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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VIJAYABARATHY SIVAKUMAR,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES, a
Washington nonprofit corporation;
PROVIDENCE HEALTH SYSTEM –
SOUTHERN CALIFORNIA, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CLASS ACTION COMPLAINT

- 1. Failure to Pay All Wages;**
- 2. Failure to Pay Overtime Compensation;**
- 3. Missed Meal Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 4. Missed Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;**
- 6. Failure to Pay all Wages Due at Termination of Employment in Violation of California Labor Code §§ 201-203;**
- 7. Failure to Provide Sick Pay at the Regular Rate in Violation of Labor Code § 246; and**
- 8. Violations of California Business & Professions Code §§ 17200, et seq.**

JURY TRIAL DEMANDED

1 Plaintiff VIJAYABARATHY SIVAKUMAR, by and through her undersigned attorneys,
2 hereby brings this Class Action Complaint against Defendants PROVIDENCE HEALTH &
3 SERVICES, a Washington nonprofit corporation; PROVIDENCE HEALTH SYSTEM –
4 SOUTHERN CALIFORNIA, a California corporation; and DOES 1 through 10 (“Defendants”) and
5 alleges as follows:

6 **I. NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to pay their staff and nurses all
8 the wages they are owed, failure to compensate them for double time, failure to provide them with
9 meal and rest periods in compliance with the applicable Wage Order and failure to properly pay meal
10 and rest period premiums to all of their non-exempt employees. Defendants have engaged in a
11 common scheme of routinely requiring and/or suffering and permitting their nurses to work in excess
12 of 12 hours per day without compensating them at the statutorily-mandated double-time rate, have
13 failed to provide them with meal periods in compliance with the applicable Wage Order, and have
14 failed to authorize and permit them rest periods in compliance with the applicable Wage Order.

15 2. Defendants employ hundreds of staff and nurses in California.

16 3. Defendants’ nurses are typically scheduled to work 12-hour shifts. However,
17 Defendants have routinely required and/or suffered and permitted their nurses to work well in excess
18 of 12 hours per day without paying them for hours in excess of 12 per day, much less at their statutorily
19 mandated double-time rate of compensation.

20 4. Defendants assign their nurses to two patients at any given time, and nurses are not
21 permitted to have more than two patients. Nurses’ job duties consist of: taking patient pulses, samples,
22 temperatures, and blood pressures; writing records; filling out patient charts; providing pre- and post-
23 operation care; monitoring and administering medication and intravenous infusions; “reporting on”
24 patients to the next shift of nurses; performing physical exams and health histories; providing wound
25 care; providing healthcare counseling and education to patients; and directing other healthcare
26 personnel, among other duties) that they typically cannot complete all of their duties within the pre-
27 allotted 12- hour shift time.

1 5. In addition, Defendants have failed to provide sufficient “break nurses” to tend to
2 patients so that their nurses may take statutorily-mandated meal and rest periods. Specifically,
3 Defendants’ policy has been to require the nurses to skip meal or rest breaks whenever a nurse’s
4 assigned patient needs treatment or monitoring, rather than to maintain a system whereby other nurses
5 relieve them at regular intervals throughout the day. As a result, Defendants’ nurses routinely are not
6 provided with uninterrupted, thirty-minute meal periods during which they are completely relieved of
7 duty, by the end of the fifth hour of work and the end of the tenth hour of work and are routinely not
8 authorized and permitted to take rest breaks of at least ten minutes by the end of every fourth hour of
9 work or major fraction thereof. Further, due to pressure from management, nurses are required to
10 clock-out for their meals and continue working.

11 6. In addition, during the Covid-19 pandemic, nurses were required to arrive prior to their
12 shift time, wait in line and have their temperatures checked prior to clocking-in. This process would
13 take approximately 5-10 minutes and was unpaid and off-the-clock.

14 7. Defendants also failed to pay sick pay wages at the regular rate, and instead paid sick
15 pay wages to nurses at the base rate of pay.

