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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

YESENIA ALEMAN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

ADAPTHEALTH, LLC. a Delaware Limited
Liability Company; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 37-2024-00001567-CU-OE-CTL

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY MINIMUM WAGES
- (2) FAILURE TO PAY ALL OVERTIME
WAGES;
- (3) FAILURE TO PAY ALL SICK TIME;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1
2 Plaintiff Yesenia Aleman (“Plaintiff”), on behalf of herself and all other similarly situated
3 non-exempt employees, alleges and complains of Defendant AdaptHealth, LLC (“Defendant”) and
4 DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant is a full-service home medical equipment and respiratory company
7 operating in 46 states, including California. It offers a wide range of clinically focused products and
8 services to help patients with daily life activities.

9 2. Plaintiff brings this class and PAGA representative action lawsuit against Defendant
10 for alleged violations of the California Labor Code and Business and Professions Code.

11 3. As set forth below, Plaintiff alleges that Defendant failed to record and pay for all hours
12 worked accurately and its unlawful rounding policy/practice. Plaintiff further alleges that Defendant
13 failed to pay all overtime compensation and sick pay wages at the proper legal rates by failing to
14 calculate the “regular rate of pay” correctly. Moreover, Plaintiff alleges that Defendant’s rest period
15 policies and practices failed to allow and permit non-exempt employees to take all compliant and
16 timely rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.

17 4. Plaintiff further alleges that Defendant failed to provide non-exempt employees with
18 accurate written itemized wage statements in violation of Labor Code § 226(a), failed to reimburse
19 all necessary business expenses incurred, and failed to timely pay all final wages upon separation of
20 employment in violation of Labor Code §§ 201-203.

21 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and
22 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
23 for herself and all other similarly situated non-exempt employees.

24 **JURISDICTION AND VENUE**

25 6. Plaintiff, on behalf of herself and all other similarly situated employees hereby bring
26 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
27 204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199,
28 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in

1 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
2 Code § 17200, *et seq.*

3 7. This class action is brought pursuant to the California Code of Civil Procedure § 382.

4 8. This Court has jurisdiction over Defendant violations of the California Labor Code and
5 applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
6 minimum.

7 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5, Defendant operates in California within the County of San Diego, and Defendant
9 is within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 10. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California
12 resident residing in the State of California.

13 11. Plaintiff is informed, believes, and alleges that Defendants are authorized to do
14 business within the County of San Diego and is and/or was the legal employer of Plaintiff and the
15 Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
16 policies and/or practices complained of herein and has been deprived of the rights guaranteed to her
17 by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510,
18 512, 516, 1174, 1174.4, 1199, 2802-2804, and the California Business and Professions Code § 17200
19 *et seq.*, and applicable Wage Orders.

20 12. Plaintiff is informed and believes, and based thereon alleges, that during the four years
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
22 do) business in the State of California, County of San Diego.

23 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
27 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
28 corporate, were responsible in some manner for the acts and omissions alleged herein, and

1 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
2 alleged herein.

3 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
7 were the agents, servants, and employees of each and every one of the other Defendants, as well as
8 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
9 scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
10 otherwise ratified each and every one of the acts or omissions complained of herein.

11 15. At all times mentioned herein, Defendants, and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
15 Classes.

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendant is a full-service home medical equipment and respiratory company with
18 operations in 46 states, including California. It offers a wide range of clinically focused products and
19 services to help patients with daily life activities.

20 17. Plaintiff was employed by Defendant as a non-exempt employee with the title of
21 "Intake Specialist" beginning on July 1, 2019, until the present at the Chula Vista, California location.
22 Plaintiff and other non-exempt employees (including, but not limited to, Warehouse Technician,
23 Respiratory Care Specialist, Medical Equipment Technician, Intake Specialist, Customer Service
24 Position, Customer Service Intake Specialist, Respiratory Support Technician, and all other non-
25 exempt positions) were responsible for all aspects of Defendant's business in the State of California.
26 However, in these roles, Plaintiff and non-exempt employees were often not afforded all protections
27 and rights conferred under the California Labor Code and applicable wage orders.

