

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/13/2024 4:37 PM
Reviewed By: J. Nguyen
Case #23CV427953
Envelope: 14399957

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Telephone: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff MICHELLE TARLETON,
individually, and on behalf of other members of
the general public similarly situated and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

MICHELLE TARLETON, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiff,

vs.

PACIFIC CLINICS, a California non-profit
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 23CV427953

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Minimum Wages)
- (2) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)
- (3) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations)
- (4) Violation of Cal. Labor Code § 226.7 (Rest Break Violations)
- (5) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)
- (6) Violation of Cal. Labor Code § 226(a) (Wage Statement Violations)
- (7) Violation of Cal. Labor Code §§ 201, 202 and 203 (Untimely Final Wages)
- (8) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
- (9) Violation of Cal. Business & Professions Code § 17200, *et seq.*

**(10) Violation of Cal. Labor Code §§
2698, *et seq.* (California Labor Code
Private Attorneys General Act of
2004)**

DEMAND FOR JURY TRIAL

1 Plaintiff MICHELLE TARLETON (“Plaintiff”), individually, and on behalf of other members
2 of the general public similarly situated and on behalf of other aggrieved employees pursuant to the
3 California Private Attorneys General Act (“PAGA”), alleges as follows against Defendant PACIFIC
4 CLINICS, and DOES 1 through 25, inclusive (“Defendants”):

5 **INTRODUCTION**

6 1. This is a class action to recover damages on behalf of Plaintiff and all current and
7 former hourly-paid and/or non-exempt employees who worked for Defendants in the State of
8 California at any time during the period from four years prior to the date of the filing of the original
9 Complaint through final judgment (“Class Members”).

10 2. This is also an enforcement action under PAGA to recover civil penalties on behalf of
11 Plaintiff, the State of California, and all current and former hourly-paid and/or non-exempt employees
12 who worked for Defendants in the State of California at any time from one year prior to Plaintiff’s
13 submission of written notice of Defendants’ alleged violations of the California Labor Code to the
14 Labor & Workforce Development Agency (“LWDA”) through final judgment (“Aggrieved
15 Employees”).

16 3. Plaintiff alleges that Defendants hired Plaintiff, Class Members and Aggrieved
17 Employees but, among other things, failed to properly pay them all wages owed for all time worked
18 (including minimum wages, straight time wages, and overtime wages), failed to provide them with all
19 meal periods and rest periods and associated premium wages to which they were entitled, failed to
20 timely pay them all wages due during their employment, failed to timely pay them all wages due upon
21 termination of their employment, failed to provide them with accurate itemized wage statements, failed
22 to maintain accurate payroll records, and failed to reimburse them for necessary business expenses.

23 4. As a result, Defendants violated, *inter alia*, California Labor Code sections 201, 202,
24 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the
25 applicable Industrial Welfare Commission (“IWC”) Wage Order. Through this action, Plaintiff seeks
26 to recover all available remedies including but not limited to actual and liquidated damages, penalties,
27 and attorney’s fees and costs.

28 ///

1 **JURISDICTION AND VENUE**

2 5. This is a class action lawsuit brought pursuant to California Code of Civil Procedure
3 section 382 and a PAGA action brought pursuant to California Labor Code sections 2698, *et seq.*

4 6. The monetary damages, restitution, statutory penalties, and other applicable legal and
5 equitable relief sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and
6 will be established according to proof at trial.

7 7. This Court has jurisdiction over this action pursuant to the California Constitution,
8 Article VI, section 10, which grants the superior court “original jurisdiction in all other causes” except
9 those given by statute to other courts. The statutes under which this action is brought do not specify
10 any other basis for jurisdiction.

11 8. This Court has jurisdiction over all Defendants because, upon information and belief,
12 Defendants are either citizens of California, have sufficient minimum contacts in California, and/or
13 otherwise intentionally avail themselves of the California market so as to render the exercise of
14 jurisdiction over them by the California courts consistent with traditional notions of fair play and
15 substantial justice. Further, no federal question is at issue because the claims asserted herein are based
16 solely on California law.

17 9. Venue is proper in this Court because, upon information and belief, Defendants
18 maintain offices, have agents, employ individuals, and/or transact business in the State of California,
19 County of Santa Clara. Many of the acts, events, and violations alleged herein relating to Plaintiff
20 occurred throughout the state of California, including in the County of Santa Clara.

21 **THE PARTIES**

22 10. At all times herein mentioned, Plaintiff MICHELLE TARLETON is and was an
23 individual residing in Santa Clara County in the State of California.

24 11. At all times herein mentioned, Defendant PACIFIC CLINICS was and is, an employer
25 who does business in California, with locations throughout the state of California, and whose
26 employees are engaged throughout Santa Clara County and the State of California, including at 251
27 Llewellyn Ave., Campbell, California 95008.