16 8. Accordingly, Defendants have denied their nurses the double time wages they are owed
17 under California law and have further denied them the legally complaint, duty-free meal and rest
18 breaks and premium pay in lieu thereof.

19 9. Plaintiff brings Causes of Action One through Eight (the “class claims”) as a class action
20 on behalf of herself and other similarly situated individuals who have worked as nurses for Defendants
21 at Little Company of Mary Medical Center, at any time since four years prior to filing this action,
22 through the date judgment is rendered in this action.

23 10. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class claims
24 pursuant to California Labor Code §§ 201, 202, 203, 221-223, 226, 226.7, 246, 510, 512, 1174, 1194,
25 the applicable IWC Order, and under Business & Professions Code §§ 17200-17208, for unfair
26 competition due to Defendants’ unlawful, unfair and fraudulent business acts and practices.

27 11. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 engaged in, among other things a system of willful violations of the Labor Code and the applicable

1 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
2 employees the above stated rights and benefits.

3 **II. JURISDICTION AND VENUE**

4 12. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
5 California Constitution and California Code of Civil Procedure § 410.10.

6 13. Additionally, this Court has jurisdiction over Plaintiff's and the Classes' claims for
7 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
8 under Business & Professions Code §§ 17203 and 17204.

9 14. The Court has jurisdiction over Defendants because they are corporations authorized to
10 do business in the State of California and are registered with the California Secretary of State.
11 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
12 intentionally avail themselves of the California market through the advertising, marketing and sale of
13 goods and services, to render the exercise of jurisdiction over Defendants by the California court
14 consistent with traditional notions of fair play and substantial justice.

15 15. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure § 395.5.
16 Defendants employed Plaintiff and the other nurses in this County, transact business in this County,
17 and the events complained of in this Complaint occurred in this County.

18 **III. PARTIES**

19 16. Plaintiff and all of the proposed Class Members as set forth below are current or former
20 employees of Defendants in California who worked for Defendants at Little Company of Mary
21 Medical Center any time since four years of filing this action through the resolution of this action and
22 were classified by Defendants as non-exempt.

23 17. Plaintiff VIJAYABARATHY SIVAKUMAR is a resident of Los Angeles County.
24 Plaintiff worked for Defendants at Little Company of Mary Medical Center San Pedro in Los Angeles
25 County, California, as a nurse at from approximately 2016 through June 2023. Plaintiff's last day
26 worked was approximately July 21, 2022.

27 18. Defendant PROVIDENCE HEALTH & SERVICES, is a Washington nonprofit
28 corporation and at all relevant times has been engaged in the business of health care and hospital

1 services in the State of California and operates hospitals and medical centers.

2 19. Defendant PROVIDENCE HEALTH SYSTEM – SOUTHERN CALIFORNIA, is a
3 California corporation and at all relevant times has been engaged in the business of health care and
4 hospital services in the State of California.

5 20. Plaintiff does not know the true names and capacities of Defendants sued herein as
6 DOES 1-10, and therefore sues these Defendants by fictitious names. Plaintiff will amend this
7 Complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes
8 and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for
9 the occurrences and damages alleged herein, and that Plaintiff's damages as hereinafter set forth were
10 proximately caused by said Defendants.

11 21. Throughout this Complaint, any reference to "Defendants" is intended to refer to all
12 Defendants, including DOES 1-10, jointly.

13 IV. FACTUAL ALLEGATIONS

14 22. During the relevant time period of this action, Defendants have employed Plaintiff and
15 other similarly situated individuals to provide nursing services. Their job duties have included
16 assisting patients in recovery and prevention, filling out patient charts, administering tests, checking
17 vital signs, blood pressures, and temperatures, filling out reports regarding a patient's health and
18 recovery for review by the treating physician and other nurses, providing medication, providing pre-
19 and post-operation care, administering intravenous infusions, providing wound care, physically
20 moving and otherwise assisting patients with everyday activities, performing other treatment duties,
21 and performing additional administrative duties at the direction of Defendants, filling out patient
22 charts and other paperwork.

