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8 and all others similarly situated.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF FRESNO**

11 RACHEL LERMA, on behalf of herself and
12 all others similarly situated

13 **PLAINTIFF,**

14 **v.**

15 FRESNO COMMUNITY HOSPITAL AND
16 MEDICAL CENTER d/b/a COMMUNITY
17 REGIONAL MEDICAL CENTER, a
18 California Nonprofit Corporation; and DOES
1 through 100, inclusive

19 **DEFENDANTS.**

Case No.: 26CECG01142

FIRST AMENDED COMPLAINT

1. **Failure to Pay Overtime and Double Time Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Reimburse Business Expenses;**
5. **Failure to Provide Accurate Wage Statements;**
6. **Failure to Pay All Wages Due at Separation;**
7. **Unfair Competition; and**
8. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

This is an action brought by Plaintiff Rachel Lerma (“Plaintiff”), on behalf of herself and all others similarly situated, against Fresno Community Hospital and Medical Center d/b/a Community Regional Medical Center, a California Nonprofit Corporation, 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. Plaintiff seeks on behalf of herself and the class damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

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II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants’ failure to compensate hourly shift, non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail to compensate Plaintiff and class members the full amount of wages owed including overtime premiums and meal and rest period premiums at the correct regular rate of pay, reimburse business expenses, and engage in other Labor Code violations. Additionally, Defendants violated and continue to violate the California Unfair Competition Law.

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

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification. (The “Class”).

3. This Court is the proper court, and this action is properly filed in Fresno County and in this judicial district because Defendants do business in Fresno County, out of Fresno, California, and because Defendants’ obligations and liabilities arise therein.

4. Plaintiff is an hourly non-exempt employee for Defendants and a resident of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER d/b/a COMMUNITY REGIONAL MEDICAL CENTER, is a California Nonprofit Corporation.

1 6. The true names and capacities, whether individual, corporate, associate, or
2 otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE
3 Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and
4 capacities when they have been ascertained.

5 7. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
6 and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each
7 acting as agents and/or employees, and/or under the direction and control of each of the other
8 Defendants, and that said acts and failures to act were within the course and scope of said agency,
9 employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges,
10 that at all times material hereto Defendants were and are the agents of each other.

11 8. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 1
12 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of
13 Defendants, and were acting on behalf of Defendants in the payment of wages to Plaintiff and the
14 Class.

15 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

16 9. Plaintiff and the Class worked as hourly non-exempt employees for Defendants. At
17 all relevant times alleged herein Plaintiff was employed by Defendants, and Plaintiff performed
18 work for Defendants in Fresno County, California.

19 10. Throughout the period of four (4) years prior to the filing of this action through the
20 date of class certification (“Class Period”), Plaintiff and all Class members were and are employees
21 of Defendants in the state of California, entitled to all of the protections afforded to employees
22 under the Labor Code and applicable IWC Wage Order.

23 11. Defendants’ primary business is providing healthcare services. This work is
24 accomplished in part by Plaintiff and the Class members.

25 12. Defendants conduct, as alleged herein, has caused Plaintiff and Class members
26 damages including, but not limited to, loss of wages and compensation.

27 13. Defendants are liable to Plaintiff and the Class for failing to pay overtime and
28 double time wages for all overtime and double time hours worked based on the regular rate of pay,

1 failing to provide legally compliant meal and rest periods, failing to reimburse necessary business
2 expenses, failure to provide accurate wage statements, and failure to pay all wages owed upon
3 termination, and unfair competition.

4 14. Plaintiff is a member of and seeks to be the representative for the Class of similarly
5 situated employees who all have been exposed to, have suffered, and/or were permitted to work
6 under, Defendant's unlawful employment practices as alleged herein.

7 15. Throughout the Class Period, Plaintiff and the Class members worked in excess of
8 eight (8) hours in a workday and in excess of twelve (12) hours in a workday.

