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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KALTUME NDIPAGBOR, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

UNIVERSAL HOME CARE, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: 23STCV29077
*[Assigned to Hon. David S. Cunningham III,
Dept 11, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Rest Breaks;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Reimburse Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized Wage Statements; and
- (17) Failure to Maintain Employment Records

FILED
Superior Court of California
County of Los Angeles
02/23/2024
David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

1 Plaintiff Kaltume Ndipagbor, (“Plaintiff”) on behalf of herself, on a representative basis,
2 and on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her employers, Defendants Universal Home
5 Care, Inc., and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of
6 herself and all other current and former nonexempt employees employed by Defendants in
7 California within the last four years (the “Represented Employees”), for Defendants’ violations
8 of the California Labor Code stemming from Defendants’ failure to pay all wages owed,
9 including minimum and regular wages, failure to pay for overtime wages, failure to provide
10 mandated meal periods and rest breaks, failure to reimburse business expenses, failure to timely
11 pay wages, failure to provide accurate itemized wage statements, and failure to maintain
12 employment records, among other claims.

13 2. Plaintiff was employed by Defendants from approximately April 2008 through
14 July 2023.

15 3. Plaintiff alleges on information and belief that the Represented Employees were
16 subjected to the same policies, working conditions, and corresponding wage and hour violations
17 to which Plaintiff was subjected during her employment.

18 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
19 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
20 worked.

21 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
22 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
23 the Represented Employees were subjected to meal period violations when they were: (1) unable
24 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
25 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
26 period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts
27 in excess of 10 hours.
28

1 6. Defendants also failed to provide Plaintiff and the Represented Employees with
2 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
3 mandated by California law. Defendants did not schedule rest breaks and the Represented
4 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
5 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
6 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
7 mandated third or fourth rest breaks.

8 7. Also, Defendants required Plaintiff and the Represented Employees to incur
9 substantial business-related expenses and costs without reimbursement. For example, Plaintiff
10 and the Represented Employees used their personal cell phones to complete paperwork, patient
11 charts, etc., yet Defendants did not provide reimbursement for this expense.

12 8. Plaintiff also alleges that she and the Represented Employees were not paid all
13 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
14 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
15 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
16 Employees at the time their employment ended with Defendants, including, but not limited to
17 minimum wages, overtime wages, regular wages, wage premiums, among others.

18 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
19 statements that fully complied with the requirements of Labor Code § 226(a).

20 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
21 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
22 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
23 competitors.

24 11. At all material times, Defendants and DOES 1 through 20 were and/or are
25 Represented Employees' employers or persons acting on behalf of Represented Employees'
26 employer, within the meaning of California Labor Code § 558, who violated or caused to be
27 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are

1 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
2 California law.

3 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
4 monetary relief against Defendants and each of them, on behalf of herself and the Represented
5 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
6 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204,
7 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 512, 558, 1174(d), 1194, 1194.2, 1194.2, 1197,
8 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff
9 also reserves the right to name additional representatives throughout the State of California.

10 13. Pursuant to Labor Code § 2699.3(a), Plaintiff has given written notice by online
11 filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
12 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
13 the facts and theories to support the alleged violations. As such, Plaintiff reserves the right to
14 amend this complaint or bring a separate complaint for the PAGA claims pursuant to Labor Code
15 § 2699.3(a)(2)(C).

16 **II. JURISDICTION**

17 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
18 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

19 **III. VENUE**

20 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
21 Procedure §§ 395(a) and 395.5. Defendants transact business in Los Angeles County and the
22 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
23 Los Angeles County. Furthermore, Defendants employed or employ Plaintiff and Represented
24 Employees in Los Angeles County.

25 **IV. PARTIES**

26 **Plaintiff**

27 16. Plaintiff and Class Representative Kaltume Ndipagbor was employed by
28 Defendants from approximately April 2008 through July 2023 and performed work for

Defendants in Los Angeles County.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant Universal Home Care, Inc. is a California corporation authorized to and doing business in Los Angeles County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20, inclusive, but on information and belief alleges that those Defendants are legally responsible for the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

19. Plaintiff is informed and believes and thereon alleges that she and the Represented Employees worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other Represented Employees.

20. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are an integrated enterprise and should be treated as a single employer because these entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

21. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active

1 concert with one another such that the acts of each were and are fully attributable to the others in
2 all material respects. Plaintiff is further informed and believes that at all relevant times
3 Defendants and each of them are now, and at all material times herein mentioned were, the
4 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
5 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
6 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
7 their remaining co-Defendants.

8 22. Plaintiff is further informed and believes that at all relevant times, Defendants
9 have been inadequately capitalized to conduct business, have failed to follow appropriate
10 corporate formalities, and have simply been a shell and instrumentality through which
11 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
12 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
13 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
14 separate existence of these corporate entities would permit abuse of the corporate privilege,
15 thereby sanctioning fraud and promoting injustice.

16 23. Pursuant to Labor Code § 2699.3(a), Plaintiff is in the process of providing
17 written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and
18 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. The waiting period
20 imposed by Labor Code § 2699.3(a)(2)(A) has not yet elapsed. In accordance with Labor Code §
21 2699(g)(1), Plaintiff reserves the right to amend this complaint or bring a separate complaint
22 within 60 days of: 1) receipt of notice from the LWDA that it does not intend to investigate the
23 alleged violation, or 2) if no notice is provided by the LWDA. Pursuant to Labor Code §
24 2699.3(a)(2)(C), “[n]otwithstanding any other provision of law, a plaintiff may as a matter of
25 right amend an existing complaint to add a cause of action arising under this part at any time
26 within 60 days of the time periods specified in this part.”

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1 **V. CLASS ACTION ALLEGATIONS**

2 24. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
3 (herein the “Complaint”) as if fully alleged herein.

4 25. Plaintiff brings this action on behalf of herself and all others similarly situated as
5 a class action, pursuant to Code of Civil Procedure § 382.

6 26. The relevant time period for this class action is defined as the time period
7 beginning four years prior to the filing of this action until class certification (the “Relevant Time
8 Period”).

9 27. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
10 represent is defined as follows:

11 **California Class**

12 All current and former nonexempt employees who resided
13 in California and who were employed by Defendants at any
14 time during the Relevant Time Period.

15 28. Plaintiff reserves the right to amend or modify the class description with greater
16 specificity or further division into subclasses or limitation to particular issues as appropriate.

17 29. Plaintiff, as Class Representative, is a member of the class that she seeks to
18 represent.

19 30. This action has been brought and may properly be maintained as a class action
20 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
21 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
22 records.

23 31. **Numerosity:** The potential members of the Class as defined are so numerous that
24 a joinder of all Represented Employees is impracticable. Although the exact number is currently
25 unknown to Plaintiff, this information is easily ascertainable from Defendants’ payroll and
26 personnel records.

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1 32. **Commonality:** There are questions of law and fact common to the class which
2 predominate over any questions affecting only individual members of the class, including
3 without limitation:

4 i. Whether Defendants violated the California Labor Code and IWC Wage
5 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented
6 Employees for all hours worked;

7 ii. Whether Defendants violated California Labor Code and IWC Wage
8 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
9 hourly compensation for rest periods and other nonproductive time;

10 iii. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Represented
12 Employees and whether Defendants failed to compensate Plaintiff and the Represented
13 Employees with one additional hour of wages at the regular rate of pay for each instance when a
14 paid rest break was not provided;

15 iv. Whether Defendants violated the California Labor Code and applicable
16 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Represented
17 Employees and whether Defendants failed to compensate Plaintiff and the Represented
18 Employees with one additional hour of wages at the regular rate of pay for each instance when a
19 compliant meal period was not provided;

20 v. Whether Defendants violated the California Labor Code and applicable
21 IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business
22 expenses incurred while discharging their duties or in obedience to the directions of their
23 employer;

24 vi. Whether Defendants violated the California Labor Code by failing to
25 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
26 Represented Employees, whether such separation was voluntary or involuntary;

27 vii. Whether Defendants violated the California Labor Code by failing to
28 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and failure to timely pay final wages; and

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

33. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

34. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

35. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
5 alleged herein.

