 for the Class will vigorously assert the claims of all Class members.

13 21. The persons who comprise the Class are so numerous that joining all of them is
14 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
15 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
16 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
17 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
18 Plaintiff are experienced, qualified and generally able to conduct complex class action litigation.

19 22. The Court should permit the action to be maintained as a class action under *Code*
20 *of Civil Procedure* § 382 because:

- 21 (a) The questions of law and fact common to the Class predominate over any
22 question affecting only individual members;
- 23 (b) A class action is superior to any other available method for fairly and
24 efficiently adjudicating the claims of the Class;
- 25 (c) The Class members are so numerous that it is impractical to bring all of
26 them before the Court;
- 27 (d) Plaintiff and other Class members will not be able to obtain effective and
28 economic legal redress unless the action is maintained as a class action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the statutory violations, and in obtaining adequate
3 compensation for the damages and injuries for which Defendants are
4 responsible in an amount sufficient to adequately compensate the Class
5 members;
- 6 (f) Without Class certification, the prosecution of separate actions by
7 individual Class members would create a risk of:
- 8 i. Inconsistent or varying adjudications for individual Class members
9 that would establish incompatible standards of conduct for
10 Defendants; and/or,
- 11 ii. Adjudication for individual Class members that would, as a practical
12 matter, dispose of other non-party members' interests, or that would
13 substantially impair or impede the non-parties' ability to protect
14 their interests, by, for example, potentially exhausting the funds
15 available from Defendant, and
- 16 (g) Defendant has acted or refused to act on grounds generally applicable to
17 the Classes, making final injunctive relief appropriate for the Class, as a
18 whole.

19 23. Plaintiff contemplates eventually issuing notice to the proposed Class Members
20 that would set forth the subject and nature of the action. The Defendant's own business records
21 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
22 further notices may be required, Plaintiff would contemplate using additional media and/or
23 mailing.

24 **GENERAL ALLEGATIONS**

25 24. At all times material hereto, Berkeley has been, and is, a mental health clinic that
26 provides psychotherapy services.

27

28

25. Plaintiff and members of the Class were employed as Administrators and other nonexempt hourly employees in California by Defendant at various times during the Class Period.

THE CONDUCT

26. Plaintiff seeks relief from Defendant's uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

27. Starting on or about April 18, 2018 and continuing through the present, Defendant employed Plaintiff as an Administrator in Berkeley and remotely since September 2022 from Emeryville, California.

28. While employed by Defendant, Plaintiff was paid \$26.00 per hour.

29. The employment by Defendant of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 4, which covers those persons employed in the professional, technical, clerical, mechanical and similar occupations.

OFF-THE-CLOCK WORK

30. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

31. Defendant required Plaintiff and the Class to regularly perform compensable tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, as part of the Class members' employment, Defendant required Plaintiff and the Class, to undergo COVID-19 temperature checks, before the start of their work, off-the-clock. Plaintiff was required to take her temperature with a handheld thermometer before clocking in for her shift. Only after such temperature checks and screenings were completed, was Plaintiff and the Class, finally able clock in for their shifts. As a result, and because they improperly treated such pre-shift COVID-19 screening time as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

1 32. At all times relevant, Plaintiff and Class members consistently worked hours for
2 which they were not paid because Plaintiff and the Class members were required to engage in
3 post-shift off-the-clock activities such as responding to emails and calls from patients on
4 Plaintiff's and Class members' personal cell phone. The calls from patients lasted between 3 and
5 10 minutes.

6 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

7 33. At all times during the relevant time period, Plaintiff and the Class routinely
8 worked schedules such that they were due pay at overtime time rates. During this period, it was
9 the practice and policy of Defendant to not pay employees overtime at appropriate overtime rates.
10 Monies for unpaid overtime remain due and owing.

11 34. Under California law, non-exempt employees as defined by the applicable Wage
12 Order are entitled to minimum wages. Plaintiff and the Class were not paid minimum wages.

13 35. Under California law, non-exempt employees as defined by Wage Order 4, are
14 entitled to premium wages for overtime worked, a 30-minute lunch period for each 10 hours
15 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-
16 exempt employees are entitled to one hour pay at their regular pay rate for each day the requisite
17 rest and/or meal periods are not provided.

18 36. Defendant unlawfully rounded down or "shaved" the hours worked by employees
19 such that they were not paid for all hours worked. Plaintiff and Class members did not use
20 electronic time clocks at work to keep track of their time. Plaintiff and Class members created
21 spreadsheets and manually entered their shift's scheduled start and stop times. Plaintiff and Class
22 members shaved their time and rounded it down because Defendant did not approve overtime
23 pay. Plaintiff's paystubs show rounded hours and her electronic timesheets show rounded entries.

24 **MISSED/LATE/INTERRUPTED MEAL BREAKS**

25 37. Plaintiff and the Class were routinely not provided meal breaks, meal breaks were
26 cut short, provided late and/or interrupted. Further, approximately 1 to 2 times per month,
27 Plaintiff worked 5-6 hours shifts and was not afforded meal breaks for those shifts.