1 18. At all relevant times, Plaintiff and other non-exempt employees regularly worked
2 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.
3 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
4 procedures, practices, working conditions, and corresponding wage and hour violations to which she
5 was subjected during her employment.

6 19. First, at all relevant times, Defendant has consistently failed to accurately record all
7 time worked, including the time non-exempt employees were under the employer's control. This
8 included a policy and practice of failing to record and capture aggrieved employees' time correctly,
9 including all time spent working off the clock.

10 20. Moreover, Defendant utilizes a uniform policy/practice of unevenly rounding
11 Plaintiff's and other non-exempt employees' time entries to the nearest 15-minute interval. As a result
12 of these company-wide policies/practices, Plaintiff and other non-exempt employees are not
13 compensated for all the hours that they actually work and all of the overtime hours they actually work,
14 in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

15 21. California courts have held that rounding time policies can be lawful "if the rounding
16 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a
17 period of time, in failure to compensate the employees properly for all the time they have actually
18 worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48;
19 see DLSE Manual, *supra*, §§ 47.1, 47.2.)."

20 22. Here, Defendant's rounding time policy/practice is not neutral on its face or in its
21 application as Plaintiff and other non-exempt employees are subject to discipline, including
22 termination for being tardy in reporting to work or returning from a meal period. Moreover, because
23 Defendant can easily track the time worked by non-exempt employees to the minute, the policy exists
24 not for the convenience or benefit of the employees who are trying to report their time on timecards
25 or otherwise but for Defendant's benefit.

26 23. As a result, over a period of time, Plaintiff and other non-exempt employees needed
27 to be properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1,
28 1199, and applicable Wage Orders. Additionally, due to Defendant's unlawful timekeeping and

1 rounding policies/practices, Plaintiff and other non-exempt employees were not properly paid at the
2 correct overtime rate for hours worked in excess of eight hours per shift in violation of Labor Code §
3 510.

4 24. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
5 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
6 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
7 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
8 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
9 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
10 underpaid regardless of whether the initial violation is intentionally committed.

11 25. Labor Code § 510 requires an employer to compensate an employee who works more
12 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
13 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
14 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
15 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
16 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
17 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
18 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
19 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

20 26. Furthermore, at all relevant times, Plaintiff and other non-exempt employees worked
21 regular shifts that lasted longer than 8.0 hours in a workday and resulted in non-exempt employees
22 regularly working more than 40 hours in a workweek. However, Defendant uniformly failed to
23 properly calculate and pay overtime wages at the proper legal rate due to Defendant's failure to
24 include all forms of compensation/remuneration, including, but not limited to, commissions,
25 incentives, non-discretionary bonuses, and all other forms of remuneration in calculating the "regular
26 rate of pay" for purposes of overtime compensation.

27 27. Under the California Labor Code (as well as the FLSA), courts have consistently held
28 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in

1 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
2 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
3 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
4 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
5 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual
6 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*
7 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect
8 all payments which the parties have agreed shall be received regularly during the workweek,
9 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.
10 Once the parties have decided upon the amount of wages and the mode of payment, the determination
11 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
12 by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110
13 ("production bonus") and 778.111 ("piece-rate").

14 28. By their policy of requiring Plaintiff and the other non-exempt employees to work in
15 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
16 them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendant willfully violated the
17 provisions of Labor Code § 510 and the applicable Wage Orders.

18 29. Similarly, at all relevant times, Defendant also failed in its obligation to provide
19 Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant
20 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works
21 in California for the same employer for 30 or more days within a year from the commencement of
22 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
23 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid
24 sick time for non-exempt employees must be "calculated in the same manner as the regular rate of
25 pay for the workweek in which the employee uses paid sick time, whether or not the employee
26 actually works overtime in that workweek."

27 30. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
28 by dividing the employee's total wages, not including overtime premium pay, by the employee's total

1 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
2 requires employers to “provide an employee with written notice that sets forth the amount of paid
3 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
4 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
5 on the designated pay date with the employee’s payment of wages.”