6 37. Plaintiff and the Represented Employees were not exempt from the requirement
7 to be paid at least the applicable California minimum wage throughout the statutory period for
8 each hour worked.

9 38. Plaintiff and the Represented Employees were not provided proper minimum and
10 regular wages due to Defendants' failure to accurately record and compensate for all hours
11 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
12 required to perform off-the-clock work that Defendants either knew or should have known they
13 were performing.

14 39. Consequently, Defendants violated California Labor Code laws and minimum
15 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
16 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

17 40. Plaintiff is informed and believes and thereon alleges that Defendants
18 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
19 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

20 41. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
21 Represented Employees were entitled to be paid wages throughout the statutory period for each
22 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
23 accordance thereto.

24 42. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
25 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
26 Represented Employees' employer, within the meaning of California Labor Code § 558, who
27 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
28 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

1 43. During employment of Plaintiff and the Represented Employees, Defendants
2 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

3 44. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
4 Employees have been damaged in amounts to be proven at trial.

5 45. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
6 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
7 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
8 at trial.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME WAGES**

11 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

12 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 47. Plaintiff and the Represented Employees were employees of Defendants who did
15 not receive proper protections and benefits of the laws governing payment of overtime wages.

16 48. Labor Code § 204 requires that the employer timely pay all overtime wages to its
17 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
18 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
19 any one workweek shall be compensated at the rate of no less than one and one-half times the
20 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
21 in one workday shall be compensated at twice the regular rate of pay for an employee.

22 49. At all relevant times, Plaintiff and the Represented Employees were required by
23 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
24 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
25 Represented Employees did not receive proper overtime compensation.

26 50. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
27 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
28 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per

1 week without proper overtime compensation.

2 51. Plaintiff is informed and believes and thereon alleges that Defendants
3 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
4 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

5 52. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
6 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
7 period, yet Defendants chose not to pay them in accordance thereto.

8 53. At all material times, Defendants DOES 1 through 20 were and/or are the
9 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
10 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
11 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
12 Labor Code regulating hours and days of work respectively.

13 54. During the employment of Plaintiff and the Represented Employees, Defendants
14 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

15 55. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
16 Employees have been damaged in amounts to be proven at trial.

17 56. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
18 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
19 Defendants in an amount to be proven at trial.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST BREAKS**

22 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

23 57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 58. Plaintiff and the Represented Employees are and/or were employees of
26 Defendants who did not receive proper protections and benefits of the laws governing mandatory
27 rest breaks.

1 59. Labor Code § 226.7 requires employers, including Defendants, to provide rest
2 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

3 60. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
4 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
5 each work period. Employees shall receive a 10-minute rest period every four hours or major
6 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
7 hours worked, for which there shall be no deduction from wages.

8 61. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
9 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
10 at her regular rate of compensation for each day that the rest period is not provided.

11 62. At all relevant times, Plaintiff and the Represented Employees were denied
12 mandated paid rest breaks by virtue of Defendants' policy that only paid its employees for each
13 patient seen. As Plaintiff and Represented Employees could not earn income during a rest break
14 (i.e., they could not take an off-duty rest break and treat a patient simultaneously), Plaintiff and
15 the Represented Employees were illegally denied paid rest breaks.

16 63. Defendants also failed to provide Plaintiff and the Represented Employees with
17 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
18 mandated by California law. Defendants did not schedule rest breaks and the Represented
19 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
20 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
21 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
22 and/or permit a third mandated rest break.

23 64. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
24 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
25 and the Represented Employees were not provided with all mandatory rest periods and
26 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
27 compensation in lieu thereof.

1 65. At all relevant times herein, Defendants failed to provide Plaintiff and the
2 Represented Employees all mandated rest breaks and failed to pay wage premiums in lieu of
3 mandated rest periods, thereby receiving an economic benefit.