1 38. Defendant failed to ensure that Plaintiff and members of the Class recorded their
2 meal breaks. Plaintiff did not record her meal breaks' start and stop times. Defendant had an
3 unlawful policy and procedure of automatically deducting ("auto-deduct") 30 minutes for meal
4 periods from employees' daily hours even if employees did not receive their meals periods, their
5 meal periods were shortened, and/or interrupted. This auto-deduct policy was unlawful and did
6 not account for whether meal periods were actually provided, whether employees were able to
7 take their meal periods at all, whether they took meal periods of less than 30 minutes and whether
8 they were free from interruption for the full 30 minutes. As a result of this policy, Defendant
9 failed to compensate these employees with at least minimum wage rate for all time worked when
10 their daily hours were automatically reduced even though employees did not receive a meal
11 period, their meal periods were cut short and/or interrupted.

12 39. Defendant's policies and procedures were applied to all non-exempt employees
13 in California and resulted in non-exempt employees working time which was not compensated
14 by any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders. As
15 a result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of their
16 California non-exempt employees whose daily hours were automatically reduced even though
17 they did not take meals periods, the meal periods were shortened and/or interrupted.

18 **REST BREAKS ROUTINELY INTERRUPTED**

19 40. Plaintiff and the Class's rest breaks were routinely interrupted.

20 **LACK OF EXPENSE REIMBURSEMENT**

21 41. Further, Plaintiff and Class Members incurred out-of-pocket expenses relating to
22 their work such as cell phone use, computer purchase, internet use and additional electricity costs,
23 but were not reimbursed therefor.

24 **UNLAWFUL DEDUCTION OF WAGES**

25 42. Moreover, beginning in February 2023, Defendant paid a \$25 "Phone and Internet
26 Reim" to Plaintiff and members of the Class on a bimonthly basis. However, the reimbursement
27 was taxed. As a result, Defendant did not fully reimburse Plaintiff and members of the Class.

1 Defendant engaged in the unlawful deduction of wages when it taxed reimbursements of Plaintiff
2 and members of the Class for “Phone and Internet Reim”.

3 **FAILURE TO PROPERLY PAY SICK PAY WAGES**

4 43. Defendant acted intentionally and with deliberate disregard to the rights of
5 Plaintiff and members of the Class by failing to pay sick pay at the regular rate of pay and instead
6 paying it at the base rate.

7 **EXCLUSION OF BONUSES/GIFT CARDS FROM REGULAR RATE OF PAY**

8 44. California law uses the terms “compensation” and “pay” interchangeably and
9 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
10 discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers, etc., be
11 included when calculating an employee's regular rate of pay.

12 45. Defendant failed to properly pay and calculate wages due to excluding
13 nondiscretionary Christmas bonuses and gift cards from regular rate of pay calculations. Such
14 bonus payments are required under California law to be included in an employee’s regular rate
15 of pay for wage calculation. Defendant failed to do so, thereby failing to pay employees their full
16 wages as required under the Labor Code.

17 46. Plaintiff and members of the Class received gift cards that must be included when
18 calculating their regular rates of pay for purposes of wages. However, Defendant failed to
19 correctly calculate Plaintiff and members of the Class’s regular rate of pay to include all
20 applicable remuneration, including, but not limited to, gift cards. Defendant issued Plaintiff 2 gift
21 cards and failed to report this compensation on Plaintiff’s paystubs. Defendant gave Plaintiff gift
22 cards in or about 2019 or 2020 and 2023 for Professional Administrator’s Day and also a \$50.00
23 Amazon gift card. These gift cards were not recorded or shown on Plaintiff and Class members’
24 wage statements.

25 **ILLEGAL VACATION CAP**

26 47. Defendant had an unreasonable vacation cap for employees who have worked
27 more than 10 years for Defendant. Defendant’s Employee Handbook, effective November 1,
28 2017, states: “Vacation pay can be carried forward and can accrue past your actual accrual limit,

up to a maximum of 200 unused vacation hours.” However, the maximum cap should be no less than 239.94 hours.

FAILURE TO PAY FOR ALL HOURS WORKED

48. Defendant failed to pay Plaintiff and Class members for all hours worked. At the time of hire, Defendant required Plaintiff and Class members to read training policies and procedures outside of work hours. Further, in or about March 2020, Defendant required Plaintiff and Class members to watch videos and/or tutorials concerning the newly implemented AMR system. Plaintiff and Class members were required to watch 5 videos/tutorials which were each 1 hour long. Plaintiff and Class members were not paid for all training time.

FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS

49. Defendant failed to allow Plaintiff and Class members to timely inspect their records and payroll files.

50. As a result of Defendant’s failure to pay employees at required overtime time rates, minimum wages, premium pay for missed meal/rest breaks, sick pay, vacation pay, all hours worked and unlawful deductions, the wage statements issued to the employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission (“IWC”) Wage Order 4 in that they did not accurately reflect all wages earned and due and owing.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME TIME

(Labor Code §§510, 558, 1194.3 and Wage Order 4 By Plaintiffs Against Defendant and Does 1-100)

51. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

52. During Plaintiff’s entire employment with Defendant, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 4, Defendant was required to compensate Plaintiff with premium pay for all overtime work, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week.

1 53. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
2 who had not been paid overtime compensation could recover the unpaid balance of the full
3 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
4 fees and costs of suit.

5 54. Pursuant to IWC Wage Order No. 4-2001, § 3, "Employment beyond eight (8)
6 hours in any workday is permissible provided the employee is compensated for such overtime at
7 not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
8 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

9 55. California Labor Code section 558.1 provides in pertinent part:

10 (a) Any employer or other person acting on behalf of an employer who
11 violates, or causes to be violated, a section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows:

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

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

20 (3) Wages recovered pursuant to this section shall be paid to the affected
21 employee...