6 31. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
7 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
8 of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below
9 the “regular rate of pay” as required by Labor Code §§ 246(l) (1-2).

10 32. Next, at all relevant times, Plaintiff and other non-exempt employees were not
11 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due
12 to Defendant's uniform rest period policies/practices, operational requirements, and work demands.
13 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
14 minute duty-free rest period for every major fraction of four hours worked. This includes a second
15 rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in
16 a workday.

17 33. By not relieving all non-exempt employees of all duties during rest periods, Defendant
18 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
19 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
20 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
21 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
22 duty rest period to employees who worked as security guards and further explained: “that employers
23 [must] relinquish any control over how employees spend their break time and relieve their employees
24 of all duties.” *Id.* at 273. Each time non-exempt employees could not take a compliant rest period,
25 Defendant failed and continues to fail to adequately pay rest period premium payments at the “regular
26 rate of pay” as required by Labor Code § 226.7.

27 34. Accordingly, due to Defendant’s uniform rest period policies/practices, non-exempt
28 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,

1 512, and applicable Wage Orders.

2 35. As a result of Defendant's failure to pay Plaintiff and other non-exempt employees for
3 all hours they were subject to the control of Defendant, including all overtime wages, sick pay wages,
4 Defendant's failure to adequately pay for all overtime/sick pay wages at the appropriate legal rate,
5 and Defendant's failure to pay all rest period premiums at the "regular rate of pay," Defendant issued
6 wage statements which failed to identify the gross wages earned accurately, the total hours worked,
7 the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in
8 violation of Labor Code § 226(a)(1, 2, 5, and 9).

9 36. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
10 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
11 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
12 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
13 deduction statement or fails to keep the required in subdivision (a) of Section 226."

14 37. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
15 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendant violations of
16 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
17 Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §
18 226(e).

19 38. Moreover, because Defendant failed to pay all overtime, sick pay wages, and rest
20 period premiums at the "regular rate of pay," Defendant also failed and continues to fail to pay
21 Plaintiff and other non-exempt employees all wages owed at their time of separation from
22 employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees
23 would be entitled to recover waiting time penalties under Labor Code §§ 201-203.

24 39. Finally, at all relevant times, Defendant required Plaintiff and other non-exempt
25 employees to incur necessary business expenses associated with using their personal cell phones and
26 home internet for work-related purposes but did not reimburse non-exempt employees adequately for
27 these necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's*
28 *Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-

1 related calls on a personal cell phone, then he or she is incurring an expense for the purposes of
2 section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show
3 liability under section 2802, an employee need only show that he or she was required to use a personal
4 cell phone to make work-related calls, and he or she was not reimbursed”]. Here, Defendant uniformly
5 failed to reimburse non-exempt employees for a reasonable portion of cell phone and home internet
6 bills and other necessary costs incurred in discharging their duties for those non-exempt employees.
7 Accordingly, due to Defendant’s uniform failure to adequately reimburse for necessary business
8 expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

9 **CLASS ACTION ALLEGATIONS**

10 40. Plaintiff brings this action on behalf of herself and the following Classes pursuant to §
11 382 of the Code of Civil Procedure:

12 All current or former non-exempt hourly employees who work or worked
13 for Defendant in California from May 1, 2023, through the date of trial. (the
14 “Class”);

15 All current or former non-exempt employees who worked for Defendant in
16 California and worked overtime hours during at least one shift from May 1,
2023, through the date of trial. (“the Overtime Subclass”);

17 All current or former employees who work or worked for Defendant in
18 California from May 1, 2023, through the date of trial. (“the Wage
19 Statement Subclass”)

20 All employees who work or worked for Defendant in California and who
21 left their employment from May 1, 2023, through the date of trial. (“Waiting
22 Time Penalty Subclass”)

23 (collectively “the Classes”)

24 41. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
25 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
26 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
27 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
28 Defendant’s employment and payroll records.