28 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under

1 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
2 serve such fictitiously named Defendants once their names and capacities become known.

3 13. Plaintiff is informed and believe, and thereon allege, that the acts and omissions alleged
4 herein were performed by, or are attributable to Defendant(s) PACIFIC CLINICS and/or DOES 1
5 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
6 concert with, each of the other co-Defendants and within the course and scope of such agency,
7 employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The
8 acts of Defendants represent and were in accordance with Defendants' official policies.

9 14. At all relevant times, Defendants were the employers of Plaintiff within the meaning
10 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
11 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
12 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

13 15. Defendants had the authority to hire and terminate Plaintiff and the other Class
14 Members, to set work rules and conditions governing Plaintiff and the other Class Members'
15 employment, and to supervise their daily employment activities.

16 16. Defendants exercised sufficient authority over the terms and conditions of Plaintiff
17 and the other Class Members' employment for them to be joint employers of Plaintiff and the other
18 Class Members.

19 17. Defendants directly hired and paid wages to Plaintiff and the other Class Members.

20 18. Defendants continue to employ hourly paid and/or non-exempt employees within the
21 State of California.

22 19. At all relevant times, Defendants, and each of them, ratified each act or omission
23 complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts
24 and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

25 20. Plaintiff is informed and believes, and thereon alleges, that each Defendant is in some
26 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and
27 transactions alleged herein.

28 ///

1 **GENERAL ALLEGATIONS**

2 21. Plaintiff MICHELLE TARLETON worked for Defendants from approximately April
3 2016 through present as a Licensed Psychiatric Technician/Licensed Vocational Nurse. Defendants
4 jointly and severally employed Plaintiff at their location in Campbell, California. Plaintiff performed
5 various duties for Defendants including, among other things, administering medication, conducting
6 assessments of children, including intakes and discharges, managing doctors' orders, and answering
7 patient questions.

8 22. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a
9 pattern and practice of wage abuse against their hourly-paid and/or non-exempt employees. As set
10 forth in more detail below, this pattern and practice of wage abuse involved, *inter alia*, requiring
11 Plaintiff, Class Members and the Aggrieved Employees to work off-the-clock without compensation,
12 failing to properly pay wages for all hours worked, failing to provide all meal and rest breaks to which
13 they were entitled and failing to pay meal and rest break premiums when due, failing to timely pay
14 wages during employment and upon termination of employment, failing to provide accurate wage
15 statements, failing to reimburse necessary business-related expenses and failing to adhere to other
16 related protections afforded by the California Labor Code and the applicable Industrial Welfare
17 Commission Wage Order.

18 23. Defendants knew or should have known that they had a duty to compensate Plaintiff,
19 Class Members and the Aggrieved Employees pursuant to California law. Defendants had the financial
20 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so to increase
21 Defendants' profits.

22 **CLASS ACTION ALLEGATIONS**

23 24. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff and all others
24 similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure
25 section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and
26 superiority requirements under California Code of Civil Procedure section 382.

27 25. The proposed ***Class*** is defined as follows:

28 **All current and former hourly-paid and/or non-exempt employees**

1 **who worked for Defendants in the State of California at any time**
2 **during the period from four years prior to the date of the filing of**
3 **the original Complaint until final judgment.**

4 26. The proposed *Former Employee Sub-Class* is defined as follows:

5 **All former hourly-paid and/or non-exempt employees who worked**
6 **for Defendants in the State of California at any time during the**
7 **period from four years prior to the date of the filing of the original**
8 **Complaint until final judgment.**

9 27. Plaintiff reserves the right to establish additional subclasses as appropriate.

10 28. There is a well-defined community of interest in this litigation and the Class is easily
11 ascertainable. While the exact number and identities of Class Members are currently unknown to
12 Plaintiff, such information can be ascertained through appropriate discovery from records maintained
13 by Defendants and their agents.

14 29. The Class is so numerous that the individual joinder of all its members is impracticable.

15 30. Common questions of fact and law exist as to all Class Members, which predominate
16 over any questions affecting only individual members of the Class. The common legal and factual
17 questions which do not vary from Class Member to Class Member, and which may be determined
18 without reference to the individual circumstances of any Class Member include the following:

19 i. Whether Defendants had a policy and practice of failing to pay minimum wages to
20 Plaintiff and the other Class Members for all hours worked;

21 ii. Whether Defendants had a policy and practice of failing to pay overtime wages to
22 Plaintiff and the other Class Members for all overtime hours worked;

23 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
24 Plaintiff and the other Class Members;

25 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
26 Plaintiff and the other Class Members;

27 v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
28 the State of California for all hours worked, and for all missed, short, late, and/or

