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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

25CV107067

ILANA PEARLMAN, an individual; SALLIE HILL, an individual; SONYA JUBB, an individual; DIANA NEMIROVSKY, an individual; LIOR BLOOM, an individual; ALISON ROBERTS, an individual; and TIFFANY LUNDEEN, an individual, on behalf of themselves and all other aggrieved employees,

Plaintiffs,

vs.

SUTTER HEALTH, a California nonprofit corporation; SUTTER EAST BAY MEDICAL GROUP, INC., a California professional corporation; SUTTER BAY MEDICAL FOUNDATION, a California nonprofit corporation; THE SURGERY CENTER OF ALTA BATES SUMMIT MEDICAL CENTER, LLC, a California limited liability company; and DOES 1 through 50, inclusive,

Defendants.

COMPLAINT FOR:

1) **FAILURE TO PAY OVERTIME WAGES (Labor Code §§ 510, 1194 and 1198 and Applicable Wage Order(s));**
2) **UNPAID MEAL PERIOD WAGES (Labor Code §§ 226.7, 512 and Applicable Wage Order(s));**
3) **UNPAID REST PERIOD WAGES (Labor Code § 226.7 and Applicable Wage Order(s));**
4) **FAILURE TO PROVIDE PAID SICK LEAVE (Labor Code § 245 et seq. and Berkeley Municipal Code § 13.100);**
5) **FAILURE TO PROVIDE AND MAINTAIN ACCURATE, ITEMIZED WAGE STATEMENTS (Labor Code §§ 226 and 1174);**
6) **FAILURE TO PAY ALL WAGES DUE AT TIME OF DISCHARGE (Labor Code §§ 201- 203);**
7) **ILLEGAL DEDUCTIONS (Labor Code §§ 221 and 224);**
8) **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq.); and**
9) **CLAIM FOR PENATIES PURSUANT TO PRIVATE**

ATTORNEY GENERAL ACT
(Labor Code § 2698, et seq.)

COME now Plaintiffs Ilana Pearlman, Sallie Hill, Sonya Jubb, Diana Nemirovsky, Lior Bloom, Alison Roberts, and Tiffany Lundeen ("Plaintiffs"), who, by and through their counsel, file this Complaint against Defendants: Sutter Health, Sutter East Bay Medical Group, Inc., Sutter Bay Medical Foundation (hereafter collectively referred to as "SUTTER"); The Surgery Center of Alta Bates Summit Medical Center, LLC (referred to as "ALTA BATES"); and Doe Defendants (collectively referred to with SUTTER and ALTA BATES, as "Defendants").

THE PARTIES

1. Plaintiff Ilana Pearlman has been employed by Defendants to perform midwifery services at Alta Bates Summit Medical Center, in Berkeley, California, since April 1, 2020.

2. Plaintiff Sallie Hill has been employed by Defendants to perform midwifery services in California since April 1, 2020.

3. Plaintiff Sonya Jubb has been employed by Defendants to perform midwifery services in California since October 25, 2021.

4. Plaintiff Diane Nemirovsky has been employed by Defendants to perform midwifery services in California since December 5, 2020.

5. Plaintiff Lior Bloom has been employed by Defendants to perform midwifery services in California since April 27, 2020. On or about December 3, 2023, Plaintiff Lior Bloom transitioned to "per diem" employment status with Defendants.

6. Plaintiff Alison Roberts was previously employed by Defendants to perform midwifery services in California from April 4, 2020 until June 2024.

7. Plaintiff Tiffany Lundeen was previously employed by Defendants to perform midwifery services in California beginning April 27, 2020 until December 2021.

8. Plaintiffs are "aggrieved" within the meaning of Labor Code § 2699(c) because they are and/or were employed by Defendants and have suffered one or more of the Labor Code violations committed by Defendants.

9. At all relevant times, Plaintiffs and, on information and belief, other aggrieved employees of Defendants in California, were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

10. Plaintiffs are informed and believe, and thereon allege, that Defendant Sutter Health is a California corporation qualified to do business and actually doing business in the State of California. Plaintiffs are further informed and believe, and based thereon allege that Defendant Sutter Health is a parent or "umbrella" entity of all other named Defendants.

11. Plaintiffs are informed and believe, and thereon allege, that Defendant Sutter East Bay Medical Group, Inc. is a California entity qualified to do business and actually doing business in the State of California. Plaintiffs are further informed and believe, and based thereon allege that Defendant Sutter East Bay Medical Group, Inc. is the entity that entered into separate written employment agreements with each of the respective Plaintiffs.

12. Plaintiffs are informed and believe, and thereon allege, that Defendant Sutter Bay Medical Foundation is a California entity qualified to do business and actually doing business in the State of California. Plaintiffs are further informed and believe, and based thereon allege that Defendant Sutter Bay Medical Foundation directly controls Defendant Sutter East Bay Medical Group, Inc.

13. Plaintiffs are informed and believe, and thereon allege, that Defendant The Surgery Center of Alta Bates Summit Medical Center, LLC is a California entity qualified to do business and actually doing business in the State of California. Plaintiffs are further informed and believe, and based thereon allege that Defendant The Surgery Center of Alta Bates Summit Medical Center, LLC owns Defendant Alta Bates Summit Medical Center - Alta Bates Campus.

14. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue these defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will amend the complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the fictitiously named defendants was intentionally, negligently, or in some other manner responsible for the occurrences alleged herein, and that Plaintiffs' injuries and damages as alleged herein were proximately caused by such acts. At all times alleged herein, Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 50, inclusive, to the extent they are each an owner,

director, officer, or managing agents of defendants, may be held personally liable pursuant to California Labor Code § 558.1 on account of the fact that, on information and belief, these Doe defendants controlled Plaintiffs' and other aggrieved employees' working conditions, including wages and hours of work, and caused the Labor Code violations complained of herein.

15. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned, each Defendant was the agent, principal and/or employee of each other Defendant in the acts and conduct alleged herein and therefore incurred liability to Plaintiffs and other aggrieved employees for the acts alleged below. Plaintiffs are further informed and believe, and based thereon allege, that at all times herein mentioned, all defendants acted within the course and scope of their employment and/or said agency and therefore the owners, directors, officers and managing agents of same may be held personally liable pursuant to California Labor Code § 558.1.

JURISDICTION & VENUE

16. Venue is proper in Alameda County because Plaintiffs, at all relevant times, were residents of and/or employed by Defendants in Alameda County, California. Moreover, all of the events, transactions, and injuries giving rise to the causes of action stated herein took place in Alameda County, California.

17. The causes of action and damages stated herein are, and Plaintiffs seek, in excess of $35,000.00 and thus this action is within the jurisdiction of this Court.

18. This Court has jurisdiction over Plaintiffs' claims brought under the California Labor Code and California Business and Professions Code.

19. Plaintiffs have satisfied the procedural requirements of California Labor Code § 2699.3. Specifically, Plaintiff Pearlman served the Labor and Workforce Development Agency ("LWDA") electronically and Defendants via certified mail with notice of the wage an hour violations and penalties, including the facts and theories to support each violation. More than sixty-five calendar days have passed since such notice was served. Therefore, all the administrative requirements to pursue civil penalties against Defendants pursuant to Labor Code § 2698, et seq. have been satisfied.

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JOINT EMPLOYER ALLEGATIONS

20. Plaintiffs are informed and believe, and based thereon allege, that there exists, and at all times herein mentioned there existed, a joint employment relationship by and between SUTTER, ALTA BATES, and Plaintiffs. Based on the conduct alleged herein, and any additional conduct that may come to light through discovery in this action, SUTTER and ALTA BATES acted together as Plaintiffs' joint employers at all times relevant hereto and are thus jointly liable for Plaintiffs' and other aggrieved employees' damages asserted herein.

21. At all times alleged herein, Plaintiffs reported to and/or were supervised by both SUTTER and ALTA BATES. Plaintiffs also regularly utilized equipment and facilities owned or otherwise provided by both SUTTER and ALTA BATES and their work is conducted within a work environment shared and managed by SUTTER and ALTA BATES.

22. At all times alleged herein, Plaintiffs' work simultaneously benefited SUTTER and ALTA BATES, and each of them. SUTTER and ALTA BATES also had the joint authority to supervise, discipline, or discharge Plaintiffs, and the ability to determine the amount of compensation earned by Plaintiffs. The operations and finances of SUTTER and ALTA BATES are interrelated, at least with respect to the work performed, revenue generated, and wages earned by Plaintiffs. Further, when Plaintiffs' wages were wrongfully reduced, as discussed below, SUTTER and ALTA BATES were both aware. As such, at all times alleged herein, SUTTER and ALTA BATES shared control over their operations and their operations were intermingled, making them Plaintiffs' joint employers.

23. This action involves a series of harmful and unlawful acts and omissions by Defendants, and each of them, against Plaintiffs. The factual allegations set forth hereinafter are made for the sole purpose of stating causes of action against Defendants, and each of them, and are not intended to be an inclusive list of all Defendants' unlawful, harmful acts and omissions against Plaintiffs.

FACTUAL BACKGROUND

24. Defendants provide medical services in, among other areas, the specialty of obstetrics and gynecology to various hospitals, including hospitals located throughout California,

including at Alta Bates Summitt Medical Center, in Berkeley, California, where Plaintiffs work or worked.

25. At all times relevant to this action, Plaintiffs were employed by Defendants to perform duties on Defendants' behalf in California at Defendants' facilities in Berkeley, California. In particular, Plaintiffs provided midwifery services managed by Defendants.

26. Plaintiffs were offered employment by Defendants, to be paid by the hour. Defendants set Plaintiffs' work schedules. Defendants generally schedule Plaintiffs' clinical work in shifts. Scheduled shifts are typically 12.5 hours. However, shifts often exceed 12.5 hours, with Plaintiffs being required to stay longer than scheduled and work additional hours to accommodate patients giving birth.

27. At all times relevant to this action, Defendants controlled the wages, hours, and working conditions of Plaintiffs. Defendants set the respective rates of pay for the work performed by Plaintiffs and determined the method of Plaintiffs' compensation. Defendants exercised exclusive control over the work activities of Plaintiffs, and the tasks Plaintiffs performed were for the benefit of Defendants. Plaintiffs' work is an integral part of Defendants' regular business operations.

THE WRITTEN EMPLOYMENT AGREEMENTS

28. Each Plaintiff was hired pursuant to a form employment agreement nominally provided by "Sutter East Bay Medical Group Affiliated with the Sutter East Bay Medical Foundation."[1] While the form of the agreements varies slightly, for the most part, and as related to the claims pleaded herein, they are materially the same. These form contracts, which are adhesive by their nature, confirm the Plaintiffs are hired to "join our OB Hospitalist program as a Certified Nurse Midwife at Alta Bates Summit Medical Center in Berkeley, California."