1
2 42. **Common Questions of Law and Fact Predominate/Well-Defined Community of**
3 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
4 non-exempt employees, which predominate over questions affecting only individual members
5 including, without limitation to:

6 1. Whether Defendant's rounding policy/practice failed to accurately record and pay for
7 all hours worked by Class Members;

8 2. Whether Defendant failed to properly calculate the "regular rate of pay" for purposes of
9 paying overtime and sick pay wages to the members of the Class;

10 3. Whether Defendant provided legally compliant rest periods or proper compensation at
11 the "regular rate of pay" in lieu thereof to members of the Class;

12 4. Whether Defendant furnished legally compliant wage statements to members of the
13 Wage Statement Subclass pursuant to Labor Code § 226(a);

14 5. Whether the timing and amount of payment of final wages to members of the Waiting
15 Time Penalty Subclass at the time of separation from employment were unlawful; and

16 6. Whether Defendant failed to reimburse Class Members for all necessary business
17 expenses in violation of Labor Code §§ 2802-2804.

18 43. **Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual members of the Classes. The common
20 questions of law set forth above are numerous and substantial and stem from Defendant's policies
21 and/or practices applicable to each individual class member, such as without limitation, Defendant's
22 failure to properly pay overtime and sick pay wages, Defendant's failure to provide all compliant rest
23 periods or premiums at the "regular rate of pay" in lieu thereof, Defendant's failure to provide
24 accurate itemized wage statements, Defendant's failure to pay wages timely, Defendant's failure to
25 reimburse for all necessary business expenses, and Defendant's failure to pay for all wages due upon
26 separation of employment. As such, the common questions predominate over individual questions
27 concerning each class member's showing as to his or her eligibility for recovery or the amount of his
28 or her damages.

1 44. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendant as a non-exempt employee in California during the statute(s)
3 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
4 Plaintiff, like the members of the Classes, was deprived of overtime, and sick pay wages, was
5 deprived of rest period premium wages, was subject to Defendant's uniform rest period
6 policies/practices, was not provided accurate itemized wage statements, was not reimbursed for all
7 necessary business expenses, and was not timely paid all wages owed upon separation of
8 employment.

9 45. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
10 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
11 attorneys are ready, willing, and able to fully and adequately represent the members of the Classes.
12 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
13 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
14 members of the Classes.

15 46. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
16 important public interest in establishing minimum working conditions and standards in California.
17 These laws and labor standards protect the average working employee from exploitation by
18 employers who have the responsibility to follow the laws and who may seek to take advantage of
19 superior economic and bargaining power in setting onerous terms and conditions of employment. The
20 nature of this action and the format of laws available to Plaintiff and members of the Classes make
21 the class action format a particularly efficient and appropriate procedure to redress the violations
22 alleged herein. If each employee were required to file an individual lawsuit, Defendant would
23 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
24 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

25 47. Moreover, requiring each member of the Classes to pursue an individual remedy would
26 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
27 against their former and/or current employer for real and justifiable fear of retaliation and permanent
28 damages to their careers at subsequent employment. Further, the prosecution of separate actions by

1 the individual class members, even if possible, would create a substantial risk of inconsistent or
2 varying verdicts or adjudications with respect to the individual class members against Defendant
3 herein and which would establish potentially incompatible standards of conduct for Defendant; and/or
4 legal determinations with respect to individual class members which would, as a practical matter, be
5 dispositive of the interest of the other class members not parties to adjudications or which would
6 substantially impair or impede the ability of the class members to protect their interests. Further, the
7 claims of the individual members of the class are not sufficiently large to warrant vigorous individual
8 prosecution considering all of the concomitant costs and expenses attending thereto. As such, the
9 Classes identified in Paragraph 29 are maintainable as Classes under § 382 of the Code of Civil
10 Procedure.

11 **FIRST CAUSE OF ACTION**

12 **MINIMUM WAGE VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 49. Section 4 of the applicable Wage Order(s) and Labor Code §§ 1197 and 1182.12
16 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
17 state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
18 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
19 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
20 wages and interest accrued thereon.