9 16. Plaintiff and the Class were suffered and/or permitted to and worked in excess of
10 eight (8) hours and/or and in excess of twelve (12) hours in a workday without receiving all earned
11 overtime and/or double time pay for all overtime hours worked. Despite knowing that Plaintiff and
12 the Class were working overtime and/or double time hours, Defendants refused to pay the full
13 amount of overtime and/or double time premiums for all overtime and/or double time hours
14 worked.

15 17. Defendants failed to pay Plaintiff and the Class members overtime pay for daily
16 overtime hours and/or double time hours worked in a workday without exemption.

17 18. Throughout the Class Period, Defendants failed to pay Plaintiff and Class members
18 the full amount of overtime and double time wages based on their correct regular rate of pay.

19 19. Defendants failed to compensate Plaintiff and the Class members for time spent on
20 non-duty free meal periods resulting in unpaid, earned, overtime and double time wages.

21 20. Throughout the Class Period, Defendants failed to authorize and permit legally
22 compliant meal breaks. Plaintiff and Class members were assigned to and required to work shifts
23 lasting over six (6) hours and were not provided nor allowed to take a thirty (30) minute
24 uninterrupted off-duty meal break without exemption. Plaintiff and Class members were assigned
25 to and required to work shifts lasting over ten (10) hours without a second thirty (30) minute
26 uninterrupted off-duty meal break without exemption. Plaintiff and the Class members were
27 required to carry communication devices to be on-call during off-duty meal periods.

28 21. Throughout the Class Period, Defendants failed and continue to fail to pay for the

1 meal period violations at the correct regular rate of pay.

2 22. Throughout the Class Period, Defendants failed to authorize and provide paid rest
3 periods compliant with the provisions of the California Labor Code and applicable Wage Order.
4 Plaintiff and Class members were assigned to and required to work shifts lasting over four (4)
5 hours and were not provided nor allowed to take a non-captive paid ten-minute uninterrupted rest
6 break during each four (4) hour work period, or major fraction thereof, at the direction of
7 Defendants and/or with Defendants knowledge and acquiescence. Plaintiff and the Class members
8 were required to carry communication devices to be on-call during off-duty rest periods.

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

11 24. Plaintiff and the Class incurred necessary expenditures in direct consequence of the
12 discharge of their duties to Defendants, and/or their obedience to Defendants' directions, for which
13 she and the Class have not been reimbursed that include but are not limited to expenses for cell
14 phone costs.

15 25. The wage statements provided by Defendants failed to provide accurate
16 information reflecting the total hours worked, gross and net wages earned for all hours worked per
17 pay period as well as meal and rest period premiums.

18 26. The underpayment of wages, Labor Code violations and Wage Order violations
19 upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices
20 which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

21 27. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
22 continue to be systematically deprived of their benefits of the Labor Code and applicable IWC
23 Wage Orders, to the detriment of Plaintiff, the Class, and the public at large.

24 **CLASS DEFINITION AND CLASS ALLEGATIONS**

25 28. Plaintiff brings this action on her own behalf and on behalf of all others similarly
26 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class
27 defined as follows:

28 All current and former California hourly non-exempt employees of Defendants who

provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification (“the Class”).

Sub-Class 1

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification who worked at least one (1) shift of more than eight (8) hours. (“Daily Overtime” Sub-Class).

Sub-Class 2

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification who worked at least one (1) shift of more than twelve (12) hours. (“Double Time” Sub-Class).

Sub-Class 3

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification who worked at least one shift of six (6) hours or more. (“Meal Period” Sub-Class).

Sub-Class 4

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification who worked at least one shift of three and a half (3.5) hours or more. (“Rest Period” Sub-Class).

Sub-Class 5

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from four years prior to the filing of this action through the date of class certification who incurred unreimbursed business expenses in the performance of their job duties for Defendants. (“Business Expense” Sub-Class).

Sub-Class 6

All current and former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from one year prior to the filing of this action through the date of class certification who are members of Sub-Classes 1 and/or 2 and/or 3 and/or 4 and/or 5. (“Pay Stub” Sub-Class).