23 23. Pursuant to California law, Defendants are obligated to compensate their nurses at a
24 regular rate of pay for the first 8 hours worked in a day, at an overtime premium rate of 1.5 times the
25 regular rate for hours worked in excess of 8 in a day, and at a "double-time" rate of 2 times the regular
26 rate for hours worked in excess of 12 in a day.

27 24. Defendants regularly schedule nurses to work 12-hour shifts.

28 25. Defendants assign their nurses to two patients at any given time, and nurses are not

1 permitted to have more than two patients. Nurses' job duties consist of: taking patient pulses, samples,
2 temperatures, and blood pressures; writing records; filling out patient charts; providing pre- and post-
3 operation care; monitoring and administering medication and intravenous infusions; "reporting on"
4 patients to the next shift of nurses; performing physical exams and health histories; providing wound
5 care; providing healthcare counseling and education to patients; and directing other healthcare
6 personnel, among other duties) that they typically cannot complete all of their duties within the pre-
7 allotted 12- hour shift time. As a result, meal and rest breaks are missed entirely, and if charting is not
8 finished within the allotted shift time, Plaintiff and other nurses are to complete this off-the-clock.

9 26. Defendants communicate to their nurses the importance of taking special care to
10 accurately record patient information, and clearly and effectively communicate all necessary
11 information to the nurses working the subsequent shift, such as patients' health history, diagnosis, and
12 plan of care. This is because passing along inaccurate information or failing to alert subsequent
13 staffers of a patient's particular needs can contribute to gaps in patient care and breaches in patient
14 safety, such as medication errors, wrong-site surgery, and even patient deaths.

15 27. As a result, the nurses must be thorough and complete in fulfilling their obligations to
16 fill out patient charts after providing treatment. Thus, nurses are routinely obligated to work much
17 later than their scheduled shift end time to finish their charting obligations.

18 28. Further, because Plaintiff and other nurses are prohibited from having more than two
19 patients at any given time, they are not permitted to hand-off their patients to another nurse during
20 meal and rest breaks, as this would result in nurses having more than two patients. However, as a result
21 of pressures from management, Plaintiff and other nurses are still required to clock-out for meal breaks
22 and continue working.

23 29. Defendants have failed to provide sufficient "break nurses" to tend to patients so that
24 nurses may take statutorily-mandated meal and rest periods. As a result, the nurses routinely are not
25 provided with uninterrupted, thirty-minute meal periods during which they are completely relieved of
26 any duty, by the end of the fifth hour of work and the end of the tenth hour of work, and are routinely
27 not authorized and permitted to take rest breaks of at least ten minutes by the end of every fourth hour
28 of work or major fraction thereof.

1 30. Additionally, supervisors have also ignored the nurses’ pleas for Defendants to provide
2 adequate break nurses so that statutorily mandated meal and rest periods may be taken.

3 31. Further, during the Covid-19 pandemic, nurses were required to arrive prior to their shift
4 time, wait in line and have their temperatures checked prior to clocking-in. This process would take
5 approximately 5-10 minutes and was unpaid and off-the-clock.

6 32. Defendants also failed to pay sick pay wages at the regular rate, and instead paid sick
7 pay wages to nurses at the base rate of pay.

8 33. Defendants also failed to accurately record the hours worked by the nurses in that, as a
9 result of Defendants’ policies and procedures, all time worked is not accurately captured and thus
10 Defendants have failed to keep accurate payroll records.

11 34. In light of the foregoing, the nurses—including Plaintiff—have been denied the wages
12 and benefits to which they are entitled under California law.

13 ***Plaintiff’s Exhaustion of Administrative Remedies***

14 35. Plaintiff is currently complying with the procedures for bringing suit specified in
15 Labor Code section 2699.3.

16 36. By letter dated October 17, 2023, required notice was provided to the Labor and
17 Workforce Development Agency (“LWDA”) and Defendants, of the specific provisions of the Labor
18 Code alleged to have been violated, including the facts and theories to support the alleged violations.

19 37. This Complaint will be amended when more than sixty-five (65) days have passed
20 since the date the notice was mailed to Defendants and the LWDA, if the LWDA chooses not to
21 investigate the allegations herein.