- 1 interrupted meal periods and rest breaks;
- 2 vi. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class
- 3 Members during their employment;
- 4 vii. Whether Defendants' failure to pay wages, without abatement or reduction, in
- 5 accordance with the California Labor Code, was willful;
- 6 viii. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
- 7 Members within the required time upon their discharge or resignation;
- 8 ix. Whether Defendants failed to comply with wage reporting as required by the California
- 9 Labor Code; including, *inter alia*, section 226;
- 10 x. Whether Defendants failed to reimburse Plaintiff and the other Class Members for
- 11 necessary business-related expenses and costs;
- 12 xi. Whether Defendants' conduct was willful or reckless;
- 13 xii. Whether Defendants engaged in unfair business practices in violation of California
- 14 Business & Professions Code section 17200, *et seq.*;
- 15 xiii. The appropriate amount of damages, restitution, and/or monetary penalties resulting
- 16 from Defendants' violation of California law; and
- 17 xiv. Whether Plaintiff and the other Class Members are entitled to compensatory damages
- 18 pursuant to the California Labor Code.

19 31. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are

20 coincident with and not antagonistic to those of the other Class Members Plaintiff seeks to

21 represent. Plaintiff will fairly and adequately protect the interests of the members of the Class.

22 Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intend to

23 prosecute this action vigorously.

24 32. A class action is superior to other available methods for the fair and efficient

25 adjudication of this controversy since individual litigation of the claims of all Class Members is

26 impracticable. Even if every Class Member could afford individual litigation, the court system could

27 not. It would be unduly burdensome on the courts in which individual litigation of numerous cases

28 would proceed. Individualized litigation would also present the potential for varying, inconsistent

1 and/or contradictory judgments and would magnify the delay and expense to all parties and to the
2 court system resulting from multiple trials of the same factual and legal issues. By contrast, the conduct
3 of this action as a class action presents fewer management difficulties, conserves the resources of the
4 parties and of the court system, and protects the rights of each Class Member.

5 33. Certification of this lawsuit as a class action will advance public policy objectives.
6 Employers of this great state violate employment and labor laws every day. Current employees are
7 often afraid to assert their rights out of fear of direct or indirect retaliation. However, class
8 actions provide the Class Members who are not named in the complaint anonymity that allows for the
9 vindication of their rights.

10 **PAGA ALLEGATIONS**

11 34. PAGA is and was applicable to Defendants' employment of Plaintiff and Aggrieved
12 Employees.

13 35. PAGA provides that any provision of law under the California Labor Code that
14 provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected
15 by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through
16 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or
17 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

18 36. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is
19 any person employed by the alleged violator and against whom one or more of the alleged violations
20 was committed.

21 37. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees"
22 as defined by California Labor Code section 2699(c) because they are current or former employees of
23 Defendants against whom one of more of the alleged violations were committed.

24 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
25 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
26 have been met:

- 27 a. The Aggrieved Employee shall give written notice by certified mail (hereinafter
28 "Employee's Notice") to the LWDA and the employer of the specific provisions of the

1 Labor Code alleged to have been violated, including the facts and theories to support
2 the alleged violations.

- 3 b. The LWDA shall provide notice (“LWDA Response”) to the employer and the
4 aggrieved employee by certified mail that it does not intend to investigate the alleged
5 violation within sixty (60) calendar days of the postmark date of the Employee’s
6 Notice. Upon receipt of the LWDA Response, or if the LWDA Response is not
7 provided within sixty-five (65) calendar days of the postmark date of the Employee’s
8 Notice, the aggrieved employee may commence a civil action pursuant to California
9 Labor Code section 2699 to recover civil penalties in addition to any other penalties to
10 which the employee may be entitled.

11 39. On December 7, 2023, Plaintiff provided notice by electronic submission to the LWDA
12 and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to
13 have been violated, including the facts and theories to support the alleged violations, pursuant to Labor
14 Code section 2699.3. **A true and correct copy of the Employee’s Notice is attached hereto as**
15 **Exhibit A.**

16 40. Plaintiff did not receive a LWDA Response within sixty-five calendar days of
17 providing the Employee’s Notice.

18 41. Therefore, the administrative prerequisites under California Labor Code section
19 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of
20 *inter alia* California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),
21 1194, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

24 **Failure to Pay Minimum Wage**

25 **(Against All Defendants)**

26 42. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

27 43. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage
28 for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to

employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the other Class Members were frequently suffered or permitted to work “off-the-clock”, such that they were not paid minimum wage for all hours worked.

44. Such “off-the-clock” work that Plaintiff and Class Members were suffered and/or permitted to work, and for which Plaintiff and Class Members did not receive minimum wage include *inter alia*: requiring Plaintiff and class members to (1) comply with COVID-19 procedures and health screenings prior to clocking in, (2) handle change of shift protocols, reporting, and counting medication prior to clocking in, and (3) work through meal periods providing nursing job duties to Defendants.