4 66. By their failure to provide Plaintiff and the Represented Employees with rest
5 breaks as required by California law, and failing to pay one hour of additional wages in lieu of
6 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
7 IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at
8 the employee's regular rate of compensation for each workday that a paid rest break was not
9 lawfully provided in an amount to be proven at time of trial.

10 67. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
11 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the
12 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

16 68. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 69. Plaintiff and the Represented Employees are and/or were employees of
19 Defendants who did not receive proper protections and benefits of the laws governing mandatory
20 meal periods.

21 70. Labor Code § 226.7 requires employers, including Defendants, to provide
22 employees with meal periods as mandated by the Industrial Welfare Commission.

23 71. Labor Code § 512(a), in part, provides that employers, including Defendants, may
24 not employ an employee for a work period of more than five hours per day without providing an
25 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
26 except that if the total work period per day of the employee is no more than six hours, the meal
27 period may be waived by mutual consent of both the employer and the employee. Employers
28 may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

2 72. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
3 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
4 pay for each meal period that is missed.

5 73. At all relevant times herein, Plaintiff and the Represented Employees were denied
6 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
7 practices, Plaintiff and the Represented Employees were subjected to meal period violations
8 when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a
9 meal period after the 5th hour of work, and (3) not provided a mandated second meal period on
10 occasions on shifts in excess of 10 hours.

11 74. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
12 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
13 and the Represented Employees were not provided with all mandatory meal periods and
14 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
15 compensation at the regular rate of pay in lieu thereof.

16 75. At all relevant times herein, Defendants failed to provide Plaintiff and the
17 Represented Employees all mandated meal periods and failed to pay wage premiums in lieu of
18 mandated meal or rest periods, thereby receiving an economic benefit.

19 76. On information and belief, Plaintiff and the Represented Employees did not
20 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
21 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
22 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
23 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
24 Employees to take meal periods in accordance with California law.

25 77. By their failure to provide Plaintiff and the Represented Employees with meal
26 periods as required by California law, and failing to pay one hour of additional wages in lieu of
27 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
28 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at

1 the employee's regular rate of compensation for each work day that a meal period was not
2 lawfully provided in an amount to be proven at time of trial.

3 78. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
4 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the
5 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 79. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

11 80. Plaintiff and the Represented Employees are and/or were employees of
12 Defendants who did not receive proper protections and benefits of the laws governing
13 reimbursement of business expenses.

14 81. Labor Code § 2802(a) requires that the employer indemnify its employees for
15 expenses incurred while discharging their duties or in obedience to directions of their employer.

16 82. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Represented Employees to incur substantial business-related expenses
18 and costs without reimbursement. For example, Plaintiff and the Represented Employees used
19 their personal cell phones to complete paperwork, patient charts, etc., yet Defendants did not
20 provide reimbursement for this expense.

21 83. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
23 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

24 84. At all relevant times herein, Defendants failed to reimburse the Represented
25 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
26 thereby receiving an economic benefit.

27 85. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
28 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,

1 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
2 compel Defendants to fully perform their obligations under the law, all in an amount to be
3 proved at time of trial.

4 86. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
5 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
6 civil actions, and said interest will accrue from the date on which the employee incurred the
7 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
8 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
9 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

10 87. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
11 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
12 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
13 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
14 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
15 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
16 fees will be in an amount to be proved at the time of trial.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

20 88. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 89. Plaintiff and the Represented Employees are and/or were employees of
23 Defendants who did not receive proper protections and benefits of the laws governing the timing
24 and payment of wages.

25 90. Labor Code § 201 requires that the employer immediately pay any wages, without
26 abatement or reduction, to any employee who is discharged.
27
28

1 91. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 92. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 93. At all relevant times, Defendants employed a policy and practice whereby
8 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
9 of employment within the time required by Labor Code §§ 201 and 202.

10 94. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Represented Employees upon separation of
12 employment, including, but not limited to, minimum and regular wages, as well as meal and rest
13 period premiums.