22 (d) The civil penalties provided for in this section are in addition to any
23 other civil or criminal penalty provided by law.

24 56. Plaintiff and members of the Class were required to undergo Covid temperature
25 checks that were off-the-clock prior to clocking in for their shifts.
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27
28

1 57. At all times relevant, Plaintiff and members of the Class consistently worked
2 hours for which they were not paid because Plaintiff and members of the Class were required to
3 engage in post-shift off-the clock activities such as responding to emails and calls from patients.
4 Defendant failed to pay Plaintiff and the members of the Class for these off-the clock activities
5 and as a result thereof, Plaintiff and the Class were not paid overtime that was due to them.

6 58. Plaintiff and members of the Class did not enter their meal breaks' start and stop
7 times. Plaintiff and Class members' electronic timesheets show exactly 30-minute meal breaks
8 without start and stop times. Thus, when meal breaks were missed, interrupted and/or cut short,
9 Plaintiff and Class members were not paid premium pay.

10 59. The regular rate of pay under California law includes all remuneration for
11 employment paid, on behalf of the employer, to the employee. Employers must properly factor
12 all economic items into the regular rate of pay for purposes of calculating the overtime wages
13 due to its employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542,
14 554, 568 (the regular rate of pay must include the "value of any nonhourly compensation,"
15 including bonuses).

16 60. Specifically, Defendant had a company-wide policy of paying Plaintiff and
17 members of the Class nondiscretionary bonuses around the time of the holidays. Upon
18 information and belief, Defendant's nondiscretionary holiday bonus was listed on Plaintiff's and
19 class members end of the year wage statements as "Bonus", and was paid annually in December
20 to all Class members. For example, Plaintiff's wage statement dated December 30, 2022, shows
21 she received a \$1,040 bonus. As a result, the regular rate was likely not properly calculated for
22 other pay periods during the year.

23 61. Plaintiff and Class Members were required to work in excess of 8 hours, but were
24 not paid for overtime.

25 62. Defendant violated the rights of Plaintiff and the members of the Class by not
26 correctly calculating their regular rate of pay to include all applicable remuneration, including,
27 but not limited to, non-discretionary bonuses and/or gift cards.

1 63. In addition, Defendant unlawfully instructed Plaintiff and members of the Class
2 to round down or shave their time such that Plaintiff and members of the Class were
3 systematically deprived of earned wages.

4 64. Throughout Plaintiff's employment, Defendant failed and refused to pay and
5 properly calculate overtime compensation to Plaintiff and members of the Class as required by
6 law.

7 65. The foregoing overtime compensation is owed and unpaid. As a direct and
8 proximate result of Defendant's failure and refusal to pay overtime compensation, Plaintiff and
9 Class Members suffered damages in an amount to be proven at trial.

10 66. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
11 counsel in order to enforce Plaintiff's rights to overtime, is entitled to recover Plaintiff's
12 attorneys' fees, costs and interest.

13 **SECOND CAUSE OF ACTION**

14 **FOR FAILURE TO PAY MINIMUM WAGES**

15 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 4 By Plaintiffs Against**
16 **Defendant)**

17 67. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 68. Labor Code § 1197 states the California requirement that employees must be paid
20 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
21 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the
22 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
23 of this minimum wage." IWC Wage Order 4-2001 also obligates employers to pay each
24 employee minimum wages for all hours worked. These minimum wage standards apply to each
25 hour employees worked for which they were not paid.

26 69. During the four years preceding the filing of this lawsuit, Defendant was required
27 to compensate Plaintiff and members of the Class at the minimum wage, but failed to carry out
28 its duties and responsibilities as an employer imposed under the laws and regulations of the State

1 of California by failing to pay Plaintiff a minimum wage as required by the Cal. Lab. Code
2 and/or IWC Wage Order No. 4. Specifically, Defendant committed the following acts:

- 3 a. failing to pay overtime time;
- 4 b. failing to pay minimum wages;
- 5 c. failing to provide meal breaks as required by law;
- 6 d. failing to provide rest breaks as required by law;
- 7 e. failing to maintain records and provide accurate itemized wage
8 statements;
- 9 f. failing to accurately record the time worked;
- 10 g. failing to pay wages on resignation or termination;
- 11 h. failing to reimburse business expenses;
- 12 i. failing to pay sick pay;
- 13 j. failing to pay vacation pay;
- 14 k. unlawful wage deductions;
- 15 l. failing to provide employment records; and
- 16 m. all other reasons to be discovered.

17 70. Plaintiff and members of the Class did not enter their meal breaks' start and stop
18 times. Plaintiff and Class members electronic timesheets show exactly 30-minute meal breaks
19 without start and stop times. As a result, Plaintiff and members of the Class were paid less than
20 minimum wage.

21 71. Labor Code § 1194 provides, in part, that any employee receiving less than the
22 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
23 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

24 72. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
26 Code § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
27 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for
28 the time associated with the overtime for which they received no compensation. See *Sillah v.*

1 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
2 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
3 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F.
4 Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

5 73. Plaintiff and the other Class Members suffered and continue to suffer losses
6 related to the use and enjoyment of compensation due and owing to them as a direct result of
7 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
8 proof at trial and within the jurisdictional limitations of this Court.