Sub-Class

All former California hourly non-exempt employees of Defendants who provide patient care services for Defendants at any time from three years prior to the filing of this action through the date of class certification who are members of Sub-Classes 1 and/or 2 and/or 3 and/or 4 and/or 5. (“Waiting Time Penalties” Sub-Class).

29. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to

1 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

2 30. Further, this action is brought for the benefit of the public, who are entitled to
3 restitution of those funds improperly withheld by Defendants.

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

6 32. **Numerosity:** Members of the Class are so numerous that their individual joinder is
7 impracticable. It is possible to ascertain the number of former and current employees who are
8 members of the proposed class, but they are so numerous that joinder is impracticable. The
9 proposed Class includes future employees (persons who are hired by defendant within the class
10 period, but who are not now class members as current or former employees) whose joinder is
11 currently impossible. The precise number of Class members and their addresses can be determined
12 by Defendants' business records and will become known to Plaintiff through discovery. Class
13 members may be notified of the pendency of this action by mail, e-mail, the internet, or published
14 and posted notice.

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

18 34. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
19 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
20 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
21 fairly and adequately protected by Plaintiff and his counsel.

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

- 25 1) Whether Defendants improperly retained, appropriated or deprived Plaintiff
26 and the Class members use of monies or sums to which they were legally
27 entitled;
- 28 2) Whether Defendants engaged in a pattern or practice of failing to pay

1 Plaintiff and the members of the Class the full amount of overtime wages,
2 based on the regular rate of pay, for time worked in excess of eight (8) per
3 day worked in violation of the applicable Labor Code provisions including
4 §§510 and 1194;

5 3) Whether Defendants engaged in a pattern or practice of failing to pay
6 Plaintiff and the members of the Class the full amount of double time wages,
7 based on the regular rate of pay, for time worked in excess of twelve (12)
8 per day worked in violation of the applicable Labor Code provisions
9 including §§510 and 1194;

10 4) Whether Defendants engaged in a pattern or practice of failing to provide
11 Plaintiff and the members of the Class compliant rest periods, in violation
12 of IWC Wage Order No. 5-2001 and Labor Code §226.7;

13 5) Whether Defendants engaged in a pattern or practice of failing to provide
14 Plaintiff and the members of the Class complaint meal periods, in violation
15 of IWC Wage Order No. 5-2001 and Labor Code §§ 512, 226.7;

16 6) Whether Defendants failed to reimburse Plaintiff and the Class members for
17 business expenses and out-of-pocket expenses such as the use of personal
18 cell phones for business purposes;

19 7) Whether Defendants violated Labor Code §203 by failing to pay all wages
20 due upon separation;

21 8) Whether Defendants failed to provide accurate wage statements to Plaintiff
22 and the members of the Class;

23 9) Whether Defendants engaged in unfair business practices;

24 10) Whether Defendants were participants in the alleged unlawful conduct;

25 11) Whether Defendants engaged in unfair practice and violated California
26 Business and Professions Code §17200, *et seq.*; and

27 12) The nature and extent of class-wide injury and measure of damages for the
28 injury.

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

11 37. Plaintiff knows of no difficulty that will be encountered in the management of this
12 litigation that would preclude its maintenance as a Class action. Plaintiff is informed and believes,
13 and on that basis alleges, that the amount of money due each Class member as economic damages
14 is ascertainable from Defendants' records or may readily be determined by other means.

15 38. The Classes should also be certified because:

- 16 1) The prosecution of separate actions by individual Class members
17 would create a risk of inconsistent or varying adjudications with
18 respect to individual Class members, which would establish
19 incompatible standards of conduct for Defendants;
- 20 2) The prosecution of separate actions by individual Class members
21 creates the risk of adjudication with respect to them, which would,
22 as a practical matter, be dispositive of the interests of the other Class
23 members not parties to the adjudications, or would substantially
24 impair or impede their ability to protect their interests; and
- 25 3) Defendants have acted or refused to act on grounds generally
26 applicable to the Class, and/or general public, thereby making
27 appropriate final and injunctive relief with respect to the Classes as
28 a whole.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME AND DOUBLE TIME WAGES**

3 **Violation of Labor Code §§510 and 1194 and IWC Wage Order No. 5-2001**

4 (Against all Defendants)

5 39. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 38 of this Complaint.