45. Moreover, Defendants had a policy, practice and procedure of rounding employee time such that Plaintiff and some or all Class Members were systematically unpaid and/or underpaid for time worked over the course of their employment.

46. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff and the other Class Members for all hours they worked in violation of California Labor Code sections 1194, 1197, and 1197.1.

47. Defendants knew or should have known that Plaintiff and Class Members were performing such work “off-the-clock” because, among other things, Defendants’ management witnessed, authorized, was made aware of, and/or required Plaintiff and Class Members to perform such work.

48. Defendants’ failure to pay Plaintiff and the other Class Members the minimum wage as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney’s fees.

49. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

///

///

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 **Unpaid Overtime**

4 **(Against All Defendants)**

5 50. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

6 51. California Labor Code section 1198 and the applicable Industrial Welfare Commission
7 (“IWC”) Wage Order provide that it is unlawful to employ persons for extended periods of time
8 without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
9 rate of pay, depending on the number of hours worked by the person on a daily and/or weekly basis.

10 52. Specifically, the applicable IWC Wage Order provides that Defendants were required
11 to pay Plaintiff and the other Class Members at the rate of time-and-one-half for all hours worked in
12 excess of eight (8) hours in a day, in excess of forty (40) hours in a workweek and/or the first eight
13 (8) hours worked on the seventh consecutive day in a workweek.

14 53. The applicable IWC Wage Order further provides that Defendants were required to pay
15 Plaintiff and the other Class Members overtime compensation at a rate of two (2) times their regular
16 rate of pay for all hours worked in excess of twelve (12) hours in a day and/or for all hours worked in
17 excess of eight (8) hours on the seventh consecutive day in a workweek.

18 54. California Labor Code section 510 codifies the right to overtime compensation at one-
19 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day, forty
20 (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work, and to overtime
21 compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day
22 or in excess of eight (8) hours in a day on the seventh day of work.

23 55. Plaintiff and the other Class Members regularly worked in excess of eight (8) hours in
24 a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week and/or seven (7)
25 consecutive days in a workweek. However, Defendants did not accurately record Plaintiff and the
26 other Class Members’ actual hours worked and intentionally and willfully failed to pay all overtime
27 wages owed to Plaintiff and the other Class Members. Defendants’ failure to pay correct overtime
28 wages included, *inter alia*: (a) when the combined total of the off-the-clock work discussed *supra* and

1 the on-the-clock work exceed the number of hours that trigger the payment of overtime wages under
2 Labor Code sections 510 and 1198 and/or the applicable Wage Order; (b) when Defendants
3 intentionally, willfully and/or negligently mischaracterized overtime as straight time; (c) when
4 Defendants assigned more work than could reasonably be completed in a workday or workweek to
5 Plaintiff and Class Members, but refused to authorize the overtime necessary for them to complete the
6 assigned work; and (d) when Defendants failed to include all required wages and renumeration when
7 calculating setting the overtime rate.

8 56. Defendants' failure to pay Plaintiff and the other Class Members as outlined above
9 violates California Labor Code sections 510 and 1198 and the applicable Wage Order and is therefore
10 unlawful.

11 57. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members
12 are entitled to recover their unpaid overtime compensation, and interest, costs, and attorneys' fees.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

15 **Meal Break Violations**

16 **(Against All Defendants)**

17 58. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

18 59. California Labor Code sections 226.7 and 512(a) and the applicable Wage Order
19 govern Plaintiff and the other Class Members' employment by Defendants.

20 60. California Labor Code section 226.7 provides that no employer shall require an
21 employee to work during any meal period mandated by an applicable IWC Order.

22 61. The applicable IWC Wage Order and California Labor Code section 512(a) provide
23 that an employer may not require, cause, or permit an employee to work for a period of more than five
24 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
25 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
26 the meal period may be waived by mutual consent of both the employer and the employee.

27 62. The applicable IWC Wage Order and California Labor Code section 512(a) further
28 provide that an employer may not require, cause, or permit an employee to work a work period of

1 more than ten (10) hours per day without providing the employee with a second uninterrupted meal
2 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
3 hours, the second meal period may be waived by mutual consent of the employer and the employee
4 only if the first meal period was not waived.

5 63. Plaintiff and the other Class Members who were scheduled to work for shifts no longer
6 than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
7 required to work for periods longer than five (5) hours without an uninterrupted meal period of not
8 less than thirty (30) minutes.

9 64. Plaintiff and the other Class Members who were scheduled to work for shifts in excess
10 of ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-mandated
11 meal periods by mutual consent, were required to work for periods longer than ten (10) hours without
12 a second uninterrupted meal period of not less than thirty (30) minutes.