9 74. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
10 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
11 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

12 **THIRD CAUSE OF ACTION**

13 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

14 **(Failure to Provide Timely Off-Duty Meal Periods in Violation of IWC Wage Order No.**
15 **4; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant)**

16 75. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 76. California Labor Code §226.7(a) prohibits an employer from requiring an
19 employee to work during any meal period mandated by an applicable Industrial Wage Order.
20 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
21 employee to work during a meal or rest break or recovery period mandated pursuant to an
22 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
23 Commission..."

24 77. California Labor Code §1198 makes unlawful the employment of an employee
25 under conditions the IWC prohibits.

26 78. IWC Order No. 4-2001(11)(A) provides, in relevant part: "No employer shall
27 employ any person for a work period of more than five (5) hours without a meal period of not
28 less than 30-minutes, except that when a work period of not more than six (6) hours will complete

1 the day's work the meal period may be waived by mutual consent of the employer and the
2 employee."

3 79. IWC Order No. 4-2001 (11)(c) further provides, in relevant part: "Unless the
4 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
5 considered an 'on duty' meal period and counted as time worked."

6 80. Section 512(a) of the California Labor Code provides, in relevant part, that:

7
8 An employer may not employ an employee for a work period of more than five
9 hours per day without providing the employee with a meal period of not less than
10 30-minutes, except that if the total work period per day of the employee is no
11 more than six hours, the meal period may be waived by mutual consent of both
12 the employer and employee. An employer may not employ an employee for a
13 work period of more than 10 hours per day without providing the employee with
14 a second meal period of not less than 30-minutes, except that if the total hours
15 worked is no more than 12 hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period
17 was not waived.

18 81. The Labor Code and Wage Order provisions cited above require California
19 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
20 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
21 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2)
22 ensure that employees are actually free of job duties for thirty minutes per day on or before the
23 fifth hour of their shifts.

24 82. As alleged herein, Plaintiff and the members of the Class were routinely required
25 to work through their meal period at the fifth and sixth hour of their shifts at the direction of
26 Defendant and/or with their endorsement, encouragement, knowledge and acquiescence.
27 Moreover, Defendant failed to inform off-employees of their rights to off-duty thirty-minute meal
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1 periods before the fifth or even sixth hour of their shifts and instead discouraged the taking of
2 timely meal periods.

3 83. Plaintiff and members of the Class routinely worked missed their meal periods,
4 their meal periods were shortened, provide late and/or interrupted.

5 84. Under California law, employers must also record their employees' meal periods:
6 "Every employer shall keep accurate information with respect to each employee, including the
7 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
8 ... need not be recorded." IWC Order No. 4, § (7)(A)(3). Here, Defendant failed to ensure that
9 Plaintiff and members of the Class record their meal breaks. Plaintiff and Class members did not
10 enter their meal breaks' start and stop times. Where the employer has failed to keep records
11 required by statute, the consequences of such failure should fall on the employer, not the
12 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
13 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendant
14 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
15 unless "all work ceases", Defendant knew or should have known its employees were regularly
16 missing meal periods during the Class Period.

17 85. Defendant has a policy or practice of failing to ensure that Plaintiff and members
18 of the class take the meal periods and record their meal breaks required by California Labor Code
19 §226.7 and IWC Wage Order No. 4-2001 §11.

20 86. Defendant had an unlawful policy and procedure of automatically deducting
21 ("auto-deduct") 30 minutes for meal periods from employees' daily hours even if employees
22 did not receive their meals periods, their meal periods were shortened, and/or interrupted. This
23 auto-deduct policy was unlawful and did not account for whether meal periods were actually
24 provided, whether employees were able to take their meal periods at all, whether they took meal
25 periods of less than 30 minutes and whether they were free from interruption for the full 30
26 minutes. As a result of this policy, Defendant failed to compensate these employees with at least
27 minimum wage rate for all time worked when their daily hours were automatically reduced even
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1 though employees did not receive a meal period, their meal periods were cut short and/or
2 interrupted.

3 87. By their actions in failing to afford Plaintiff and Class Members meal periods,
4 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of
5 one additional hour of pay at the employee's regular rate of compensation for each work period
6 during each day in which Defendant failed to provide employees with statutory timely off-duty
7 meal periods.

8 88. Defendant also has a policy or practice of failing to pay each of their employees
9 who was not provided with a meal period as required an additional one hour of compensation at
10 each employee's regular rate of pay. Alternatively, to the extent that Defendant did pay Plaintiff
11 and Class members premium pay for missed, late, and interrupted meal periods, Defendant did
12 not pay Plaintiff and Class members at the correct rate of pay for premium wages because
13 Defendant systematically failed to include all forms of compensation, such as nondiscretionary
14 bonuses and/or other forms of remuneration, in the regular rate of pay. As a result, Defendant
15 failed to provide Plaintiff and Class members compliant meal periods in violation of California
16 Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

17 89. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
18 a private right of action to recover wages due based on the deprivation of timely meal periods
19 under Cal. Labor Code § 226.7(b).

20 90. As a direct and proximate result of Defendant's unlawful conduct as alleged
21 herein, Plaintiff and members of the Class have sustained economic damages, including but not
22 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
23 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
24 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
25 Orders.