7 40. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
9 workweek and the first eight hours worked on the seventh day of work in any one workweek shall
10 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
11 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
12 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
13 on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
14 rate of pay of an employee. Nothing in this section requires an employer to combine more than
15 one rate of overtime compensation in order to calculate the amount to be paid to an employee for
16 any hour of overtime work.” The California overtime requirement and wage requirement are non-
17 waivable rights pursuant to Labor Code §219.

18 41. IWC Wage Order No. 5-2001, applies to Plaintiff and the Class members. Section
19 3(a)(1) of Wage Order No. 5-2001 mandates that employers pay one and one-half times the
20 employees’ regular rate of pay for employees who work more than eight hours in a day or forty
21 hours in a week and two times their regular rate of pay for any work in excess of twelve hours in
22 one day.

23 42. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
24 wage, any employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
26 of the full amount of this minimum wage or overtime compensation, including interest thereon,
27 reasonable attorney’s fees, and costs of suit.”

28 43. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for

1 overtime wages directly against the employer without first filing a claim with the Division of Labor
2 Standards Enforcement (“DLSE”) and may recover such wages, together with interest thereon,
3 penalties, attorneys’ fees and costs. Further, pursuant to Labor Code §1198, it is unlawful to
4 employ person for longer than the hours set by the IWC or under conditions prohibited by the
5 applicable IWC Wage Orders.

6 44. However, Defendants have failed and refused to pay Plaintiff and the Class
7 members overtime compensation for all overtime hours worked in excess of eight (8) hours per
8 day and/or all double time premiums for all double time hours worked in excess of twelve (12)
9 hours per day as required by Labor Code §§510, 1194 and the applicable Wage Orders. Plaintiff
10 is informed and believes and based thereon alleges that the obligations and responsibilities of the
11 class employees are irrelevant because Plaintiff and all other similarly situated employees were
12 subjected to Defendants' unlawful pay plans and its failure to pay daily overtime and/or double
13 time based on the regular rate of pay. Defendants failed to pay Plaintiff and the Class members
14 overtime pay for daily overtime hours worked in a workday without exemption.

15 45. Defendants have failed and refused to pay Plaintiff and the Class members overtime
16 and double time compensation earned from uncompensated non-duty free meal periods. Plaintiff
17 is informed and believes and based thereon alleges that the obligations and responsibilities of the
18 Class are irrelevant because Plaintiff and all other similarly situated employees were subjected to
19 Defendants’ unlawful pay plans and its failure to pay wages for all hours worked.

20 46. Defendants, and each of them, consistently administered a corporate policy which
21 required Plaintiff and the Class members to work overtime without proper premium overtime
22 and/or double time pay based on the regular rate of pay. Accordingly, Plaintiff and Class members
23 were and are entitled to overtime and/or double time compensation, under California law, based
24 on the appropriate regular rate of pay.

25 47. Plaintiff and the Class members have been deprived of rightfully earned wages as
26 a direct and proximate result of Defendants’ common policies, practices, and refusal to pay the full
27 amount of compensation earned for all overtime and/or double time hours worked.

28 48. Plaintiff and the Class are entitled to and seek the full amount of all earned unpaid

1 overtime pay and/or double time pay, attorneys' fees and costs, and interest pursuant to Labor
2 Code §1194 in an amount to be determined at trial.

3 49. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
4 Members seek recovery of pre-judgment interest on all amounts recovered herein.

5 50. Plaintiff and the Class are entitled to and seek attorney's fees and costs, and interest
6 pursuant to Labor Code §1194 in the amount to be determined at trial.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Violation of Labor Code §§226.7, 512, & IWC Wage Order 5-2001**

10 (Against all Defendants)

11 51. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
12 paragraphs 1 through 38 of this Complaint.