29. Plaintiffs were offered work paid by the hour. However, rather than providing simple written confirmation of the hourly pay offered to the new-hire midwife, Defendants' form contract attaches a six-page "OB Hospitalist Midwife Employee Compensation Schedule."

[1] Sutter East Bay Medical Foundation merged into Defendant Sutter Bay Medical Foundation in or around 2017.

30. The Compensation Schedules also establish “clinical availability” requirements, which include minimum hours Plaintiffs are required to work each month and each year, measured in a minimum number of 12.5-hour shifts per each 28-day (4 week) period, and minimum total hours each Plaintiff must work each year, also measured in hours worked.

31. The Compensation Schedules, as illustrated in the figure set forth below, expressly commit Defendants to paying Plaintiffs an hourly wage. The Schedules also represents to Plaintiffs that they are to receive “Incentive Pay.”

SCHEDULE 1
Sutter East Bay Medical Group, Inc.
OB HOSPITALIST MIDWIFE EMPLOYEE COMPENSATION SCHEDULE

(A) Name of Clinician Employee:	Ilana Pearlman, CNM
(B) Specialty:	Hospitalist – Certified Nurse Midwife
(C) FTE Work Status/Health Benefits Status (“HBS”):	4/1/2020 – 4/26/2020: .3 FTE / Non-Benefitted 4/27/2020 – 7/31/2020: 1.0 FTE / Benefitted 8/1/2020 – TBD: 0.7 FTE / Benefitted
(D) Hospital Staff Privileges:	Alta Bates Summit Medical Center – Ashby Campus
(E) Clinical Availability:	8.4 shifts per 28 days (1,365 hours per year) 0.7 Clinical FTE
(F) Compensation Schedule Effective Date:	April 1, 2020
(G) Clinical Compensation hourly rate:	$90.64 per hour Incentive pay: Night shift differential and $/wRVU calculated and paid quarterly.

(Figure 1.)

32. The Compensation Schedules do not translate how “Night shift differential and $/wRVU calculated and paid quarterly” equates to wages.

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33. The Compensation Schedules also represent that Plaintiffs are to be paid "Administrative Compensation" based on an hourly wage:

(H) Administrative Compensation:	4/1/2020 – 7/31/2020: 0.3 FTE (12 hours per week) @ $100 per hour

(Figure 2.)

34. While it is unclear how the complicated formulas translate to wages, what is clear from the Compensation Schedules is that each of the midwives offered a job pursuant to these terms, including Plaintiffs, are being offered work that is to be scheduled, calculated, and paid based on an hourly rate and the quantity of hours worked. The contracts also do not include any agreement by Plaintiffs to agree to be treated as exempt from overtime pay.

35. Plaintiffs' wages are to include incentive pay that is to be calculated in part by Defendants' measurement of "RVU's." Plaintiffs understand that an RVU is a "Relative Value Unit," the measurement, calculation, and tabulation of which are conducted exclusively and confidentially by Defendants in ways not wholly shared with Plaintiffs.

36. Although RVU-based incentive pay is, at its core, wages, Defendants unlawfully delay the payment of the incentive pay. Defendants are brazen in their scheme to delay paying these wages to Plaintiffs. As Fig. 1 above shows, Defendants make express that these wages are paid – at the earliest– on a quarterly basis.

37. Defendants engage in further illegal conduct by withholding from the already-late payment of these wages 25% of the earned incentive pay. Defendants warn Plaintiffs the 25% is held back to account for any potential shortfall in the quantity of Plaintiffs' work (measured exclusively by Defendants and quantified somehow as RVU's). In other words, while Plaintiffs earn the incentive pay based on work they have done, they are not fully paid each pay period. Rather, Defendants hold it back and pay it quarterly – but only 75% of what was earned. The other 25% is held back even longer, as a way for Defendants to use Plaintiffs' earned wages as an interest-free loan from Plaintiffs against any unexpected future shortfall in the quantity of Plaintiffs' work over the next quarter. Plaintiffs' wage statements do not accurately report any of this. And as a

whole the scheme further evidences that Plaintiffs are not paid a salary, and constitutes illegal wage theft.

38. Defendants have also engaged in illegal and intentional conduct by acknowledging their failure to pay wages when due, consistent with their illegal policies that led to these circumstances. This is demonstrated by Defendants' repeated issuance of late "retroactive pay" to employees, which effectively constitutes the repayment of an *interest-free loan* imposed by Defendants *on their employees*.

39. On page two of each Compensation Schedule – in other words on the page *following* the signature lines whereby midwives agree to the hourly-pay model set forth on the first page – a description of "Compensation Method and Rates" is introduced. It, too, is not easy to understand.

40. For the first time, the term "Salary" is introduced within the "Compensation Method and Rates" clause within Section 1.3 of page two of the Compensation Schedule. This "Salary" is not predetermined or fixed. Rather, "Salary" is based on an hourly rate and multiplied by the total number of anticipated hours that Plaintiffs work per annuum. (*See* section 1.3(a) in Figure 3 on following page). Defendants, themselves, admit that "Salary" is not predetermined or fixed. This is evidenced by sections 1.3(a-c) in Figure 3 below that represents the so-called salary as "Estimated" and by verbal representations by Defendants to Plaintiff Pearlman. As to the latter, Defendants effectively told Plaintiff Pearlman in or around August 2022: "you are not on a true salary model, you are on an 'estimated bi-weekly salary shift and work RVU compensation model;" "what you are paid on your salary is not what you earn, what you actually earn is a different number;" and "your work RVUs and shifts are being measured against your estimated salary." In short, Plaintiffs were not paid a salary in any legal sense of the word, since it: (1) was not predetermined, and (2) was subject to reduction. On information and belief, Plaintiffs' "Salaries" (i.e., wages) were also actually reduced by Defendants.