26 **FOURTH CAUSE OF ACTION**
27 **FOR FAILURE TO PROVIDE REST PERIODS**
28

(Labor Code § 226.7 and IWC Wage Order No. 4 By Plaintiffs Against Defendant and Does 1 through 100)

91. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

92. Labor Code § 226.7 and the applicable Wage Order provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

93. Labor Code § 226.7 and the applicable Wage Order provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

94. Defendant has intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

95. At all times relevant hereto, Plaintiff and members of the Class have worked 8 or more hours daily.

96. At all times relevant hereto, Defendant failed to provide rest periods as required by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members rest breaks were interrupted. Alternatively, to the extent that Defendant did pay Plaintiff and Class members premium pay for missed, late, and interrupted rest periods, Defendant did not pay Plaintiff and Class members at the correct rate of pay for premium wages because Defendant systematically failed to include all forms of compensation, such as nondiscretionary bonuses and/or other forms of remuneration, in the regular rate of pay. As a result, Defendant failed to provide Plaintiff and Class members compliant rest periods in violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full rest period premiums due.

97. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)

98. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

99. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employers of Plaintiff and the Class.

100. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 4-2001 section 7, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

101. Defendant is further required to provide semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

102. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

103. Notwithstanding these provisions. Defendant has engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

104. Throughout the Class Period, Defendant intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that

1 the payments owed to Plaintiff and the members of the Class for overtime compensation,
2 minimum wages, untimely or missed meal and rest periods, sick pay, vacation pay, and all hours
3 worked, were not included in gross wages earned by Plaintiff and members of the Class. Further,
4 Defendant failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements
5 accurately showing the number of hours worked and the rates paid.

6 105. As a result, Plaintiff and members of the Class have been injured by having been
7 deprived of the true facts pertaining to their compensation and employment.

8 106. Plaintiff and members of the Class were damaged by these failures because,
9 among other things, the failures led them to believe that they were not entitled to overtime
10 compensation, minimum wages, to be paid for meal and rest periods not provided, sick pay,
11 vacation pay, to be paid for all hours worked, even though they were so entitled and these failures
12 hindered them from determining the amounts of wages owed to them.

13 107. Plaintiff and members of the Class are entitled to the amounts provided in Labor
14 Code §226(e), plus attorneys' fees and costs.

15 108. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
16 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
17 provided by law for Defendant's improper conduct.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE RECORDS**

20 **(Labor Code §1174(d) By Plaintiffs Against Defendant and Does 1 through 100)**

21 109. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Complaint.

23 110. Labor Code section 1174(d) requires that employers, including Defendant,
24 maintain accurate records showing the hours worked daily by its employees and to whom wages
25 were paid.

26 111. Additionally, the "Records" section of the applicable IWC Wage Order obligates
27 the employer, including Defendant, to keep accurate information with respect to each one of
28 their employees including, but not limited to, the total wages paid each payroll period, and time

1 records showing when the employee begins and ends each work period, meal periods, split shift
2 intervals, the total daily hours worked, the total hours worked in the payroll period, and the
3 applicable rates of pay.

4 112. Pursuant to Labor Code section 1174.5, any person employing labor who willfully
5 fails to maintain accurate and complete records required by Labor Code section 1174(d) is
6 subject to a penalty. On information and belief, Defendant intentionally failed to maintain
7 accurate records regarding Plaintiff and members of the Class, including the applicable rates of
8 pay and total wages earned for the payroll period.

9 113. Defendant failed to ensure that Plaintiff and members of the Class record their
10 meal breaks. Plaintiff's and members of the Class's electronic timesheets show exactly 30-
11 minute meal breaks without start and stop times of meal breaks.

12 114. As a direct result of Defendant's violations alleged herein, Plaintiff and members
13 of the Class have suffered and continue to suffer substantial losses related to Defendant's failure
14 to record and maintain records of meal periods and time records/rates of pay.

15 115. Plaintiff seeks all available remedies for Defendant's violations including, but not
16 limited to penalties, and costs to the extent permitted by law.

17 **SEVENTH CAUSE OF ACTION**

18 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

19 **(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)**

20 116. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 117. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due
23 and payable immediately. Labor Code § 202(a) provides that when an employee resigns from
24 employment, unpaid wages are due and payable within 72 hours of resignation.

25 118. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
26 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
27 paid, not to exceed thirty days.

1 119. Plaintiff and/or members of the Class were discharged and/or resigned from
2 Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

3 120. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one days' wages
4 for each day he or she was not timely paid, not to exceed 30 days' wages.

5 **EIGHTH CAUSE OF ACTION**

6 **REIMBURSEMENT OF BUSINESS EXPENSES**

7 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

8 121. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 122. Labor Code §2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of their duties.

12 123. At all times relevant herein, Defendant was aware that Plaintiff and members of
13 the Class were incurring out-of-pocket expenses for business purposes, but failed to indemnify
14 Plaintiff and members of the Class for all their business-related expenses, in accordance with
15 Labor Code §2802. Prior to February 2023, Plaintiff and members of the Class used their personal
16 cell phones for work-related activity since patients would contact them on their personal cell
17 phones. Further, beginning in August 2023, when Plaintiff began working from home on a full-
18 time basis, she used her personal computer, internet and expended additional electricity costs,
19 and Defendant did not reimburse her therefor.