22 **V. CLASS ACTION ALLEGATIONS**

23 38. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 39. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
25 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
26 commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

27 40. Plaintiff brings this suit as a class action on behalf of two classes of individuals defined
28 as follows (collectively the “Classes”):

1 41. Plaintiff Class: All persons who have been, or currently are, employed by Defendants at
2 Providence Little Company of Mary Medical Center and who held, or hold, job positions which
3 Defendants have classified as “non-exempt” employees in the State of California, at any time since four
4 years prior to filing this action, through the date judgment is rendered in this action.

5 42. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
6 during the Class Period.

7 43. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the
8 class period hundreds of class members have been employed by Defendants as non-exempt employees
9 in the State of California. Because so many persons have been employed by Defendant in this capacity,
10 the members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or
11 impracticable.

12 44. Common Questions of Law and/or Fact. Common questions of law, in fact, exist as to
13 all members of the Plaintiff Class and predominate over any questions affecting only individual
14 members of those classes. Among the questions of law and fact, that are relevant to the adjudication
15 of class members’ claims are as follows:

- 16 (a) Whether Plaintiff and the class members are subject to and entitled to the benefits of
17 California wage and hour statutes;
- 18 (b) Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and the
19 other members of the Plaintiff Class for all hours worked;
- 20 (c) Whether Defendants required and/or suffered and permitted Plaintiff and the other
21 members of the Plaintiff Class to work in excess of 12 hours per day;
- 22 (d) If so, whether Defendants have refused to approve payment of double-time wages for
23 hours worked in excess of 12 hours per day;
- 24 (e) Whether Defendants had a standard policy of not providing mandated meal and rest
25 breaks to Plaintiff and the other members of the Plaintiff Class;
- 26 (f) Whether Defendants unlawfully and/or willfully deprived Plaintiff and the other
27 members of the Plaintiff Class of meal and rest breaks and failed to pay premiums for
28 missed breaks;

- 1 (g) Whether meal and rest period premiums for missed meal and rest periods were paid to
2 Plaintiff and the members the classes at the regular rate or base hourly rate;
- 3 (h) Whether Defendants had a standard policy of not providing sick pay wages to Plaintiff
4 and the other members of the Plaintiff Class at the regular rate;
- 5 (i) Whether Defendants maintained accurate records of the hours worked by Plaintiff and
6 the other members of the Plaintiff Class
- 7 (j) Whether the members of the classes who had their employment relationship with
8 Defendants terminated are entitled to penalty wages for Defendants' failure to timely
9 pay all outstanding amounts of compensation owed upon termination of the
10 employment relationship;
- 11 (k) Whether Defendants' conduct as alleged herein violates the Unfair Business Practices
12 Act of California, Bus. & Prof. Code § 17200, *et seq.*;
- 13 (l) Whether Plaintiff and members of the classes sustained damages, and if so, the proper
14 measure of such damages, as well as interest, penalties, costs, attorneys' fees, and
15 equitable relief; and
- 16 (m) The injunctive and/or monetary relief to which Plaintiff and the members of the
17 classes may be entitled as a result of the violations alleged herein.

18 45. Typicality. Plaintiff's claims are typical of the claims of the classes. Defendants'
19 common course of conduct in (1) failing to pay all wages; (2) failing to approve and compensate nurses
20 at the statutorily mandated overtime rate for hours in excess of 12 per day that they require and/or
21 suffer and permit them to perform and (2) failing to provide them with meal and rest periods in
22 compliance with the applicable Wage Order; (3) failing to pay meal and rest period premiums at the
23 regular rate; (4) failing to pay sick pay wages at the regular rate has caused Plaintiff and the members
24 of the proposed classes to sustain the same or similar injuries and damages. Plaintiff's claims are
25 thereby representative of and co-extensive with the claims of the proposed classes.

26 46. Adequacy of Representation. Plaintiff is an adequate representative of the proposed
27 classes because she is a member of the classes, and her interests do not conflict with the interests of
28 the class members she seeks to represent. Plaintiff has retained competent counsel, experienced in the

1 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
2 action vigorously for the benefit of the classes. The interests of the class members will fairly and
3 adequately be protected by Plaintiff and her attorneys.