13 52. Labor Code §226.7 requires an employer to pay one additional hour of
14 compensation, at the regular rate of pay, per day for each meal period the employer fails to provide
15 pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed
16 to provide legally compliant meal periods to Plaintiff and the Class members; in addition to
17 impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods.
18 Employees are entitled to a timely meal period that is duty-free, uninterrupted and at least thirty
19 (30) minutes per every five (5) hour work period. Plaintiff and the Class members consistently
20 worked over five (5) hours or ten (10) hours in a shift without the requisite number of timely, duty-
21 free, uninterrupted, thirty (30) minute meal periods due to Defendants' policy of discouraging,
22 dissuading and/or impeding Plaintiff and the Class members from taking meal periods. Defendants
23 further failed to obtain legally compliant meal period waivers for shifts lasting longer than ten (10)
24 hours. Pursuant to the Code, Plaintiff and the Class members were entitled to a meal period of not
25 less than thirty (30) minutes prior to exceeding five (5) hours of work and a second meal period
26 for hours worked over ten (10) in a day.

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

1 54. Section 11 of Wage Order 5-2001 applies to Plaintiff and the Class members, and
2 provides, in pertinent part, that if an employer fails to provide an employee a legally compliant
3 meal period in accordance with the applicable provisions of this Order, the employer shall pay the
4 employee one hour of pay at the employee's regular rate of compensation for each workday that
5 the meal period was not provided.

6 55. Defendants failed to provide, impeded and/or discouraged Plaintiff and the Class
7 from taking meal breaks of not less than thirty (30) minutes as required by the Labor Code, by
8 requiring that Plaintiff and the Class work through meal periods and/or by failing to relieve
9 Plaintiff and the Class of their duties for off-duty meal periods, by requiring Plaintiff and the Class
10 remain on-call by communication device during meal periods to respond to work.

11 56. By its actions in requiring Plaintiff and the Class to work through meal periods
12 and/or its failure to relieve Plaintiff and the Class of their duties for off-duty meal periods,
13 Defendants violated California Labor Code §226.7 and Section 11 of Wage Order 5-2001, and are
14 liable to Plaintiff and the Class.

15 57. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in
16 an amount equal to one (1) hour of pay at no less than the regular rate of compensation for each
17 workday with one or more non-compliant meal periods, in a sum to be proven at trial.

18 58. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney's fees and
19 costs for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of
20 compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

21 59. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
22 Members seek recovery of pre-judgment interest on all amounts recovered herein.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST PERIODS**

25 **Violation of Labor Code §§226.7, 512, & IWC Wage Order 5-2001**

26 (b) (Against all Defendants)

27 60. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
28 paragraphs 1 through 38 of this Complaint.

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

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

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

15 64. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an employer
16 to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period
17 the employer failed to provide pursuant to the Labor Code and/or IWC Wage Order No. 5-2001.

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

20 66. During the relevant time period, Defendants failed to provide legally compliant
21 non-captive ten (10) minute paid rest periods to Plaintiff and the Class members by requiring the
22 rest periods to be taken on-call subject to Defendants’ contacting Plaintiff and the Class via
23 communication devices to respond to work. In violation of *Augustus v. ABM Security Services,*
24 *Inc.* (2016) 2 Cal.5th 257, Defendants failed to relinquish control over how Plaintiff and the Class
25 members spent their rest breaks.

26 67. As such, as a matter of Defendants’ established company policy, Defendants failed
27 to authorize and permit all required paid rest periods established by Labor Code §§226.7 and 516
28 and Section 12 of the applicable Wage Order.

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

5 69. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney's fees and
6 costs for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of
7 compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

8 70. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
9 Members seek to recover pre-judgment interest on all amounts recovered herein.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 **Violation of Labor Code §§2802, 2804, *et seq.***

13 (Against all Defendants)

14 71. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
15 paragraphs 1 through 38 of this Complaint.

16 72. Pursuant to Labor Code §2802, "An employer shall indemnify his or her employee
17 for all necessary expenditures or losses incurred by the employee in direct consequence of the
18 discharge of his or her duties, or of his or her obedience to the directions of the employer."