14 95. Plaintiff alleges that, at all times material to this action, Defendants had a planned
15 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
16 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
17 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
18 Employees the above-described waiting time penalty, all in an amount to be shown according to
19 proof at trial and within the jurisdiction of this Court.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 (Labor Code § 226)

23 96. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 97. Plaintiff and the Represented Employees are and/or were employees of
26 Defendants who did not receive proper protections and benefits of the laws governing the
27 provision of accurate itemized wage statements.
28

1 98. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee's name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 99. Defendants violates Labor Code § 226(a) every pay period with respect to
8 Plaintiff and the Represented Employees because the wage statements that Defendants issued to
9 Plaintiff and the Represented Employees failed to provide any information regarding hours
10 worked, and therefore the wage statements did not state "total hours worked by the employee" in
11 direct violation of Labor Code § 226(a)(2).

12 100. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
13 the wage statements failed to accurately state gross wages earned, all deductions, net wages
14 earned, the name and address of the legal entity that is the employer, and all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours at each hourly rate
16 by the employee.

17 101. Moreover, Labor Code § 226.2 states that "[f]or employees compensated on a
18 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
19 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
20 specified in that subdivision, separately state the following, to which the provisions of Section
21 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
22 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
23 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
24 wages paid for that time during the pay period."

25 102. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
26 and the Represented Employees that complied with the requirements of Labor Code §
27 226.2(a)(2) because the wage statements did not include any information regarding compensable
28 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the

1 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect
2 to Plaintiff and the Represented Employees.

3 103. Defendants' failure to provide the required writing deprived Plaintiff and the
4 Represented Employees of the ability to know, understand, and question the calculation and rate
5 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the
6 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
7 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
8 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses
9 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
10 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
11 all to their respective damages in amounts according to proof at trial.

12 104. As a result of Defendants' knowing and intentional failure to comply with Labor
13 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
14 prevented from knowing, understanding and disputing the wage payments paid to them.
15 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
16 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
17 Represented Employees being denied all necessary deductions, payments, and withholdings
18 owed by the employer, including, but not limited to, the failure to make all necessary
19 contributions for unemployment benefits, social security benefits, proper payment of taxes and
20 withholdings, and other mandated state and federal benefits.

21 105. Plaintiff has also been injured as a result of having to bring this action to attempt
22 to obtain correct wage information following Defendants' refusal to comply with many of the
23 mandates of California's Labor Code and related laws and regulations.

24 106. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
25 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
26 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
27 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
28 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable

penalty is all in an amount to be shown according to proof at trial.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

107. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

108. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

109. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

110. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum and regular wages, failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

111. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations to which they were entitled.

112. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

113. Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff and all others similarly-situated.

114. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
2 of Civil Procedure § 1021.5.

3 115. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 116. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said
15 unfair, unlawful and/or fraudulent business practices.

16 117. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 118. Plaintiff, individually, and on behalf of the Represented Employees, is further
23 entitled to and do seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 119. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION
(Cal. Lab. Code §§ 2698 – 2699.5)

120. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of herself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

121. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

122. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. More than sixty-five (65) days have passed since the Notice was mailed to Defendants and the LWDA chooses not to investigate the allegations herein.

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1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 123. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
5 herein.

6 124. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
7 be paid at least the applicable California minimum wage throughout the statutory period for each
8 hour worked.

9 125. Plaintiff and the Aggrieved Employees were not provided proper minimum and
10 regular wages due to Defendants' failure to accurately record and compensate for all hours
11 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
12 required to perform off-the-clock work that Defendants either knew or should have known they
13 were performing.

14 126. Consequently, Defendants violated California Labor Code laws and minimum
15 wage laws, inter alia, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal.
16 Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

17 127. Plaintiff is informed and believes and thereon alleges that Defendants
18 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
19 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

20 128. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
21 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
22 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

23 **TENTH CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

25 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

26 129. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein. Plaintiff and the Aggrieved Employees were employees of Defendants who did
28 not receive proper protections and benefits of the laws governing payment of overtime wages.