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> 1.3 Compensation Method and Rates.
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> (a) Estimated Salary Calculation:
>
> (a) Total annual compensation, including: $129,176 (1,456 hours x $88.72/hour)
>
> (b) Estimated Base Annual Salary $120,392 (subject to IRS guidelines)
>
> (c) Estimated Profit Sharing Trust Contribution $8,784 (subject to IRS guidelines)

(Figure 3.)

41. A salary must be fixed. (*See* 29 C.F.R. § 541.602(a) (to meet the salary basis test, the employee must regularly receive "a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.").) Yet, as stated above, Defendants are "advancing" money to Plaintiffs based on an *estimated* salary amount that is then "trued-up" against actual hours worked. This is not a salary under the law.

42. A salary also cannot be determined by the quality and quantity of work performed. *Ibid.* Yet, as also stated above, Defendants admit that RVUs (i.e., quality) and shifts (i.e., quantity) are variables in calculating Plaintiffs' compensation. Put simply, Plaintiffs could not have been paid a salary because their pay was subject to their work quality and their work hours.

43. Confirming that Plaintiffs are not paid a salary, in an e-mail from Defendants dated April 17, 2023, Ms. Pearlman was told that she is "required to work 28 hours per week for 46 weeks of the year, which calculates to 1288 hours per year (103 shifts per year)." In other words, Defendants expressly require Plaintiffs to work a certain quantity of hours to receive their purported 'salary.'

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44. Further confirming that Plaintiffs are paid by the hour (and not a salary) for their work, page two of the Compensation Schedules confirms that Plaintiffs' pay is issued "for work performed during the preceding 14-day pay period" (i.e. the work scheduled and measured in hourly units per the first page):

> 1. Compensation.
>
> <u>1.1</u> <u>Compensation Philosophy</u>. MEDICAL GROUP regards each of its Physician Employees as important, integral members of the team of physicians through which MEDICAL GROUP is able to deliver quality, multi-specialty medical care to the patients of MEDICAL GROUP.
>
> <u>1.2 Pay periods. Pay checks will be issued bi-weekly for work performed during the preceding 14 day pay period.</u>

(Figure 4.)

45. Page two of the Compensation Schedules also confirms that the Plaintiffs are scheduled to work 12.5-hour "shifts":

> <u>1.3</u> <u>Definitions. The following definitions will be used:</u>
>
> (a) Alta Bates Campus (ABSMC):
>
> - Day CNM shift is from 7:00 a.m. to 7:30 p.m.
> - Night CNM shift is from 7:00 p.m. to 7:30 a.m.

(Figure 5.)

46. The Compensation Schedules confirm the Defendants retain the right to reduce the hours (and pay) "from time to time," and as needed:

> (c) Employer may, from time to time during the term of this Agreement and in a mutually agreed to manner adjust the hours per shift or number of shifts as needed to address patient care, safety or other good reasons.

(Figure 6.)

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47. The Compensation Schedules further represent that Plaintiffs are to be paid additional hourly wages for participating in "research," i.e., not the clinical work at their regular hourly rate and based on the scheduled 12.5 hour "shifts," but instead based on a different "specialty" hourly wage set by Defendants. The same is true of extra pay by the hour for Plaintiffs acting as a "principal investigator." Defendants make clear that additional hourly pay would be earned by so participating:

> 1.5.1 Clinic or hospital visits for research patients will be paid to the employee providing the service based on the specialty rate(s) per WRVU assignment as defined in the PSA.
>
> 1.5.2 Employees who act as a Principal Investigator will receive payment based on a formula negotiated by the Foundation with the Research and Education Institute (REDI) at Alta Bates Summit Medical Center (ABSMC). The negotiated formula may be developed as a standard for all studies for a period of time or may be developed for each individual study. The parties agree that the Foundation will negotiate with REDI in good faith to achieve an adequate payment for this service.

(Figure 7.)

48. Defendants also required Plaintiffs to agree to an "Advanced Practice Clinician Employment Agreement" ("APCEA"), which is another 34-page form contract Plaintiffs must sign in order to become employed by Defendants. The APCEA establishes a set of duties and schedule requirements for Plaintiffs' shift work that Defendants measure in hours worked. This includes clinical work (12.5-hour shifts), "administrative duties," attending and participating in meetings ("unless employee is excused" from attending), serving on committees and task forces assigned by Defendants, cooperating and participating in "peer review" and "quality improvement" work and maintaining records "in a timely manner;" all measured in hours worked.

49. The APCEA further confirms Plaintiffs' shift-based hourly work and mandatory scheduling: "Employee shall be required to perform services pursuant to an assigned schedule of clinical availability established by [Defendants] … in [Defendants'] sole and reasonable discretion…."