4 47. Superiority of Class Action. A class action is superior to other available methods for
5 the fair and efficient adjudication of this litigation since individual litigation of the claims of all class
6 members is impracticable. It would be unduly burdensome to the courts if these matters were to
7 proceed on an individual basis, because this would potentially result in hundreds of individuals,
8 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory
9 judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of recovery
10 among those with equally meritorious claims. By contrast, the class action device presents far fewer
11 management difficulties, and provides the benefit of a single adjudication, economics of scale, and
12 comprehensive supervision by a single court.

13 48. The various claims asserted in this action are additionally or alternatively certifiable
14 under the provisions of the California Code of Civil Procedure § 382 because:

- 15 (a) The prosecution of separate actions by hundreds of individual class members would
16 create a risk of varying adjudications with respect to individual class members, thus
17 establishing incompatible standards of conduct for Defendants, and
18 (b) The prosecution of separate actions by individual class members would also create the
19 risk of adjudications with respect to them that, as a practical matter, would be dispositive
20 of the interest of the other class members who are not a party to such adjudications and
21 would substantially impair or impede the ability of such non-party class members to
22 protect their interests.

23 49. Plaintiff hereby incorporates each and every allegation contained above and realleges
24 said allegations as if fully set forth herein.

25 **FIRST CAUSE OF ACTION**
26 **Failure to Pay Overtime Compensation**
California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq.*, and IWC Wage Order

27 50. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though
28 fully set forth herein.

51. California Labor Code §§ 510 and 1198, and IWC Wage Order, §3, provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in any workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

52. Defendants have failed to pay Plaintiff and the members of the Plaintiff Class overtime compensation for the hours they worked in excess of the maximum hours permissible by law under California Labor Code §§ 510 and 1198, and IWC Wage Order §3. Defendants require and/or suffer and permit Plaintiff and the members of the Plaintiff Class to work hours in excess of 8 in a day and 12 in a day.

53. Defendants' failure to pay additional, premium rate compensation to Plaintiff and the members of the Plaintiff Class for their overtime and double time hours worked has caused Plaintiff and the members of the Plaintiff Class to suffer damages in amounts which are presently unknown to them but which will be ascertained according to proof at trial.

54. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and the members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

55. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff and the members of the Plaintiff Class have been deprived of overtime and double time compensation in an amount to be determined at trial. Plaintiff and the members of the Plaintiff Class request recovery of overtime and double time compensation according to proof, interest, attorney's fees and costs of suit pursuant to California Labor Code §§1194(a), 554, 1194.3 and 1197.1, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

SECOND CAUSE OF ACTION
Failure to Pay for All Hours Worked in Violation of
California Labor Code §§ 204, 221-223, 1194, 1197

56. Plaintiff realleges and incorporates by reference the above paragraphs as though fully set forth below.

1 57. At all times relevant herein, which comprise the time period not less than four (4) years
2 preceding the filing of this action, Defendant was required to compensate their hourly employees for
3 all hours worked.

4 58. For at least the four (4) years preceding the filing of this action, Defendants failed to
5 compensate employees for all hours worked. Defendants implemented policies that actively prevented
6 employees from being compensated for all time worked by subjected Plaintiff and members of the
7 classes to work off-the-clock.

8 59. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff Class
9 are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding
10 the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with
11 Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and 206.

12 60. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the time
13 during which an employee is subject to the control of an employer and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so."

15 61. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement
16 to work for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled to
17 recover in a civil action the unpaid balance of the full amount of this minimum wage ... including
18 interest thereon, reasonable attorney's fees, and costs of suit."

19 62. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
20 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
21 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
22 in an amount equal to the wages unlawfully unpaid and interest thereon."

23 63. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
25 minimum so fixed is unlawful."

26 64. Plaintiff is informed and believes, and therefore alleges, that Defendant's compensation
27 schemes do not fairly compensate Plaintiff and other Class Members for all hours spent performing
28 their job duties.

65. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff Class for each and every hour worked violates Labor Code sections 1194, 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

66. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC wage order section 3; and Business & Professions Code.

67. During the applicable time period, Defendants have and continue to have a pattern and practice of not providing its employees all wages.

68. As a proximate result of the above-mentioned violations, Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION
Failure to Provide Meal Periods, or Compensation in Lieu Thereof
California Labor Code §§ 226.7 and 512

69. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though fully set forth herein.

70. California Labor Code §§ 226.7 and 512, require Defendants to provide meal periods to Plaintiff and members of the proposed Class. California Labor Code §§ 226.7 and 512, prohibit employers from employing an employee for more than five hours without a meal period no less than thirty (30) minutes and for more than ten (10) hours without a second meal period. Unless the employee is relieved of all duty during the thirty (30) minute meal period, the employee is considered “on-duty” and the meal or rest period is counted as time worked.

71. Defendants do not provide the nurses with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

72. Rather, the nurses regularly work twelve (12) hours in a day, and often far more, without the opportunity to take a meal period during which they are relieved of all duty.

73. Defendants' policy has been to require the nurses to skip statutorily-mandated meal periods due to the lack of break nurses rather than to maintain a system whereby other nurses relieve

1 them at regular intervals throughout the day. Even when the nurses are provided with meal periods,
2 they are subject to interruption to respond to patient treatment needs.

3 74. Moreover, as a matter of policy and practice, when Defendants do provide meal period
4 premiums for missed meal periods to the nurses and their other non-exempt employees, such
5 premiums are paid at the base hourly rate, rather than the regular rate and therefore do not include all
6 wages and other nondiscretionary earnings (such as shift differentials, piece-rate and incentive
7 compensation, and nondiscretionary bonuses) in violation of California law. *See Ferra v. Loews*
8 *Hollywood Hotel, LLC*, No. S259172, 2021 WL 2965438 (Cal. July 15, 2021).

9 75. Defendants have failed to perform their obligations to provide Plaintiff and the members
10 of the Plaintiff Class off-duty meal periods by the end of the fifth hour of work and a second meal
11 period by the end of the tenth hour of work. Defendants also have failed to pay Plaintiff and the
12 members of the Plaintiff Class one (1) hour of pay for each off-duty meal period that they have been
13 denied. Further, where Defendant did provide meal period premiums for missed meal periods to their
14 nurses and other non-exempt employees, such premiums were at the employee's base hourly rate,
15 rather than the regular rate.

16 76. Defendants' conduct described herein violates California Labor Code §§226.7 and 512.
17 Therefore, Plaintiff and members of the classes are entitled to compensation for Defendants' failure
18 to provide meal periods, plus interest, expenses, and costs of suit pursuant to California Labor Code
19 §§226.7(b) and Title 8 of the California Code of Regulations §11090.

20 **FOURTH CAUSE OF ACTION**
21 **Failure to Provide Rest Periods, or Compensation in Lieu Thereof**
22 **California Labor Code §§ 226.7**

23 77. Plaintiff hereby incorporates by reference each and every one of the allegations
24 contained in the preceding paragraphs as if the same were fully set forth herein.

25 78. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require
26 employers to provide rest periods and to pay an employee one (1) additional hour of pay at the
27 employee's regular rate for each work day that a meal or rest period is not provided. Labor Code
28 section 226.7 provides that no employer shall require an employee to work during any rest period
mandated by an applicable order of the IWC. The applicable IWC wage order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
2 shall be in the middle of each work period” and that the “rest period time shall be based on the total
3 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
4 thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

5 79. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class Members
6 were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every
7 four (4) hours or major fraction thereof worked during the workday.

8 80. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants
9 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods without
10 duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right
11 to the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required
12 by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order section 11 and
13 categorically failed to pay any and all rest period wages due.

14 81. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the
15 applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular
16 rate for each work day that the rest period is/was not provided or provided late to Plaintiff and any
17 member of the Classes, the cumulative sum of which is to be determined at trial.