1 130. Labor Code § 204 requires that the employer timely pay all overtime wages to its
2 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
3 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
4 any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
6 in one workday shall be compensated at twice the regular rate of pay for an employee.

7 131. At all relevant times, Plaintiff and the Aggrieved Employees were required by
8 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
9 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
10 Represented Employees did not receive proper overtime compensation.

11 132. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
12 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
13 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
14 week without proper overtime compensation.

15 133. Plaintiff is informed and believes and thereon alleges that Defendants
16 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
17 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

18 134. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
19 Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory
20 period, yet Defendants chose not to pay them in accordance thereto.

21 135. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

24 **ELEVENTH CAUSE OF ACTION**

25 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

26 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

27 136. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 137. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

3 138. Labor Code § 226.7 requires employers, including Defendants, to provide rest
4 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

5 139. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
6 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
7 each work period. Employees shall receive a 10-minute rest period every four hours or major
8 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
9 hours worked, for which there shall be no deduction from wages.

10 140. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
11 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
12 her regular rate of compensation for each day that the rest period is not provided.

13 141. At all relevant times, Plaintiff and the Aggrieved Employees were denied
14 mandated paid rest breaks by virtue of Defendants' policy that only paid its employees for each
15 patient seen. As Plaintiff and the Aggrieved Employees could not earn income during a rest
16 break (i.e., they could not take an off-duty rest break and treat a patient simultaneously), Plaintiff
17 and the Aggrieved Employees were illegally denied paid rest breaks.

18 142. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
19 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
20 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were
21 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by
22 their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees
23 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
24 mandated rest break.

25 143. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
26 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
27 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
28 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu

1 thereof.

2 144. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
3 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
4 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

5 **TWELFTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

7 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

8 145. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
9 herein.

10 146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory meal
12 periods.

13 147. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 148. Labor Code § 512(a), in part, provides that employers, including Defendants, may
16 not employ an employee for a work period of more than five hours per day without providing an
17 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
18 except that if the total work period per day of the employee is no more than six hours, the meal
19 period may be waived by mutual consent of both the employer and the employee. Employers
20 may not employ an employee for a work period more than 10 hours per day without providing
21 the employee with a second meal period of not less than 30 minutes.

22 149. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
23 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
24 pay for each meal period that is missed.

25 150. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
28 they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal

1 period after the 5th hour of work, and (3) not provided a mandated second meal period on
2 occasions on shifts in excess of 10 hours.

3 151. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
5 and the Aggrieved Employees were not provided with all mandatory meal periods and
6 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
7 compensation at the regular rate of pay in lieu thereof.

8 152. On information and belief, Plaintiff and the Aggrieved Employees did not
9 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
10 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
11 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
12 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
13 Employees to take meal periods in accordance with California law.

14 153. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

17 **THIRTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 (Labor Code § 2802)

20 154. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 155. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
23 who did not receive proper protections and benefits of the laws governing reimbursement of
24 business expenses.

25 156. Labor Code § 2802(a) requires that the employer indemnify its employees for
26 expenses and losses incurred while discharging their duties or in obedience to the directions of
27 their employer.
28

157. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses and costs without reimbursement. For example, Plaintiff and the Represented Employees used their personal cell phones to complete paperwork and patient charts, yet Defendants did not provide reimbursement for this expense. Furthermore, Defendants did not reimburse Plaintiff and the Represented Employees for travel expenses and mileage costs when traveling to and from patient visits.

158. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

159. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

160. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

161. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

162. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month.

1 163. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
2 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
3 the wages are paid not more than seven calendar days following the close of the payroll period.”

4 164. At all relevant times herein, Defendants did not provide Plaintiff and the
5 Aggrieved Employees with all wages due and owing each period within the time required by
6 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
7 Employees with all wages due and owing each pay period, including, but not limited to,
8 minimum wages and meal and rest period premiums within the time specified by § 204.