21 50. At all relevant times herein, Defendant failed to record all time accurately worked.
22 This includes but is not limited to the Defendant's failure to properly record non-exempt employees'
23 time worked and uniform and unlawful rounding policy/practice, which resulted in these individuals
24 not being paid for all hours they actually suffered or permitted to work. Accordingly, Plaintiff and
25 members of the Classes were not compensated for all hours worked, including all hours they were
26 subject to the control of Defendant and/or suffered or permitted to work under the Labor Code and
27 applicable Wage Orders.

28 51. Labor Code § 1198 makes an employee's employment unlawful under conditions

1 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that
2 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
3 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
4 to the wages due and interest thereon.

5 52. As a direct and proximate result of Defendant's unlawful conduct as alleged herein,
6 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
7 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
8 statutory damages and penalties and other appropriate relief as a result of Defendant's violations of
9 the Labor Code and applicable Wage Orders.

10 53. Defendant's practice and uniform administration of corporate policy regarding
11 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
12 members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated
13 damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according
14 to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

18 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 55. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
20 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
21 hours worked and provide a private right of action for the failure to pay all overtime compensation at
22 the lawful regular rate of pay.

23 56. At all times relevant herein, Defendant was required to properly pay Plaintiff and
24 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
25 § 1194 and the applicable Wage Orders.

26 57. Section 3 of the applicable Wage Order requires an employer to pay an employee
27 "one and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
28 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an

1 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
2 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
3 the workweek. Defendant caused Plaintiff to work overtime and hours but did not compensate
4 Plaintiff or members of the Overtime Subclass at one and one-half times their "regular rate of pay"
5 for such hours.

6 58. Defendant failed to conform their pay practices to the requirements of the law. At
7 all relevant times herein, Defendant failed to conform their pay practices to the requirements of the
8 law. This unlawful conduct includes but is not limited to, Defendant's failure to include all forms of
9 compensation, including, but not limited to, non-discretionary bonuses and other incentive pay in
10 calculating the "regular rate of pay," which resulted in these individuals not being paid for all
11 overtime hours worked.

12 59. The foregoing policies and practices are unlawful and create an entitlement to
13 recovery by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid
14 amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs
15 of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and
16 Code of Civil Procedure § 1021.5.

17 **THIRD CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 61. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516
22 establishes the right of non-exempt employees to be provided with a rest period of at least ten (10)
23 minutes for each four (4) hour period worked or major fraction thereof.

24 62. Due to their unlawful rest period policy/practices and operational requirements/work
25 demands, Defendant did not authorize and permit Plaintiff and Class members to take all rest periods
26 to which they were legally entitled.

27 63. Despite Defendant's violations, Defendant has not paid an additional hour of pay at
28 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for

1 each violation, per California Labor Code § 226.7.

2 64. The foregoing violations create an entitlement to recovery by Plaintiff and members
3 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
4 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
5 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL SICK TIME**

8 **(AGAINST ALL DEFENDANTS)**

9 65. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 66. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
11 1198, and 1199 which provide that “[a]n employee who, on or after July 1, 2015, works in California
12 for the same employer for 30 or more days within a year from the commencement of employment is
13 entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning
14 at the commencement of employment.”

15 67. At all times relevant herein, Defendant was required to properly pay Plaintiff and Class
16 members for all sick time pursuant to California Labor Code § 246 and the applicable Wage Orders.

17 68. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
18 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
19 uses paid sick time, whether or not the employee actually works overtime in that workweek.”
20 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing
21 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
22 worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
23 requires employers to “provide an employee with written notice that sets forth the amount of paid
24 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
25 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
26 on the designated pay date with the employee’s payment of wages.”

27 69. Defendant failed in their obligation to provide Plaintiff and the Class the legally
28 required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the Class

1 members were not paid at the correct “regular rate of pay.”