18 82. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for
19 Defendant’s failure to provide rest periods, plus interest, attorneys’ fees, expenses, and costs of suit
20 pursuant to Labor Code section 226.7(b) and the applicable wage order.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Provide Accurate Itemized Wage Statement and Maintain Accurate Records**
23 **California Labor Code §§ 226, 1174**

24 83. Plaintiff hereby incorporates by reference each and every one of the allegations
25 contained in the preceding paragraphs as if the same were fully set forth herein.

26 84. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires
27 employers to furnish each employee with a statement itemizing, among other things, the total hours
28 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

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1 85. Labor Code section 226(e) provides that if an employer fails to comply with providing
2 an employee with properly itemized wage statements as set forth in section 226(a), then the employee
3 is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a
4 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed
5 \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a)
6 shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
7 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to
8 provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

9 86. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of
10 the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and the
11 applicable IWC Wage order section 6(B).

12 87. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly and
13 intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized statements
14 showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all applicable hourly
15 rates in effect during each respective pay period and the corresponding number of hours worked at
16 each hourly rate by each respective individual.

17 88. Plaintiff is informed and believes, and thereon alleges, that Defendants did not maintain
18 accurate business records pertaining to the total hours worked for Defendants by Plaintiff and the
19 members of the Classes as required under Labor Code section 1174.5. This is a result of missing pay,
20 and missed meal and rest-break premiums, as illustrated above.

21 89. As a result of not having kept accurate records, Plaintiff and the Class Members suffered
22 injuries in the form of confusion over whether they received all wages owed to them, and difficulty
23 and expense in reconstructing pay records in addition to other injuries which may come to light during
24 the discovery process.

25 90. Labor Code section 1198 provides that the maximum hours of work and the standard
26 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
27 IWC wage order. Section 1198 further provides that “[t]he employment of any employees for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

1 Pursuant to the applicable IWC Wage order, employers are required to keep accurate time records
2 showing when the employee begins and ends each work period and meal period.

3 91. During the relevant time period, Defendants failed, on a company-wide basis, to keep
4 accurate records of work and meal period start and stop times for Plaintiff and members of the Classes,
5 in violation of Labor Code section 1198. Also, as stated, Defendants engaged in a company-wide
6 practice and/or policy of falsifying Plaintiff's and members of the Classes' time records by recording
7 that compliant meal periods were taken regardless of if or when meal periods were actually taken, and
8 thereby failed to keep accurate records of meal start and end times for Plaintiff and members of the
9 Classes.

10 92. Plaintiff and the members of the Classes herein seek damages and penalties pursuant to
11 Labor Code section 226(e) for Defendant's violations of Labor Code section 226(a).

12 93. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and
13 an award of reasonable attorneys' fees and costs pursuant to Labor Code sections 218, 226(h).

14 **SIXTH CAUSE OF ACTION**
15 **Waiting Time Penalties**
16 **California Labor Code §§ 201-203**

17 94. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though
18 fully set forth herein.

19 95. California Labor Code §201 requires an employer who discharges an employee to pay
20 all compensation due and owing to said employee immediately upon discharge. California Labor
21 Code §202 requires an employer to promptly pay compensation due and owing to said employee
22 within seventy-two (72) hours of that employee's termination of employment by resignation.
23 California Labor Code §203 provides that if an employer willfully fails to pay compensation promptly
24 upon discharge or resignation, as required under California Labor Code §§201-202, then the employer
25 is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work
26 days.

27 96. Plaintiff and members of the classes have left their employment with Defendants during
28 the statutory period. Defendants willfully failed and refused, and continue to willfully fail and refuse,
to timely pay all wages owed to Plaintiff and members of the classes whose employment with

1 Defendants has ended or been terminated at any point during the statutory period. As a result,
2 Defendants are liable to Plaintiff and other formerly employed members of the classes for waiting
3 time penalties, together with interest thereon, attorneys' fees, and costs of suit, under California Labor
4 Code §203.