13 65. Defendants intentionally and willfully required Plaintiff and the other Class Members
14 to work during meal periods and failed to compensate Plaintiff and the other Class Members for work
15 performed during meal periods. This includes, among other things, requiring Plaintiff and Class
16 Members to work through their lunch breaks, permitting and/or requiring Plaintiff and Class Members
17 to take late lunch breaks, permitting and/or requiring Plaintiff and Class Members to take short lunch
18 breaks, interrupting and/or allowing others to interrupt Plaintiff and Class Members during their lunch
19 breaks, failing to relieve Plaintiff and Class Members of all duties during their lunch breaks, and
20 restricting Plaintiff and Class Members from leaving the premises during their lunch breaks.

21 66. Further, because of Defendants' rounding policy, meal breaks were at times incorrectly
22 recorded as compliant, when in reality they were untimely and/or cut short.

23 67. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
24 Members all meal period premiums due pursuant to California Labor Code section 226.7 and 512 and
25 the applicable Wage Order.

26 68. Defendants' conduct therefore violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7 and 512(a).

28 69. Pursuant to the applicable IWC Wage Order and California Labor Code section

226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided as well as interest thereon.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

Rest Break Violations

(Against All Defendants)

70. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

71. California Labor Code section 226.7 and the applicable IWC Wage Order govern Plaintiff and the other Class Members' employment by Defendants.

72. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

73. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours."

74. Defendants routinely required Plaintiff and the other Class Members to work three and one-half (3 ½) or more hours without authorizing or permitting a compliant ten (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

75. Moreover, Defendants willfully required, suffered and permitted Plaintiff and the other Class Members to work during what should have been their rest periods. Defendants also failed to relieve Plaintiff and the other Class Members of all duties for ten (10) minutes as required for compliant rest breaks.

76. As a result, Plaintiff worked through rest periods, took late rest periods, took interrupted rest periods, and/or took short rest periods, if at all.

77. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other Class Members were entitled to recover from Defendants one (1)

1 additional hour of pay at their regular hourly rate of compensation for each workday that compliant
2 rest period(s) were not provided.

3 78. Defendants had no policy or practice to pay a premium when rest periods were missed,
4 short, late, and/or interrupted, or otherwise failed to comply with California law, and thus Defendants
5 failed to pay Plaintiff and the other Class Members the full rest period premium due to them in
6 violation of California Labor Code section 226.7 and the applicable IWC Wage Order.

7 79. Pursuant to the applicable IWC Wage Orders and California Labor Code section
8 226.7(c), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
9 hour of pay at their regular rate of compensation for each workday compliant rest period(s) were not
10 provided as well as interest thereon.

11 **FIFTH CAUSE OF ACTION**

12 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

13 **Failure to Timely Pay Wages During Employment**

14 **(Against All Defendants)**

15 80. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

16 81. California Labor Code section 204 provides that all wages earned by any person in any
17 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
18 due upon termination of an employee, are due and payable between the 16th and 26th day of the month
19 during which the labor was performed.

20 82. California Labor Code section 204 provides that all wages earned by any person in any
21 employment between the 16th and the last day, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
23 the following month.

24 83. California Labor Code section 204 provides that all wages earned for labor in excess
25 of the normal work period shall be paid no later than the payday for the next regular payroll period.

26 84. As a result of the violations set forth in detail above (failure to pay overtime, failure to
27 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
28 willfully failed to timely pay Plaintiff and other Class Members all wages due to them within the

1 period permissible under California Labor Code section 204.

2 85. Plaintiff and other Class Members are entitled to recover all available remedies for
3 Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to
4 Labor Code section 210(b).

5 **SIXTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE SECTION 226(a)**

7 **Failure to Provide Accurate Wage Statements**

8 **(Against All Defendants)**

9 86. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

10 87. At all material times set forth herein, California Labor Code section 226(a) provides
11 that every employer shall furnish each of its employees an accurate itemized wage statement in writing,
12 including, but not limited to, the name and address of the legal entity that is the employer, total hours
13 worked, and all applicable hourly rates.

14 88. As a result of the violations set forth in detail above (failure to pay overtime, failure to
15 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
16 willfully failed to provide Plaintiff and the other Class Members with complete and accurate wage
17 statements. The deficiencies include, among other things, the failure to state all hours worked, the
18 failure to state the actual gross wages earned, the failure to include meal and rest break premiums, and
19 the failure to include correct rates of pay. Accordingly, Defendants violated California Labor Code
20 226(a).

21 89. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
22 and the other Class Members have suffered injury and damage to their statutorily protected rights.