2 70. The foregoing policies and practices are unlawful and create an entitlement to recovery
3 by Plaintiff and the members of the Class in a civil action for the unpaid amount of wages, including
4 interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor Code §§ 246
5 1192, 1194 *et seq.*, 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

6 **FIFTH CAUSE OF ACTION**

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

8 **(AGAINST ALL DEFENDANTS)**

9 71. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 72. Labor Code 226(a) states in pertinent part the following:

11 “(a) An employer, semimonthly or at the time of each payment of wages,
12 shall furnish to his or her employee, either as a detachable part of the check,
13 draft, or voucher paying the employee’s wages, or separately if wages are
14 paid by personal check or cash, an accurate itemized statement in writing
15 showing (1) gross wages earned, (2) total hours worked by the employee,
16 (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis, (4) all deductions, provided that all
18 deductions made on written orders of the employee may be aggregated and
19 shown as one item, (5) net wages earned, (6) the inclusive dates of the
20 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, (8) the name and
address of the legal entity that is the employer, and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.”

21 73. As set forth above, during the Class Period, Defendant issued and continues to issue
22 wage statements to its employees, including Plaintiff and members of the Wage Statement Subclass,
23 which are inadequate under Labor Code Section § 226(a).

24 74. As a result of Defendant’s failure to pay Plaintiff and the Wage Statement Subclass
25 for all overtime, sick pay wages and missed rest period premiums at the appropriate legal rate,
26 Defendant failed to include required information on Plaintiff and the Wage Statement Subclass’ wage
27 statements, including, but not limited to, the gross wages earned, the net wages earned in violation of
28 Labor Code section 226(a), (1,2,5,6 and 9).

75. Defendant' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

76. As a result of Defendant's issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendant's pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

77. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

78. The actionable period for this cause of action is three years before the filing of this Complaint through the present and ongoing until the violation is corrected or the class is certified.

79. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or around the time their employment is or was terminated or ended.

80. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

81. Defendant willfully failed to pay the Waiting Time Subclass for all hours worked, including all overtime, sick pay wages, and their rest period premiums at the “regular rate of pay,” before or upon termination or separation from employment with Defendant as required by Labor Code §§ 201 and 202.

82. As a result, Defendant is liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

3 **(AGAINST ALL DEFENDANTS)**

4 83. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 84. Labor Code 2802(a) states in pertinent part the following: “(a) An employer shall
6 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
7 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
8 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
9 believed them to be unlawful.”

10 85. As set forth above, Plaintiff and Class members must be compensated for all necessary
11 business expenditures, including, but not limited to, a reasonable portion of their monthly personal
12 cell phone and home internet bills incurred in discharging their duties. (See *Cochran v. Schwan’s*
13 *Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their
14 personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
15 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
16 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v.*
17 *Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone
18 reimbursement claim and adopting the logic of *Cochran*).

19 86. At all relevant times, Defendant has failed to comply with Labor Code Section 2802
20 and the applicable Wage Orders by failing to reimburse Plaintiff and the Class for all necessary
21 business expenditures.

22 **EIGHT CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(AGAINST ALL DEFENDANT)**

25 87. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 88. Defendant has engaged and continues to engage in unfair and/or unlawful business
27 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
28 failing to pay all overtime and sick pay wages at the proper legal rate, by failing to provide all legally

1 required rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing
2 to provide accurate wage statements, by failing to reimburse for all necessary business expenses
3 adequately, and by failing to pay all earned wages at the time of separation from employment.

4 89. Defendant’s utilization of these unfair and/or unlawful business practices deprived
5 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
7 Defendant competitors who have been and/or are currently employing workers and attempting to do
8 so in honest compliance with applicable wage and hour laws.

9 90. Because Plaintiff is a victim of Defendant’s unfair and/or unlawful conduct alleged
10 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
11 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
12 converted by Defendant pursuant to Business and Professions Code §§ 17203 and 17208.

13 91. The acts complained of herein occurred within the last four years immediately
14 preceding the filing of the Complaint in this action.