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50. Section 6.2 of the APCEA reinforces that Plaintiffs are not salaried employees, and that to the contrary their pay is subject to reduction:

> 6.2 Regular Schedule.
>
> Employee shall be required to perform services pursuant to an assigned schedule of clinical availability established by Employer from time to time in its sole and reasonable discretion, taking into account Employee's historical clinical availability, and applicable to the Site to be covered by Employee. Notwithstanding anything in this Agreement to the contrary, Employer, in its sole discretion, shall have the right to reduce Employee's total scheduled work hours, but shall not have the right to increase, on a regular basis, Employee's total scheduled work hours without Employee's prior consent.

(Figure 8.)

51. Section 6.2, coupled with Defendants' practices, which include carefully monitoring the total quantity of hours worked by Plaintiffs, on shifts scheduled by Defendants, confirms that Plaintiffs earn pay by the hour, which is subject to reduction, unlike salaried employees who are paid a fixed salary every pay period.

52. Further confirming that Plaintiffs' work and wages are scheduled and paid based on quantity of work, measured by hours worked, Defendants expressly require that Plaintiffs provide at least "four hours of scheduled patient time" in order to earn a "half-day" in wages. This is inconsistent with paying a salary.

53. Specifically, section 7.2 of the APCEA clarifies that "Schedule 1," i.e., the one-page "OB Hospitalist Midwife Employee Compensation Schedule" that Plaintiffs must sign, determines whether a given employee of Defendants is paid hourly or salary. Section 7.2 provides as follows:

> A half day shall mean no less than four (4) hours of scheduled patient time, or any longer or shorter period typically scheduled by Employee's particular Site.

(Figure 9.)

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54. Section 10.1 further confirms work is performed in shifts and paid "per hour." Again, "Schedule 1" does not even contain the word "salary."

> 10.1 <u>Compensation.</u>
>
> Commencing January 1, 2020, as compensation for professional and administrative services rendered hereunder, Employee shall receive Compensation at the estimated annual rate set forth on Schedule 1. Employee's Salary or Hourly Compensation as defined in Schedule 1 shall be considered as earned ratably over twelve (12) months and shall be prorated over any portion of an annual period constituting the term of the Employment Agreement, except as otherwise set forth in the Employment Agreement. Employee will not receive additional compensation for any administrative services necessary to complete Employee's work schedule performed by Employee, except as expressly provided in this Agreement. The compensation determined under Schedule 1 shall be prorated and paid on the

(Figure 10.)

55. And if there could be any remaining question about whether Plaintiffs are not paid a salary by Defendants, the conclusion of Section 10.1 of the APCEA resolves it:

> Notwithstanding anything contained herein to the contrary, Employer reserves the right to reduce Employee's compensation if Employee, at any time during the term of this Agreement, fails to adhere to the work schedule set forth on Schedule 1.

(Figure 11.)

<u>DEFENDANTS' WAGE AND HOUR VIOLATIONS</u>

56. Under California law, employers, including Defendants, are required to pay overtime compensation to all employees performing work in California, per California Labor Code § 510 and the applicable IWC Wage Order, unless they are exempt from California's overtime pay requirements.

57. Under California law, employers, including Defendants, are also required to provide meal and rest period breaks to all employees performing work in California, per California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order, unless they are exempt from California's meal and rest break requirements.

58. Defendants' payroll and scheduling practices are unclear and highly complicated. The practices make it impossible for Plaintiffs to evaluate or confirm that they are fully and timely compensated for all their time spent working for Defendants. This is inconsistent with California law.

59. At all times relevant to this action, Plaintiffs were hired as non-exempt employees and offered pay by the hour. They have not qualified for any exemption from being paid overtime.

60. On information and belief, and based thereupon, Plaintiffs allege that Defendants were at all times aware that Plaintiffs were not provided with all due wages and benefits due under the Labor Code. Defendants' denial of wages and other compensation due to Plaintiffs was willful and deliberate.

61. At all times relevant to this action, Plaintiffs' compensation was calculated based upon the quantity of hours worked, and their wages were subject to reduction. Plaintiffs' pay was also at times reduced by Defendants.

62. Plaintiffs did not receive a "salary" or guaranteed predetermined amount of compensation per pay period, which on at least one occasion Defendants admitted.

63. Therefore, Plaintiffs, have at all times relevant to this action, been entitled to overtime compensation for all overtime hours worked, in addition to meal and rest breaks as required by law.

64. Defendants regularly and systematically reduce Plaintiffs' wages or withhold or otherwise delay the payment of their wages. For example, during an August 2022 meeting with Lindsay Church, SUTTER's Chief Administrative Officer, Plaintiff Pearlman was informed that when fewer than expected patients come into the hospital over a given period, SUTTER reduces Plaintiff Pearlman's (and other midwives') pay. Plaintiffs understand this then places Plaintiffs in an illegal "deficit." On information and belief, Defendants reduce Plaintiffs' wages under these circumstances, because with fewer patients than expected, Plaintiffs create less revenue than Defendants "predicted." So, Defendants claim a right to reduce Plaintiffs' wages as a result. Section 10.3 of the APCEA makes clear that SUTTER retains the right to reduce their pay, stating: "…Employee agrees that Employer, in its sole discretion, may withhold or offset from Employee's compensation any amount owed by Employee to Employer, to the extent permitted by law."

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65. These, and other reductions lead to the illegal "deficits," as Ms. Church admitted. Some Plaintiffs currently face, or have faced, "deficits" to Defendants of $30,000 or more. Defendants tell Plaintiffs they are obligated to work off their "deficits," and need to work harder to eliminate any "deficit."