5 97. Plaintiff, on behalf of herself and the other members of the classes have left their
6 employment with Defendants during the statutory period, requests waiting time penalties pursuant to
7 California Labor Code §203, plus attorneys' fees and costs, as described below.

8
9 **SEVENTH CAUSE OF ACTION**

10 **Failure to Pay Sick Pay Wages at the Regular Rate**

11 **California Labor Code § 246**

12 98. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
13 herein.

14 99. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
15 in which the paid leave was taken, or at a rate determined by averaging over 90-days. (Lab. Code §
16 246(1).)

17 100. Defendants failed to pay Plaintiff and members of the Classes sick pay at the correct
18 rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts were
19 not included when calculating sick pay wages.

20 101. By failing to pay Plaintiff and Class Members for sick pay at the correct rate, Defendants
21 willfully violated Labor Code section 246.

22 102. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks
23 to represent of sick pay in amounts to be determined at trial, and they are entitled to recover these
24 amounts with interest, attorneys' fees, and costs.

25 **EIGHTH CAUSE OF ACTION**

26 **Unfair Competition and Unlawful Business Practices**
27 **California Business and Professions Code §§ 17200, *et seq.***

28 103. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though
fully set forth herein.

1 104. California Business and Professions Code §17200 defines unfair competition to include,
2 “unlawful, unfair or fraudulent business practices.”

3 105. Plaintiff and all members of the proposed classes are “persons” within the meaning of
4 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
5 property as a result of Defendants’ unfair competition.

6 106. Defendants have been committing, and continues to commit, acts of unfair competition
7 by engaging in the unlawful, unfair and fraudulent business practices and acts described in this
8 Complaint, including, but not limited to:

- 9 (a) violations of California Labor Code §§ 226.7 and 512;
- 10 (b) violations of California Labor Code §§ 221-223;
- 11 (c) violations of California Labor Code § 510;
- 12 (d) violations of California Labor Code § 246;
- 13 (e) violations of California Labor Code §§ 1174;
- 14 (f) violations of California Labor Code §§ 201-203;
- 15 (g) violations of California Labor Code §§ 226, 1174;
- 16 (h) violations of California Labor Code § 1194; and
- 17 (i) violations of California Labor Code § 1198.

18 107. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
19 Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of
20 Plaintiff and the members of the proposed classes. Defendants’ unlawful, unfair, and/or fraudulent
21 conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding
22 employers and competitors.

23 108. Business and Professions Code §17203 provides that the Court may restore to an
24 aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent
25 business acts or practices.

26 109. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or
27 fraudulent activity alleged herein.
28

110. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid.

111. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to herself and members of the proposed Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

112. Plaintiff seeks restitution to herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Cal. Code Civ. Proc. §1021.5.

VI. PRAYER

WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff and Terminated Sub-Class;
4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub-Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For statutory penalties pursuant to Labor Code sections 200, 226, 226.3, 226.7;
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, and 1194;
12. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, and Code of

1 Civil Procedure section 1021.5, and/or other applicable law; and
2 13. A declaratory judgment that Defendants have knowingly and intentionally violated the
3 following provisions of law;

- 4 a) Labor Code sections 510, 1198 for failing to pay overtime wages;
5 b) Labor Code sections 1194, 1194.2, 1197, 1198, 221, 223, for failing to pay all
6 wages;
7 c) Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal
8 and rest breaks;
9 d) Labor Code sections 226, 1174 for failing to provide compliant wage statements;
10 e) Labor Code sections 201 and 202 for failing to pay wages at termination;
11 f) Labor Code section 246 for failing to pay sick pay wages at the regular rate;
12
13 g) Business & Professions Code sections 17200-08 for violating the provisions set
14 forth herein above.

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

16 DATED: October 17, 2023

BRADLEY/GROMBACHER LLP

17
18 By: 

Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Emilie MacLean, Esq.
Attorneys for Plaintiff

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury on all issues so triable as a matter of right.
23

24 DATED: October 17, 2023

BRADLEY/GROMBACHER LLP

25
26 By: 

Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Emilie MacLean, Esq.
Attorneys for Plaintiff