15 92. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
17 Defendant's current hourly non-exempt employees, and to enforce important rights affecting the
18 public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs, which
19 she is entitled to recover under Code of Civil Procedure § 1021.5.

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

22 **(AGAINST ALL DEFENDANTS)**

23 93. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 94. Defendants have committed several Labor Code violations against Plaintiff and
25 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
26 § 2698 *et seq.*, acting on behalf of herself and other non-exempt employees from June 2, 2021 to the
27 present, bring this representative action against Defendants to recover the civil penalties due to
28 Plaintiff, other similarly non-exempt employees, and the State of California according to proof

1 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial
2 violation and (2) \$200 for each subsequent violation per employee per pay period for those violations
3 of the Labor Code for which no civil penalty is specifically provided based on the following Labor
4 Code violations:

5 a. Failing to accurately capture, record, calculate, and provide payment for all hours
6 worked, resulting in a failure to pay all minimum, in violation of Labor Code §§ 204, 210, 1174,
7 1194, 1194.2, 1197, 1197.1, 1199, and the applicable Wage Orders;

8 b. Failing to pay all overtime wages at the “regular rate of pay” because of Defendants’
9 policies/practices, in violation of Labor Code §§ 204, 210, 510, 558, 1174, 1194, and the applicable
10 Wage Orders;

11 c. Failing to provide Plaintiff and other non-exempt employees with all of their
12 statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in
13 violation of Labor Code §§ 204, 226.7, 510, 512, 516, 558, 1194 1198, and applicable Wage Orders;

14 d. Failing to timely compensate Plaintiff and other non-exempt employees with all
15 earnings during their employment and at their separation of employment in violation of Labor Code
16 §§ 201-204, 210, and 256; and

17 e. Failing to furnish Plaintiff and other non-exempt employees with complete,
18 accurate, itemized wage statements and maintain employment records in violations of Labor Code §
19 226(a), 226.3, and 1174.

20 95. Plaintiff has notified Defendant AdaptHealth, LLC via certified mail, and the
21 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
22 violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California
23 Labor Code identified in Paragraph 94(a)-(e). Now that sixty-five days have passed since Plaintiff
24 notified Defendant and the LWDA of these violations, Plaintiff will have exhausted his administrative
25 requirements for bringing a claim under the Private Attorneys General Act with respect to these
26 violations.

27 96. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect their interests and the interests of other non-exempt employees and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which she
2 is entitled to receive under California Labor Code § 2698 *et seq.*

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment for herself and all others on whose behalf this
5 suit is brought against Defendant, as follows:

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First and Second Cause of Action for compensatory, consequential,
10 general, and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,
11 1197, 1197.1, and 1198 and reasonable attorneys' fees and costs;
- 12 5. Upon the Third Cause of Action, for compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1198, and 1199;
- 14 6. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
15 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 16 7. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
17 reasonable costs and attorney's fees;
- 18 8. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
19 Labor Code §§ 201-203;
- 20 9. Upon the Seventh Cause of Action, for unreimbursed expenses, interest, and
21 attorney's fees and costs pursuant to Labor Code § 2802;
- 22 10. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
23 Classes of all money and/or property unlawfully acquired by Defendant by means of any acts or
24 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 25 11. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-
26 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
27 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
28

1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided under the Labor Code;

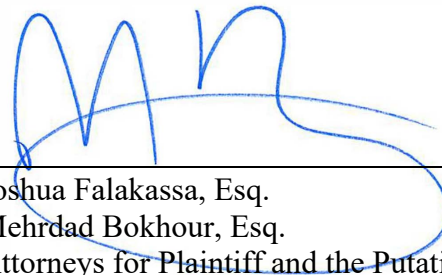
3 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
4 § 218.6 and Civil Code §§ 3287 and 3289;

5 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
6 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

7 14. For such other relief that the Court may deem just and proper.

8
9 Dated: April 3, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

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11
12 By: 

13 Joshua Falakassa, Esq.
14 Mehrdad Bokhour, Esq.
15 Attorneys for Plaintiff and the Putative Classes
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