66. Plaintiffs have repeatedly asked Defendants about the "deficits," and why the wage statements represent that Plaintiffs owe Defendants money, to no avail.

67. This practice – along with the systematic denial of wages earned – constitutes a violation of California law.

68. As stated above, Defendants also admitted to Plaintiff Pearlman in 2022 that Defendants do not compensate Plaintiffs on a "true salary model." Rather, and despite express representations made to Plaintiffs in the Compensation Schedule, Defendants admitted the actual method of calculating Plaintiffs' compensation is based on an opaque "estimated bi-weekly salary shift and RVU compensation model."

69. Plaintiffs have not been advised how this "model" works. Despite Plaintiffs' repeated questions, Defendants have been unable to confirm that Plaintiffs have been and are paid for all their hours worked consistent with the mandates of the California Labor Code.

70. Defendants also unlawfully deduct from Plaintiffs' wages when Plaintiffs attempt to take protected sick leave, causing them to fall deeper into a "deficit" with Defendants. Moreover, Plaintiffs' paystubs violate the Labor Code in that they do not accurately reflect accrued unused sick leave, making it impossible to ascertain how much, if any remains in Plaintiffs' sick leave banks at any given time.

71. As detailed herein, and despite representations from Defendants, Plaintiffs are not exempt from overtime pay. Defendants fail to track Plaintiffs' hours worked and timely pay all wages earned including overtime wages. Despite long shifts, typically in excess of 12 hours, Plaintiffs are not paid overtime premium wages. Plaintiffs are also regularly requested to perform non-clinical work, but are not paid overtime as required by law. This violates California Labor Code § 510.

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72. Defendants also have an ongoing pattern of violating the California Labor Code in other ways.

73. Plaintiffs' paystubs (wage statements) issued by Defendants are incomprehensible and violate the California Labor Code. The incomprehensibility has led—on multiple occasions—to situations where in response to Plaintiffs' questions Defendants cannot even themselves explain the information contained on the wage statements or answer basic questions about them. The result of these unlawful practices is that Plaintiffs cannot understand their compensation model or get straightforward answers to questions about how to confirm that Plaintiffs' have been timely paid all wages due.

74. Not only are wage statements insufficient for Plaintiffs to determine if they are properly paid, but Defendants also fail to provide the wage theft notice required by Labor Code § 2810.5 that is specifically designed for the purpose of communicating this very basic information to employees, like Plaintiffs.

75. During their shifts, Plaintiffs regularly do not receive uninterrupted meal and rest breaks consistent with California law. In fact, Defendants are silent as to any meal or rest break policy for Plaintiffs at all. Moreover, Plaintiffs do not receive any premium pay for missed or noncompliant meal and/or rest periods, as required by law.

FIRST CAUSE OF ACTION

Failure to Pay Overtime Wages

Labor Code §§ 510, 1194, 1198, and applicable Wage Order

(Against all Defendants)

76. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

77. Under California law, any work in excess of eight (8) hours in a workday or forty (40) hours in a workweek is considered overtime and entitles the worker to overtime compensation. Further, employees are entitled to additional overtime compensation for any work in excess of twelve (12) hours in a workday.

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78. Plaintiffs have regularly worked and work in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and forty (40) hours in a workweek during their employment.

79. Defendants have misclassified Plaintiffs as being exempt from the overtime pay entitlement under California law, and have failed and refused to pay them overtime compensation for their overtime hours worked as and, in the manner, required by California law.

80. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to be established at trial, and are entitled to recover theses damages, as well as interest thereon, costs, and reasonable attorney's fees pursuant to statute.

81. Plaintiffs seek damages pursuant to California Labor Code §§ 510, 1194, 1198, and applicable Wage Order, in addition to interest and reasonable attorney's fees and costs pursuant to statute.

SECOND CAUSE OF ACTION

Unpaid Meal Period Wages

Labor Code §§ 226.7, 512, IWC Wage Order 5-2001 § 11

(Against All Defendants)

82. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

83. Plaintiffs regularly worked and work in excess of five (5) hours in a workday without being provided a fully compliant meal period of at least thirty (30) minutes during which they were relieved of all duty, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001, § 11. When an employer fails to provide such a meal period, the employer must pay the non-exempt employee one (1) additional hour of pay, at the employee's regular rate of compensation, for each workday that the meal period is not provided. Defendants have maintained a policy and/or practice whereby they failed and refused to pay this additional meal period compensation to Plaintiffs.

84. Plaintiffs also regularly worked in excess of ten (10) hours in a workday without being provided a fully compliant second meal period of at least thirty (30) minutes during which

they were relieved of all duty, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001, § 11. When an employer fails to provide such a meal period, the employer must pay the employee one (1) additional hour of pay, at the employee's regular rate of compensation, for each workday that the meal period is not provided. Defendants have maintained a policy and/or practice whereby they failed and refused to pay this additional meal period compensation to Plaintiffs.

85. Plaintiffs did not voluntarily or willfully waive entitlement to meal periods required by California Labor Code §§ 226.7 and 512 and California Industrial Welfare Commission Wage Order 5-2001 § 11. Any express or implied waivers obtained from Plaintiffs were not willfully obtained, were not voluntarily agreed to, or were an unlawful condition of employment, or made part of an unlawful contract of adhesion.