9 165. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

12 **FIFTEENTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

14 (Labor Code §§ 201 – 203)

15 166. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 167. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
18 of Defendants who did not receive proper protections and benefits of the laws governing the
19 timing and payment of final wages.

20 168. Labor Code § 201 requires that the employer immediately pay any wages, without
21 abatement or reduction, to any employee who is discharged.

22 169. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
23 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
24 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

25 170. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
26 penalty from the due date thereof at the same rate until paid or until an action therefore is
27 commenced, but the wages shall not continue for more than thirty (30) days.
28

1 171. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
2 Employees with all wages due and owing upon separation of employment, including, but not
3 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
4 within the time specified by Labor Code §§ 201 – 203.

5 172. Plaintiff alleges that, at all times material to this action, Defendants had a planned
6 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
7 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

8 173. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

11 **SIXTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

14 (Labor Code § 226)

15 174. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 175. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
18 who did not receive proper protections and benefits of the laws governing the provision of
19 accurate itemized wage statements.

20 176. Labor Code § 226(a) requires an employer to provide its employees with itemized
21 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
22 inclusive dates of the pay period, the employee's name and the last four digits of his or her
23 Social Security number (or employee identification number), the name and address of the legal
24 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

26 177. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff
27 and the Aggrieved Employees because the wage statements that Defendants issued to Plaintiff
28 and the Aggrieved Employees failed to provide any information regarding hours worked, and

1 therefore the wage statements did not state “total hours worked by the employee” in direct
2 violation of Labor Code § 226(a)(2).

3 178. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
4 the wage statements failed to accurately state gross wages earned, all deductions, net wages
5 earned, the name and address of the legal entity that is the employer, and all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours at each hourly rate
7 by the employee.

8 179. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
9 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
10 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
11 requirements of Labor Code § 226(a). *See Lopez v. Friant & Associates, LLC* (2017) 15
12 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section
13 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of
14 section 226(e)(1)”).

15 180. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3
17 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted
18 under PAGA. *See Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
19 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

20 **SEVENTEENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS**

22 (Labor Code § 1174(d) and IWC Wage Order § 7(A)(3),(5))

23 181. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
24 herein.

25 182. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing the recording and
27 maintaining of employment records, timekeeping, and so forth.

1 183. Labor Code § 1174(d) requires that employers “[k]eep, at a central location in the
2 state or at the plants or establishments at which employees are employed, payroll records
3 showing the hours worked daily by and the wages paid to, and the number of piece-rate units
4 earned by and any applicable piece rate paid to, employees employed at the respective plants or
5 establishments.”

6 184. The applicable IWC Wage Order § 7(A) states that “[e]very employer shall keep
7 accurate information with respect to each employee including the following: ... (3) Time records
8 showing when the employee begins and ends each work period. Meal periods, split shift intervals
9 and total daily hours worked shall also be recorded ... [and] (5) Total hours worked in the
10 payroll period and applicable rates of pay.”

11 185. Here, Defendants failed to record and maintain employment information,
12 including time records, meal period information, and other required information for the
13 Aggrieved Employees. Therefore, Defendants violated Labor Code § 1174(d) and IWC Wage
14 Order § 7(A)(3) and (5) for every pay period for every Aggrieved Employee.

15 186. Plaintiff alleges that Defendants intentionally, willfully, and improperly failed to
16 record and maintain the records required by Labor Code § 1174(d) and IWC Wage Order §
17 7(A)(3) and (5).

18 187. Labor Code § 1174.5 states that “[a]ny person employing labor who willfully fails
19 to maintain [...] accurate and complete records required by subdivision (d) of Section 1174 [...]
20 shall be subject to a civil penalty of five hundred dollars (\$500).”

21 188. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 1174.5
23 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted
24 under PAGA.

25 **V. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others
27 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
28 follows:

1. As to the Ninth through Seventeenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, and 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

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Dated: February 23, 2024

BY: 
 Brian J. Mankin, Esq.
 Kristina Bui Carlson, Esq.
 Mehrdad Bokhour, Esq.
 Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On February 23, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 23, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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