20 124. Beginning in February 2023, Defendant provided Plaintiff and members of the
21 Class phones to use for work. Defendant paid Plaintiff and Class members \$25 in their pay checks
22 on a bimonthly basis for "Phone and Internet Reim". However, the reimbursement was taxed.
23 Thus, Defendant did not fully reimburse Plaintiff and members of the Class.

24 125. Defendant maintained a practice of not reimbursing Plaintiff and Class Members
25 for their work-related expenses that they incurred for work-related purposes.

26 126. As a result of Defendant's conduct, Plaintiff and Class Members suffered
27 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
28 business-related expenses incurred in the discharge of their duties.

1 127. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
2 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
3 costs of suit.

4 **NINTH CAUSE OF ACTION**
5 **UNLAWFUL DEDUCTION OF WAGES**

6 **(Cal. Labor Code § 221 By Plaintiffs against Defendant and Does 1 through 100)**

7 128. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 129. California Labor Code § 221 states that “[i]t shall be unlawful for any employer
10 to collect or receive from an employee any part of wages theretofore paid by said employer to
11 said employee.”

12 130. Labor Code § 221 reflects “‘California's strong public policy favoring the
13 protection of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal. App. 4th
14 1152, 1166.

15 131. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221
16 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor
17 Code § 221 are nonnegotiable and cannot be waived by the parties. *See Sciborski*, 205 Cal. App.
18 4th at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its
19 employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus*
20 *Group, Inc.* (1995) 34 Cal. App. 4th 1109, 1124.

21 132. As previously alleged herein, Defendant engaged in the unlawful deduction of
22 wages when it deducted taxes from the wages of Plaintiff and members of the Class’s for its
23 payment of \$25.00 for “Phone and Internet Reim” on a bimonthly basis.

24 133. Defendant’s unlawful taking back of wages earned in violation of Labor Code
25 Section 221 subjects them to civil penalties pursuant to Labor Code Section 225.5, in addition
26 to the unlawfully withheld wages due, in the amount of \$100 for any initial violation for each
27 pay period for which Plaintiff and members of the Class were underpaid, and, for each
28 subsequent violation, \$200 for each pay period for which Plaintiff and the Class were underpaid.

1 134. As a result of Defendant's violations of Labor Code § 221, Plaintiff and the
2 members of the Class seek to recover the total amount of wages unlawfully deducted, as well as
3 penalties, interest, attorneys' fees, and costs as permitted under California law.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE**

6 **(Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et. seq. – By Plaintiff against**

7 **Defendant and Does 1 through 100)**

8 135. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 136. Section 246 (1) requires that employers pay sick time pay to non-exempt
11 employees at the employee's "regular rate of pay." Employers must calculate paid sick leave for
12 nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek in
13 which the employee uses paid sick time, whether or not the employee actually works overtime
14 in that workweek" or (2) "by dividing the employee's total wages, not including overtime
15 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
16 of employment."

17 137. The "regular rate of pay" includes all remuneration for employment paid to the
18 employee with the exception of overtime pay and includes, but is not limited to base hourly
19 wages, shift differentials, assignment-based differentials, longevity differentials, and other
20 forms of non-discretionary wages.

21 138. Defendant paid Plaintiff and the members of the Class for sick leave at the
22 incorrect rate of pay. Defendant paid Plaintiff and members of the Class at their base rate of pay.
23 as opposed to the regular rate of pay, which would take into account all non-discretionary
24 incentives, shift differentials, or premium payments, or by dividing the employees' total wages,
25 not including overtime premium pay, by the employees' total hours worked in the full pay
26 periods of the prior 90 days of employment, as required by Section 246. This resulted in
27 underpayments of sick pay to Plaintiff and members of the Class.

1 139. Moreover, Section 204 provides that wages are generally due and payable no later
2 than seven days after the end of a pay period or at least twice during each calendar month, on
3 days designated in advance as the regular paydays. Section 201 provides if an employer
4 discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
6 wages no later than 72 hours after an employee quits his or her employment, unless the employee
7 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
8 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if
9 an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then
10 the wages of the employee shall continue as a penalty from the due date, and at the same rate
11 until paid, but the wages shall not continue for more than thirty (30) days.

12 140. Because Defendant did not pay, or timely pay, Plaintiff and members of the Class
13 all owing and underpaid sick pay wages, Defendant violated Sections 201-204, 246, and other
14 Labor Code sections. Defendant willfully failed to timely pay Plaintiff and members of the Class
15 all their wages due during employment and failed to timely pay all their wages due upon the
16 termination of their employment within the times prescribed by the Labor Code and are therefore
17 subject to applicable penalties, including a waiting time penalty, for each day, up to a thirty (30)
18 day maximum, pursuant to Section 203.

19 141. Labor Code section 233 provides: “Any employer who provides sick leave for
20 employees shall permit an employee to use in any calendar year the employee's accrued and
21 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
22 during six months at the employee's then current rate of entitlement, for the reasons specified in
23 subdivision (a) of Section 246.5.”

24 142. During the relevant time period, Defendant intentionally and willfully failed to
25 pay Plaintiff and members of the Class their sick pay wages at the regular rate of pay required
26 by law. Accordingly, Plaintiff and members of the Class did not receive the full amount of paid
27 sick time that they were entitled to receive by law, and were therefore denied the right to use
28 sick leave within the meaning of Labor Code Sections 233(a) and (c).