23 90. Specifically, Plaintiff and the other Class Members have been injured by Defendants'
24 intentional violation of California Labor Code section 226(a) because they were denied both their legal
25 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
26 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
27 number of total hours worked on wage statements, Plaintiff and the other Class Members have been
28 prevented by Defendants from determining if all hours worked were paid and the extent of the

1 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
2 time records, and perform computations in order to analyze whether in fact Plaintiff and the other
3 Class Members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to
4 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
5 costs had Defendants provided the accurate number of total hours worked. This has also delayed
6 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

7 91. Plaintiff and the other Class Members are entitled to recover from Defendants the
8 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
9 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

10 **SEVENTH CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

12 **Final Wages Not Timely Paid**

13 **(Against All Defendants)**

14 92. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

15 93. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
16 to timely pay all earned and unpaid wages to an employee who is discharged. California Labor Code
17 section 201 mandates that if an employer discharges an employee, the employee's wages accrued and
18 unpaid at the time of discharge are due and payable immediately. California Labor Code section 202
19 mandates that if an employee quits, his or her wages shall become due and payable not later than
20 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
21 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting.

23 94. California Labor Code section 203 provides that if an employer willfully fails to pay,
24 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
25 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
26 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
27 continue for more than thirty (30) days.

28 95. As a result of the violations set forth in detail above (failure to pay overtime, failure to

1 pay minimum wages, meal break violations and rest break violations), at the time that Plaintiff and the
2 other Class Members' employment with Defendants ended, Defendants knowingly and willfully failed
3 to pay them all wages owed to them pursuant to California Labor Code sections 201 and
4 202, including, without limitation, overtime wages, minimum wages, meal period premium wages,
5 and rest period premium wages, and all wages due to Plaintiff and Class Members as they became
6 due, as required per California Labor Code sections 204.

7 96. As a result, Plaintiff and the other Class Members are entitled to all available
8 statutory penalties, including the waiting time penalties provided in California Labor Code section
9 203, together with interest thereon, as well as other available remedies.

10 **EIGHTH CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

12 **Failure to Reimburse Necessary Business Expenses**

13 **(Against All Defendants)**

14 97. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

15 98. Pursuant to California Labor Code sections 2800 and 2802, an employer must
16 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
17 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
18 consequence of his or her obedience to the directions of the employer.

19 99. Plaintiff and the other Class Members incurred necessary business-related expenses
20 and costs that were not fully reimbursed by Defendants, including, but not limited to the usage of
21 personal cell phones for work-related purposes.

22 100. Defendants intentionally and willfully failed to reimburse Plaintiff and the other Class
23 Members for all necessary business-related expenses and costs. Plaintiff and the other Class Members
24 are entitled to recover from Defendants their business-related expenses and costs incurred during the
25 course and scope of employment, plus interest accrued from the date on which Plaintiff and the other
26 Class Members incurred the necessary expenditures at the same rate as judgments in civil actions in
27 the State of California.

28 ///

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET. SEQ.***

3 **Unfair and Unlawful Business Practices**

4 **(Against All Defendants)**

5 101. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

6 102. Each and every one of Defendants' acts and omissions in violation of the California
7 Labor Code and/or the applicable IWC Wage Order as alleged in this Complaint including but not
8 limited to Defendant's failure and refusal to pay overtime compensation, Defendant's failure and
9 refusal to pay minimum wages, Defendants' failure and refusal to provide required meal periods and/or
10 pay meal period premiums, Defendants' failure and refusal to provide required rest periods and/or pay
11 the required rest break premiums, Defendants' failure to timely pay wages at the correct rate during
12 employment, Defendants' failure and refusal to furnish accurate itemized wage statements,
13 Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to
14 timely pay wages upon termination constitutes an unfair and unlawful business practice under
15 California Business and Professions Code § 17200 *et seq.*

16 103. Defendants' violations of California wage and hour laws constitute an unfair and
17 unlawful business practice because. Among other things, they were done repeatedly over a significant
18 period of time, and in a systematic manner, to the detriment of Plaintiff and the other Class Members.

19 104. Defendants have avoided payment of overtime wages, minimum wages, meal period
20 premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required
21 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
22 Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the
23 state authorities under the California Labor Code and other applicable regulations.

24 105. As a result of Defendants' unfair and unlawful business practices, Defendants have
25 reaped unfair and illegal profits during Plaintiff and the other Class Members' tenure at the expense
26 of Plaintiff, the other Class Members, and members of the public. Defendants should be made to
27 disgorge their ill-gotten gains and to restore them to Plaintiff and the other Class Members.

28 106. Defendants' unfair and unlawful business practices entitle Plaintiff and the other Class

Members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for, disgorge, and restore to Plaintiff and the other Class Members the wages and other compensation unlawfully withheld from them. Plaintiff and the other Class Members are entitled to restitution of all monies to be disgorged from Defendants in an amount according to proof at the time of trial.

TENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, *ET SEQ.*

California Private Attorneys General Act

(Against All Defendants)

107. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

108. Plaintiff brings this action on a representative basis on behalf of other Aggrieved Employees and the State of California, in Plaintiff's capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

109. PAGA expressly provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: "*Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.*" Cal. Lab. Code § 2699(a).