86. As a direct and proximate result of Defendants' conduct, Plaintiffs have sustained damages, including loss of earnings from unpaid meal periods, in an amount to be established at trial, and are entitled to recover these damages, as well as interest, costs, and reasonable attorney's fees, pursuant to statute.

87. Plaintiffs seek damages pursuant to California Labor Code §§ 226.7, 512, IWC Wage Order 5-2001 § 11, in addition to interest and reasonable attorney's fees and costs pursuant to statute.

THIRD CAUSE OF ACTION

Unpaid Rest Period Wages

Labor Code § 226.7 and IWC Wage Order 5-2001, § 12

(Against All Defendants)

88. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

89. IWC Wage Order 5-2001, § 12 requires employers to authorize all non-exempt employees to take a fully paid 10-minute paid rest period per every four (4) hours, or major fraction thereof, worked. If an employee is not provided a fully compliant rest period, the employer must pay the employee one (1) additional hour of pay, at the employee's regular rate of compensation,

for each workday that the rest period is not provided.

90. Defendants have systematically failed and/or refused to provide to Plaintiffs fully compliant 10-minute rest breaks for every four (4) hours worked or major fraction thereof. Plaintiffs were required to continue with their duties and work through their entire shifts without rest periods.

91. Defendants have also failed and/or refused to provide Plaintiffs with the additional compensation for missed rest periods required by California Labor Code section 226.7 and IWC Wage Order 5-2001, § 12.

92. Plaintiffs did not lawfully voluntarily or willfully waive entitlement to rest periods. Any express or implied waivers obtained from Plaintiffs were not willfully obtained, were not voluntarily agreed to, or were an unlawful condition of employment, or made part of an unlawful contract of adhesion.

93. Based on Defendants' conduct, as alleged herein, Defendants are liable to Plaintiffs for their unpaid premium wages for missed rest periods, pursuant to California Labor Code sections 226.7 and Wage Order 5-2001, § 12.

94. Plaintiffs seek damages pursuant to California Labor Code § 226.7 and Wage Order 5-2001, § 12, in addition to interest and reasonable attorney's fees and costs pursuant to statute.

FOURTH CAUSE OF ACTION

Failure to Provide Paid Sick Leave

Labor Code § 245 et seq. and Berkeley Municipal Code § 13.100

(Against All Defendants)

95. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

96. At all times during their employment by Defendants, Plaintiffs were entitled to paid sick leave. As of January 1, 2024, California law requires employers to provide at least 40 hours or five (5) days of paid sick leave per year. Cal. Labor Code section 245, et seq. Beginning in 2016, in the City of Berkeley, where Plaintiffs perform work for Defendants, employers have been

required to provide one (1) hour of sick leave for each 30 hours worked, up to 72 hours. Berkeley Mun. Code. section 13.100.

97. Berkeley Municipal Code ("BMC") section 13.100 mirrors Labor Code section 245, et seq.'s requirement that employees' wages are not deducted when using accrued sick leave.

98. Defendants knowingly and intentionally failed in their affirmative obligation to provide and pay paid sick leave to Plaintiffs in violation of applicable law.

99. Defendants have failed to follow the Labor Code and/or the Berkeley Municipal Code, because Defendants either denied Plaintiffs any paid sick leave or have deducted Plaintiffs' wages after taking what should have been paid. Defendants take the illegal position that Plaintiffs owe Defendants money when Plaintiffs have taken what should have been paid sick leave. Defendants' wage statements fail to account for or otherwise detail accrued versus used sick leave.

100. As a result, Defendants violated the Labor Code and the BMC, damaging Plaintiffs. Defendants are liable to Plaintiffs for these violations of law.

101. Plaintiffs seek damages pursuant to California Labor Code 245 et seq., and BMC § 13.100, in addition to interest and reasonable attorney's fees and costs pursuant to statute.

FIFTH CAUSE OF ACTION

Failure to Provide and Maintain Accurate, Itemized Wage Statements

Labor Code §§ 226, 1174

(Against All Defendants)

102. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

103. California Labor Code § 226, subdivision (a) requires employers to furnish to employees, at the time of each payment of wages, an accurate itemized statement showing: (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; (5) net wages earned, (6) the pay period; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number; (8) the name and address of 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.

104. California Labor Code § 1174, subdivision (d) requires employers to keep adequate time records.

105. Defendants knowingly and intentionally failed to furnish to Plaintiffs accurate itemized wage statements including the information required by Labor Code § 226.

106. By failing to keep adequate records and furnish accurate itemized statements as required by California Labor Code §§ 226 and 1174, Defendants have injured Plaintiffs. This failure has injured Plaintiffs by depriving them of wage and hour earnings information to which they are entitled, making it difficult to calculate the unpaid wages due, causing them to not be paid wages to which they are entitled and violating their rights under California Labor Code § 226 to review itemized wage statement information by inspecting the employer's underlying records.

107. Plaintiffs seek damages pursuant to California Labor Code § 226, subdivisions (e) and (g), in addition to interest and reasonable attorney's fees and costs pursuant to statute.

SIXTH CAUSE OF ACTION

Failure to Pay All Wages Due at Time of Discharge

Labor Code §§ 201-203

(By Plaintiffs Roberts and Lundeen Against All Defendants)

108. Plaintiffs Roberts and Lundeen incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

109. California Labor Code §§ 201 and 202 require employers, such as Defendants, to pay their employees all wages due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.