143. Any employer who violates Labor Code section 233 is liable to employees for the greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys' fees and costs. Lab. Code sections 233(d), (e).

144. Labor Code section 218 authorizes a private right of action to recover unpaid wages, including under sections 204 and 233.

145. Pursuant to Labor Code sections 218 and 218.5, Plaintiff and members of the Class are entitled to recover the full amount of their unpaid wages, applicable penalties, prejudgment interest on the amount of their unpaid wages, reasonable attorneys' fees and costs of suit.

ELEVENTH CAUSE OF ACTION

ILLEGAL VACATION POLICY

(Cal. Labor Code §227.3 – By Plaintiffs against Defendant and Does 1 through 100)

146. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

147. California law, including Labor Code § 227.3, prohibits employers in California from imposing a cap on the accrual of vacation time that is unreasonable.

148. Defendant's vacation policy, which applies to all of its employees in California, violates California law because it imposes an unreasonable cap on the accrual of vacation. Specifically, Defendant's employees who have worked more than ten years are subject to a maximum of 200 unused vacation hours that can be carried forward and accrue past their annual accrual limit. However, the maximum cap should be 239.94 hours.

149. Plaintiff and members of the Class have been damaged by Defendant's vacation policy because they have been forced to forfeit earned vacation wages.

150. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and members of the Class have sustained damages, including loss of earnings in an amount to be established at trial, in addition to prejudgment interest, costs, and attorneys' fees pursuant to applicable law.

TWELFTH CAUSE OF ACTION

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1 in an amount to be ascertained at the trial of the matter according to proof, plus interest thereon
2 and attorney's fees pursuant to California Labor Code Sections 218.5 and costs pursuant to Labor
3 Code Section 218.6.

4 **THIRTEENTH CAUSE OF ACTION**

5 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

6 **(Cal. Labor Code § 1198.5; IWC Wage Order No. 4 By Plaintiffs against Defendant and**
7 **Does 1 through 100)**

8 161. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 162. California Labor Code Section 1198.5 provides:

11 (a) Every current and former employee, or his or her representative, has the right
12 to inspect and receive a copy of the personnel records that the employer maintains
13 relating to the employee's performance or to any grievance concerning the
14 employee.

15
16 (b) The employer shall make the contents of those personnel records available for
17 inspection to the current or former employee, or his or her representative, at
18 reasonable intervals and at reasonable times, but not later than 30 calendar days
19 from the date the employer receives a written request, unless the current or former
20 employee, or his or her representative, and the employer agree in writing to a date
21 beyond 30 calendar days to inspect the records, and the agreed-upon date does not
22 exceed 35 calendar days from the employer's receipt of the written request to
23 inspect the records. Upon a written request from a current or former employee, or
24 his or her representative, the employer shall also provide a copy of the personnel
25 records,..... later than 30 calendar days from the date the employer receives the
26 request...

1 (k) If an employer fails to permit a current or former employee, or his or her
2 representative, to inspect or copy personnel records within the times specified I
3 this section... the current or former employee may recover a penalty of seven
4 hundred fifty dollars (\$750) from the employer.
5

6 (1) A current or former employee may also bring an action for injunctive relief to
7 obtain compliance with this section, and may recover costs and reasonable
8 attorney's fees in such an action.
9

10 163. Additionally, pursuant to Wage Order 4, at section 7 re: Records, employers are
11 required to keep accurate payroll records on each employee, and such records must be made
12 readily available for inspection by the employee upon reasonable request. The employer must
13 also maintain accurate production records.

14 164. On or about __ ____, 2023, through her counsel, Plaintiff issued a written request
15 to Defendant for copies of her personnel records.

16 165. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
17 include all records relating to Plaintiff's hours worked, wage statements and compensation.
18 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
19 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
20 records.

21 166. As a direct result and consequence of Defendant's failure and refusal to permit
22 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
23 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result
24 of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty
25 of \$750 based upon Defendant's violation of § 1198.5.

26 **FOURTEENTH CAUSE OF ACTION**
27 **FOR UNFAIR COMPETITION**
28

(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1 through 100)

167. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

168. Pursuant to applicable IWC Wage Orders, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business & Professions Code §17021.

169. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay overtime time compensation; (2) pay minimum wages; (3) pay for meal periods not provided, (4) pay for rest periods not provided; (5) pay wages due to discharged or quitting employees, (6) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (7) maintain accurate records, (8) reimburse business expenses, (9) issue proper reimbursements that were not taxed to employees, (10) pay all sick leave wages when due, (11) pay vacation wages, (12) pay for all hours worked, and (13) allow inspection of employment records, all in violation of Business & Professions Code §§ 17200 *et seq.*

170. By and through the unfair and unlawful business practices described herein, Defendant has obtained valuable property, money and services from the Plaintiff and the Class and have deprived them of valuable rights and benefits guaranteed by law all to the detriment of Plaintiff and the Class.

171. All the acts described herein are violations of, among other things, the Labor Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

172. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

173. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendant from engaging in any of the above described unfair and unlawful business practices in the future.

174. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendant. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant is restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

FIFTEENTH CAUSE OF ACTION

(Damages Pursuant to the Private Attorney General Act Against Employers)

175. Plaintiff repeats and realleges each of the allegations set forth in this complaint.

176. Plaintiff bring this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period violations, and rest periods violations (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages due on termination, failure to reimburse business expenses, failure to pay for uniform maintenance, failure to pay for off the clock work, time shaving, unlawful deductions, and unfair competition as set forth in this pleading.