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

111. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

112. Defendants' conduct, as alleged herein, violates numerous sections of the California

1 Labor Code, including, but not limited to, the following:

- 2 a. Violation of California Labor Code sections 510 and 1198 for failure to pay overtime
3 wages, as set forth more fully above;
- 4 b. Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay
5 minimum wages, as set forth more fully above;
- 6 c. Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
7 legally required meal periods, as set forth more fully above;
- 8 d. Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
9 required meal period premiums, as set forth more fully above;
- 10 e. Violation of California Labor Code section 226.7 for failure to provide legally required
11 rest periods, as set forth more fully above;
- 12 f. Violation of California Labor Code section 226.7 for failure to pay required rest period
13 premiums, as set forth more fully above;
- 14 g. Violation of California Labor Code section 204 for failure to timely pay wages to
15 Plaintiff and Aggrieved Employees during employment, as set forth more fully above;
- 16 h. Violation of California Labor Code sections 201, 202, and 203 for failure to pay all
17 wages at time of discharge from employment, as set forth more fully above;
- 18 i. Violation of California Labor Code section 226(a) for failure to provide accurate wage
19 statements to Plaintiff and Aggrieved Employees, as set forth more fully above;
- 20 j. Violation of California Labor Code section 1174(d) for failure to keep complete and
21 accurate payroll records relating to Plaintiff and Aggrieved Employees, as set forth
22 more fully above; and
- 23 k. Violation of California Labor Code sections 2800 and 2802 for failure to reimburse
24 Plaintiff and Aggrieved Employees for necessary business-related expenses, as set
25 forth more fully above.

26 113. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
27 Plaintiff, acting in the public interest as a private attorney general, seek assessment and collection of
28 civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants

1 for violations of Labor Code sections set forth herein, including penalties under California Labor Code
2 sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC
3 Wage Order, and any and all additional penalties and remedies as provided by the California Labor
4 Code and/or other statutes.

5 114. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
6 Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for
7 the enforcement of labor laws and education of employers and employees about their rights and
8 responsibilities and twenty-five (25%) to the Aggrieved Employees.

9 115. Plaintiff retained counsel to file this court action, and to assess and collect the civil
10 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and
11 costs pursuant to Labor Code §§ 210, 218.5, 2699(g)(1), and any other applicable statute.

12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of other members of the general public similarly situated and on behalf of
14 other aggrieved employees pursuant to the California Private Attorneys General Act, prays for relief
15 and judgment against Defendants, jointly and severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
18 2. That Plaintiff be appointed as the representative of the Class;
19 3. That counsel for Plaintiff be appointed as Class Counsel; and
20 4. That Defendants provide to Class Counsel the names and most current/last known
21 contact information (address, e-mail and telephone numbers) of all Class Members.

22 **As to the First Cause of Action**

23 5. That the Court declare, adjudge, and decree that Defendants violated California Labor
24 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
25 other Class Members;

- 26 6. For general unpaid wages and such general and special damages as may be appropriate;
27 7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
28 Plaintiff and the other Class Members in the amount as may be established according to proof at trial;

8. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

10. For liquidated damages pursuant to California Labor Code section 1194.2;

11. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

12. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other Class Members;

13. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

14. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194;

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods, (including second meal periods) to Plaintiff and the other Class Members;

18. For premium wages pursuant to California Labor Code section 226.7(c);

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For pre-judgment interest on any unpaid wages from the date such amounts were due;

21. For reasonable attorneys' fees and costs of suit incurred herein;

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor

Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other Class Members;

- 24. For premium wages pursuant to California Labor Code section 226.7(c);
- 25. For all actual, consequential, and incidental losses and damages, according to proof;
- 26. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- 27. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

28. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

- 29. For statutory penalties pursuant to California Labor Code section 210;
- 30. For such other and further relief as the Court deems just and proper.

As to the Sixth Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated the provisions of California Labor Code section 226(a) and applicable IWC Wage Order as to Plaintiff and the other Class Members, and willfully failed to provide accurate itemized wage statements to them;

- 32. For actual, consequential and incidental losses and damages, according to proof;
- 33. For statutory penalties pursuant to California Labor Code section 226(e);
- 34. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h);

- 35. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other Class Members no longer employed by Defendants;

- 37. For all actual, consequential, and incidental losses and damages, according to proof;
- 38. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff

1 and the other Class Members who have left Defendants' employ;

2 39. For pre-judgment interest on any unpaid compensation from the date due;

3 40. For such other and further relief as the Court may deem just and proper.

4 **As to the Eighth Cause of Action**

5 41. That the Court declare, adjudge, and decree that Defendants violated California Labor
6 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other Class Members
7 for all necessary business-related expenses as required by California Labor Code sections 2800 and
8 2802;

9 42. For actual, consequential and incidental losses and damages, according to proof;

10 43. For the imposition of civil penalties and/or statutory penalties;

11 44. For reasonable attorneys' fees and costs of suit incurred herein; and

12 45. For such other and further relief as the Court may deem just and proper.