19 73. Plaintiff and the Class incurred necessary expenditures in direct consequence of the
20 discharge of their duties to Defendants, and/or their obedience to Defendants' directions, for which
21 they have not been reimbursed including but not limited to cell phone costs.

22 74. Defendants' actions in requiring Plaintiff and the Class to expend money in the
23 discharge of their duties, but failing to fully indemnify and reimburse for those expenses, is
24 unlawful under the laws and regulations of the State of California.

25 75. Defendants have wrongfully withheld indemnification for the expenses incurred by
26 Plaintiff and the Class. In violation of California law, Defendants have systematically, knowingly,
27 and willfully refused to perform their obligations to indemnify and reimburse Plaintiff and the
28 Class.

1 76. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
2 substantial losses related to the use and enjoyment of such money, lost interest on such money,
3 and expenses and attorneys' fees, expenses, and costs of suit.

4 77. Plaintiff and the Class are entitled to recover, and seek, an award from Defendants
5 of the full amount of all unreimbursed necessary expenditures, plus interest on all such amounts,
6 injunctive relief, reasonable attorney's fees and costs of suit, and all other appropriate remedies
7 provided by Labor Code §2802, or any other provision of the Labor Code, and IWC Wage Orders.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

10 **Violation of Labor Code §226**

11 (Against all Defendants)

12 78. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
13 paragraphs 1 through 38 of this Complaint.

14 79. California Labor Code §226 provides:

15 (a) Every employer shall, semimonthly or at the time of each payment of wages,
16 furnish each of his or her employees, either as a detachable part of the check, draft,
17 or voucher paying the employee's wages, or separately when wages are paid by
18 personal check or cash, an accurate itemized statement in writing showing (1) gross
19 wages earned, (2) total hours worked by the employee, except for any employee
20 whose compensation is solely based on a salary and who is exempt from payment
21 of overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
24 provided that all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
26 the period for which the employee is paid, (7) the name of the employee and only
27 the last four digits of his or her social security number or an employee identification
28 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
the employee...

80. Section 7(A) of the Wage Order requires accurate information pertaining to total
wages paid each payroll period, total hours worked in the payroll period and applicable rates of
pay to the employees.

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

7 82. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
8 and intentional failure to provide accurate itemized wage statements as Plaintiff and the Class
9 member were owed but not paid for all hours worked and owed and not paid premium payments
10 for meal and rest period violations which were not reflected on the wage statements. Plaintiff and
11 the Class members suffered injury as a reasonable person could not promptly and easily determine
12 from the wage statements alone the accurate amount of gross wages, the net wages earned for the
13 pay period, and the applicable hourly rates at the corresponding hours worked per pay period.

14 83. At all material times, Defendants knowingly and intentionally failed to provide
15 Plaintiff and Class Members with accurate wage statements reflecting the gross wages earned, net
16 wages earned, and the applicable hourly rates at the corresponding hours worked, and/or meal and
17 rest period premium payments on the wage statement.

18 84. Plaintiff and the Class members are entitled to the greater of actual damages or
19 statutory penalties pursuant to Labor Code §226(e) for these violations, in an amount to be
20 determined at trial.

21 85. Plaintiff and the Class members are entitled to and seek costs and reasonable
22 attorneys' fees pursuant to Labor Code §226(e).

23 86. Plaintiff further seeks reasonable attorneys' fees and costs pursuant to Labor Code
24 §226(h).

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

3 **Violation of Labor Code §§201, 203**

4 (Against all Defendants)

5 87. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 38 of this Complaint.

7 88. Plaintiff and the Class members whose employment ended with Defendants during
8 the relevant time period were entitled to be promptly paid all earned and unpaid wages at the time
9 of termination, including but not limited to overtime and/or double time wages and/or meal period
10 premiums and/or rest period premiums, as required pursuant to Labor Code §§201 and 202, *et seq.*
11 Defendants refused and/or intentionally failed to promptly compensate Plaintiff and the other Class
12 members all earned wages at the time of separation. Based on this Plaintiff and the Class members
13 seek and are entitled to damages in the form of statutory waiting time penalties pursuant to Labor
14 Code §203.