177. On June 13, 2023, Plaintiff, pursuant to California Labor Code §§2699, *et seq.*, by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the

1 State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
2 Certified Mail Return Receipt Requested to the defendant.

3 178. More than 30 days have passed since the above letter, and Plaintiff’s counsel has
4 not received any notice from the LWDA stating an intention to prosecute Plaintiff’s PAGA
5 claims.

6 179. Plaintiff has, therefore complied with the administrative exhaustion requirements
7 of PAGA.

8 180. Plaintiff seeks Labor Code penalties, attorney’s fees, and costs, in an amount
9 according to proof at trial, as provided by the Labor Code Private Attorney General Act.
10

11 **WHEREFORE**, Plaintiff respectfully prays that this Court enter judgment in her favor
12 and against Defendant as follows:

13 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
14 and Class Members, according to proof;

15 2. For compensatory damages in the amount of unpaid minimum wages due to
16 Plaintiff and Class Members, according to proof;

17 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
18 Class Members for each workday that a meal and/or rest period was not provided;

19 4. For payment of unpaid wages in accordance with California labor and
20 employment law;

21 5. For compensatory damages in the amount of unpaid wages due to failure to pay
22 for all hours worked;

23 6. For an award of consequential damages in Plaintiff and Class Members’ favor
24 and against Defendant, in an amount to be proven at trial;

25 7. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

26 8. For payment to Plaintiff and Class Members of waiting time penalties pursuant
27 to *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
28 termination or layoff, multiplied by the total amount of days elapsed between the date of the

1 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
2 maximum of 30 days' pay, according to proof;

3 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
4 pursuant to Cal. *Bus. & Prof. Code* §17200 and Cal. *Lab. Code* §203, according to proof;

5 10. For compensatory damages in the amount of Plaintiff and Class Members' out
6 of pocket expenses and/or reimbursement of monies incurred while performing Defendant's
7 business-related duties plus interests, costs and attorneys' fees pursuant to Cal. *Code Civ. Proc.*
8 §2802(c);

9 11. For an award of all amounts unlawfully deducted from Plaintiff and members of
10 the Class's wages;

11 12. For unpaid sick pay;

12 13. For all vacation wages owed;

13 14. For prejudgment interest accrued on all due and unpaid overtime and minimum
14 wages from the date that wages were due and payable, pursuant to Cal. *Lab. Code* §§218.6 and
15 1194(a), according to proof;

16 15. For statutory penalties pursuant to Cal. *Lab. Code* §§ 558, 203, 210, 225.5,
17 226.7, 248.5, according to proof;

18 16. For reasonable costs, including attorneys' fees, in an amount according to proof
19 pursuant to, *inter alia*, Cal. *Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or Cal. *Code of*
20 *Civ. Proc.* §1021.5;

21 17. For an award of restitution of wages to Plaintiff and Class Members in an
22 amount equal to the amount of wages owed and unpaid, according to proof;

23 18. For injunctive relief ordering the continuing unfair business acts and practices to
24 cease, as the Court deems just and proper;

25 19. For other injunctive relief ordering Defendant to notify Plaintiff and Class
26 Members that they have not been paid the proper amounts in accordance with California law;

27 20. For injunctive relief requiring Defendant to comply with Labor Code
28 1198.5(b)(1);

- 1 21. For punitive and exemplary damages in a sum to be determined at trial;
2 22. For penalties provided by the Labor Code Private Attorney General Act; and
3 23. For such other and further relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff Ingrid Maria Dickson hereby respectfully requests a trial by jury for all claims
6 and issues raised in her Complaint that may be entitled to a jury trial.

7
8 LIPELES LAW GROUP, APC

9 Date: August 17, 2023

10
11 By: _____

12 Jasmine J. Badawi
13 Thomas H. Schelly
14 Attorneys for Plaintiff
15 Timothy Contreras
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

By sending a true copy thereof to the address listed below:

SEE ATTACHED SERVICE LIST

- ☐ **By Messenger Service.** I served the documents by providing them to a professional messenger service for personal service.
- ☐ **By Overnight Delivery.** I deposited a sealed envelope containing a true and correct copy of the documents listed above for overnight delivery and with the postage fully prepaid.
- ☐ **By E-Mail or Electronic Transmission.** I caused the documents to be sent to the persons at the email address listed above in a PDF file, and the transmission appeared to be successful.
- ☒ **By United States Mail.** I deposited a sealed envelope containing a true and correct copy of the documents listed above with the United States Postal Service with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at El Segundo, California.
- ☐ **By Fax Transmission.** I faxed the documents to the persons at the fax number listed above, and the transmission appeared to be successful.

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

Executed on August 17, 2023 at El Segundo, California.

Daisy Zacarias
Daisy Zacarias

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

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

Executed on August 17, 2023 at Stanton, California.

/s/ Jessica Torres
Jessica Torres

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SERVICE LIST

Amy Mahoney
Eric Pierson
Berkeley Therapy Institute, Inc.
1749 Martin Luther King Jr Way
Berkeley, CA 94709-2139
E: ericpierson@bti.org
DrChernick@bti.org

Agent of Service for Berkely Therapy Institute, Inc.