13 **As to the Ninth Cause of Action**

14 46. That the Court declare, adjudge and decree that Defendants violated the following
15 California Labor Code sections as to Plaintiff and the other Class Members: 510 and 1198 (by failing
16 to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a)
17 (by failing to provide meal and rest periods or compensation in lieu thereof); 204 (by failing to timely
18 pay wages during employment); 226(a) (by failing to provide accurate wage statements); and 201,
19 202, and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to
20 reimburse business-related expenses);

21 47. For restitution of unpaid wages to Plaintiff and all the other Class Members and all pre-
22 judgment interest from the day such amounts were due and payable;

23 48. For the appointment of a receiver to receive, manage and distribute any and all funds
24 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
25 result of violation of California Business and Professions Code sections 17200, *et seq.*;

26 49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
27 Code of Civil Procedure section 1021.5; and

28 50. For injunctive relief to ensure compliance with this section, pursuant to California

1 Business and Professions Code sections 17200, *et seq.*

2 **As to the Tenth Cause of Action**

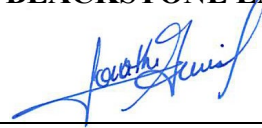
3 51. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
4 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code and/or
5 other applicable statutes;

6 52. For statutory attorneys' fees and costs pursuant to sections 210, 218.5 and 2699(g)(1)
7 of the California Labor Code; and

8 53. For such other and further relief as the Court may deem proper.

9
10 DATED: February 13, 2024

BLACKSTONE LAW, APC

11
12 By: 

Jonathan M. Genish, Esq.

Attorneys for Plaintiff

13 MICHELLE TARLETON, individually, and on
14 behalf of other members of the general public
15 similarly situated and on behalf of other
16 aggrieved employees pursuant to the California
Private Attorneys General Act

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED: February 13, 2024

Laurel Quinn

Jonathan M. Genish, Esq.
Attorneys for Plaintiff
MICHELLE TARLETON, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act

Exhibit A



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Miriam Schimmel, Esq.
mschimmel@blackstonepc.com

December 7, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Michelle Tarleton & Perla Diaz v. Pacific Clinics*

To Whom It May Concern:

This office represents Michelle Tarleton and Perla Diaz (“Claimants”) with respect to their claims under the California Labor Code against Pacific Clinics (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Michelle Tarleton from approximately April 2016 to present as a non-exempt, hourly-paid employee. Michelle Tarleton is working as a Licensed Psychiatric Technician/Licensed Vocational Nurse for Employers and is based out of Employers’ facility located at 251 Llewellyn Ave, Campbell, California 95008.

Employers employed Perla Diaz from approximately April 2018 to present as a non-exempt, hourly-paid employee. Perla Diaz is working as a Licensed Vocational Nurse for Employers and is based out of Employers’ facility located at 251 Llewellyn Ave, Campbell, California 95008.

Claimants intend to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimants are seeking penalties on behalf of themselves and in representative capacities on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimants’ notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimants’ employment, including but not limited to California Labor Code sections 201, 202,

203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”).

The claims made on behalf of Claimants and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimants and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee’s regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee’s regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimants and other Aggrieved Employees to perform work off-the-clock including, among other things: (1) comply with COVID-19 procedures and health screenings prior to clocking in, (2) handle change of shift protocols, reporting, and counting medication prior to clocking in, and (3) work through meal periods providing nursing job duties to Employers. Employers failed to compensate Claimants and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimants and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimants and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimants and Aggrieved Employees. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimants and Aggrieved Employees.

Employers also failed to pay overtime to Claimants and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers failed to pay Claimants and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimants and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimants and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimants and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimants and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and

(7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimants and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimants and other Aggrieved Employees to work through rest periods. Claimants and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimants and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train

Claimants and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers failed to timely pay all wages earned because Claimants and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimants and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimants and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimants and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the usage of personal cell phones for work related purposes.

Accordingly, Employers violated the applicable IWC Order ;**Error! No se encuentra el**

origen de la referencia.and California Labor Code sections 2800 and 2802. Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimants and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimants and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimants and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as Aggrieved Employees, Claimants have standing, and intend to pursue civil penalties on behalf of the LWDA against Employers for any and all other Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimants, as "aggrieved" employees affected by at least one Labor Code violation may, and hereby do, pursue penalties on behalf of LWDA for all Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

but not limited to said sections stated above. Claimants hereby provide notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*, and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimants' intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel
Miriam Schimmel Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

Pacific Clinics
ATTN: Kim Marie Wells, Agent for Service of Process
251 Llewellyn Avenue
Campbell, CA 95008