15 89. Plaintiff and the Class members whose employment terminated during the relevant
16 time period were employees of Defendants covered by Labor Code §203.

17 90. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are
18 entitled to waiting time penalties at an amount to be proven at trial.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

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

22 (Against all Defendants)

23 91. Plaintiff and the class re-allege and incorporate by reference and re-allege each and
24 every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint
25 as if fully set forth herein.

26 92. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
27 least since four (4) years before the filing of this action, Defendants have engaged in a pattern and
28 practice of acts of unfair competition in violation of Business and Professions Code §17200,

1 including the practices alleged herein.

2 93. Defendants, and each of them, are “persons” as defined by Business and
3 Professions Code §17201.

4 94. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues
5 on her own behalf and on behalf of the Class that were denied wages due to Defendants’ unfair
6 business practices.

7 95. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result
8 of the Defendants’ unfair competition alleged herein.

9 96. Defendants have previously or continue to engage in unlawful, unfair, and/or
10 fraudulent business practices, as alleged in this Complaint, in violation of California’s Business
11 and Professions Code §17200 *et seq.* by:

12 1) Failing refusing to pay Plaintiff and the Class members the full amount of overtime
13 and double time compensation in violation of Labor Code §§510, 1194, & IWC Wage Order No.
14 5-2001;

15 2) Failing and refusing to provide Plaintiff and the Class members legally compliant
16 non-captive, paid, ten-minute rest periods or premium payments at the regular rate of pay in lieu
17 thereof, in violation of Labor Code § §226.7, 512 and IWC Wage Order No. 5-2001;

18 3) Failing and refusing to provide Plaintiff and the Class members legally compliant,
19 uninterrupted, meal breaks or premium payments at the regular rate of pay in lieu thereof, in
20 violation of Labor Code §§226.7, 512 and IWC Wage Order No. 5-2001; and

21 4) Failing and refusing to reimburse Plaintiff and the Class members for necessary
22 business expenditures, including cell phone expenses, in violation of Labor Code §2802.

23 97. All of these allegations constitute unfair business practices and/or unlawful
24 business practices in violation of California Business and Professions Code §17200, *et seq.*

25 98. As a result of Defendants’ unfair business practices, Defendants have reaped unfair
26 benefits and illegal profits at the expense of Plaintiff, the Class members, and others similarly
27 situated, and the members of the public. Defendants should be made to disgorge their ill-gotten
28 gains and to restore them to the Class, including Plaintiff.

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

11 100. Plaintiff is informed and believes and thereon alleges that at all times herein
12 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
13 prohibited by California Business and Professions Code §17200, thereby depriving their
14 employees and the Class members, the minimum working condition, standards and conditions due
15 to them under the California labor laws and Industrial Welfare commission wage orders as
16 specifically described herein. Plaintiff further seeks an order requiring Defendants to identify by
17 full name, telephone number, and last known address employees who worked or still work for
18 Defendants for the Class members from four (4) years preceding the filing of the original
19 Complaint through the date of class certification. Plaintiff further seeks an order requiring
20 Defendants to timely pay restitution to her and the Class, including back wages, and interest.

21 101. By and through its unfair, unlawful, and/or fraudulent business practices and acts
22 described herein, Defendants have obtained valuable services from Plaintiff and all persons
23 similarly situated and has deprived Plaintiff and all persons similarly situated of valuable rights
24 and benefits guaranteed by law, all to their detriment.

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

103. 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.

104. Plaintiff 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.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

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

(Against all Defendants)

105. Plaintiff on behalf of herself and on behalf of all other aggrieved employees herein re-alleges and incorporates each and every one of the allegations in the preceding paragraphs as if fully set forth herein.

106. 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.

107. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

108. Plaintiff and Defendants' non-exempt hourly employees who provide patient care services for Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

1 109. Plaintiff gave written notice electronically to the LWDA, and by certified mail to
2 Defendants of the specific provisions of this code alleged to have been violated, including the facts
3 and theories to support the alleged violations as required by Labor Code §2699.3. More than 65
4 days have lapsed since notice to the LWDA and the LWDA has not responded to Plaintiff's notice.
5 Accordingly, Plaintiff may commence a civil action to recover civil penalties on behalf of other
6 current and former employees under Labor Code §2699 pursuant to §2699.3.

7 110. Plaintiff asserts all the claims in this Complaint against Defendants, individually
8 and on behalf of all aggrieved employees in their capacity as private attorney general and seeks all
9 applicable civil penalties available under the Labor Code.

10 111. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of the
11 aggrieved employees, requests and seeks to recover from the Defendants applicable penalties
12 related to Defendants' failure to provide accurate wage statements, failure to pay all overtime
13 and/or double time wages, failure to provide meal and/or rest periods and/or pay meal and/or rest
14 period premium payment at the regular rate of pay in lieu of providing meal and/or rest periods,
15 failure to reimburse business expenses, and failure to pay all wages due at separation. Plaintiff is
16 further entitled to attorneys' fees and costs pursuant to Labor Code §2699(k)(1), as well as all civil
17 penalties, including, but not limited to:

- 18 1) Penalties under Code of Regulations, Title 8 §11050 in the amount of \$50 for each
19 aggrieved employee per pay period for the initial violation, and \$200 for each
20 aggrieved employee per pay period for each subsequent violation;
- 21 2) Penalties under Labor Code §558, in addition to and entirely independent and apart
22 from other penalties provided under the Labor Code, in the amount of \$50 for each
23 underpaid aggrieved employee for each pay period the aggrieved employee was
24 underpaid in addition to an amount sufficient to recover underpaid wages, and
25 \$100 for each subsequent violation for each underpaid employee for each pay
26 period for which the employee was underpaid in addition to an amount sufficient
27 to recover underpaid wages, with all wages recovered pursuant to Labor Code
28 §558 provided to the affected employees;

3) Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalties provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

4) Penalties under Labor Code §2699(f)(2)(A), 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, or pursuant to Labor Code §2699(f)(2)(B) for \$200 for each aggrieved employee per pay period for each violation.

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

113. Plaintiff seeks and is entitled to have 65% of all penalties obtained be allocated to the LWDA and 35% to aggrieved employees.

114. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §§2699(k)(1).

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, address and telephone number all current and former employees of Defendants, that are covered by the Class Definition, for the period of four (4) years prior to the filing of this action through the date of class action certification.
5. For all unpaid wages due to Plaintiff and each Class member, in amounts to be proven at trial;
6. For restitution of all unpaid wages due Plaintiff and each Class member;

7. For the full amount of unpaid wages due to Plaintiff and each class member pursuant to Labor Code §1194;
8. For recovery as authorized by Labor Code §226(e);
9. For all applicable statutory penalties, in amounts to be proven at trial;
10. For an award of waiting time penalties pursuant to Labor Code §203, in amounts to be proven at trial;
11. For general damages including compensatory damages according to proof;
12. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) and Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
13. For all applicable interest on damages, wages, expenses, and penalties due;
14. For declaratory relief that Defendants engaged in unfair practices;
15. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194, and 2802, *et seq.*;
16. For restitution of all moneys due to Plaintiff and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
17. 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;
18. 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;
19. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 218.5, 1194(a), 2802, 2699(k)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law;
20. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil penalties authorized by Labor Code §2699, including but not limited to:
 - a. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each

aggrieved employee per pay period for each subsequent violation;

b. For civil penalties pursuant to Labor Code §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; and

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;

c. For civil penalties per Code of Regulations, Title 8 §11050 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;

d. For civil Penalties under Labor Code §2699(f)(2)(A), 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, or pursuant to Labor Code §2699(f)(2)(B) for \$200 for each aggrieved employee per pay period for each violation; and,

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

Date: May 18, 2026

THE MYERS LAW GROUP, A.P.C.

By: 

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Attorneys for Plaintiff and all others similarly
situated