110. Plaintiffs Roberts and Lundeen separated from employment with Defendants without being paid all earned and unpaid wages, including the overtime and meal and rest period wages that are due to them, within the time required by Labor Code §§ 201 and 202.

111. At all times pertinent hereto, Defendants had it within their abilities to consult their business records and properly calculate and pay all of the said unpaid wages at the time Plaintiffs Roberts and Lundeen separated from employment with Defendants. However, Defendants, and

each of them, willfully and intentionally failed and refused to pay the earned and unpaid wages to Plaintiffs Roberts and Lundeen.

112. Plaintiffs Roberts and Lundeen did not hide themselves, or in any manner refuse or obfuscate any attempt by Defendants to tender the balance of the earned and unpaid wages.

113. Pursuant to California law, Plaintiffs Roberts and Lundeen are entitled to a penalty equal to their respective regular daily rate of pay, up to a maximum of thirty (30) days.

114. Plaintiffs Roberts and Lundeen seek penalties pursuant to California Labor Code § 203 in an amount to be determined at trial and attorney's fees, costs, and interest pursuant to statute.

SEVENTH CAUSE OF ACTION

Illegal Deductions

Labor Code §§ 221 and 224

(Against all Defendants)

115. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

116. Pursuant to California Labor Code sections 221 and 224, an employer can lawfully withhold amounts from an employee's wages only (1) when required or empowered to do so by state or federal law, or (2) when a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions, or other deductions not amounting to a rebate on the employee's wages, or (3) when a deduction to cover health, welfare, or pension contributions is expressly authorized by a wage or collective bargaining agreement.

117. Defendants regularly withhold and deduct sums from the wages of Plaintiffs that were not authorized or permitted under California law. As set forth above, Defendants, without Plaintiffs' authorization, withhold 25% of Plaintiffs' earned incentive pay to account for potential shortfalls in the quantity of work. In other words, Defendants take a portion of Plaintiffs' earned wages and use it as an interest-free loan to secure against unexpected future work shortages. This practice is illegal.

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118. As a proximate result of Defendants' actions, Plaintiffs have sustained damages in an amount to be proven at trial consisting of the amount of wages illegally deducted from their pay, plus interest thereon.

119. Additionally, Plaintiffs are entitled to all available statutory penalties, including those provided in California Labor Code § 203, as well as all other remedies available under the law.

EIGHTH CAUSE OF ACTION

Violation of California Unfair Competition Laws

Business & Professions Code § 17200 et seq.

(Against all Defendants)

120. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

121. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the policies, customs, and practices outlined above, including, to wit: (1) failing to pay all wages earned, including overtime wages; (2) failing to pay all earned wages in a timely fashion; and (3) failing to pay premium wages for meal and rest periods not provided.

122. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

123. Plaintiffs seek, on their behalf, and on behalf of the general public, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

124. The acts complained of herein occurred within the last four (4) years preceding the filing of this action.

125. Plaintiffs are informed and believe, and based thereon allege, that at all times pertinent hereto, Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by Business & Professions Code § 17200 et seq., including those set forth hereinabove, thereby depriving Plaintiffs and other members of the general public the minimum working

standards and conditions due to them under California law.

126. Plaintiffs seek damages pursuant to Business & Professions Code § 17200 et seq., in addition to interest and reasonable attorney's fees and costs pursuant to statute.

NINTH CAUSE OF ACTION

Claim for Penalties Pursuant to Private Attorney General Act

Labor Code § 2698, et seq.

(Against All Defendants)

127. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint as though fully set forth herein.

128. Plaintiffs submit this Complaint to include allegations pursuant to California Labor Code § 2698, et seq., the Private Attorneys General Act of 2004 ("PAGA"). As described above, Plaintiff have complied with all relevant administrative requirements to bring this PAGA claim.

129. Plaintiffs are aggrieved employees as defined in California Labor Code § 2699, subdivision (a). Plaintiffs bring this claim on behalf of themselves and other current and former aggrieved employees affected by the labor law violations alleged in this Complaint, including violations of California Labor Code §§ 201, 202, 203, 221, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, and 2810.5.

130. Plaintiffs also seek civil penalties as provided under applicable California Labor Code sections for violations of the California Labor Code alleged herein pursuant to California Labor Code § 2699, subdivision (a). To the extent that any violation alleged herein does not carry a penalty, Plaintiffs seek all civil penalties pursuant to California Labor Code § 2699, subdivision (f), for Plaintiffs and other current or former employees for violations of those sections. Plaintiffs are also entitled to an award of attorney's fees and costs as set forth in this Complaint.

131. Plaintiffs' PAGA claim does not require class certification because the claims in this action are held by Plaintiffs and, primarily, on behalf of the State of California. Seventy-five percent (75%) of the net penalties obtained through PAGA accrue to the State of California. Both the language of the PAGA and the express intent of the Legislature indicate that an aggrieved employee may bring an action on behalf of other employees without complying with the

requirements of a class action. California Labor Code § 2699 specifically states that an aggrieved employee may bring an action on behalf of other employees, "[n]otwithstanding any other provision of law…."

132. An action under the PAGA is in the nature of an enforcement action with the aggrieved employee(s) acting as a Private Attorney General to collect penalties from employers who violate labor laws. Such an action is designed to protect the public and penalize defendants for past illegal conduct. Restitution is not the primary object of a PAGA action. An action under the PAGA is not for the purpose of recovering damages, but only for the recovery of a civil penalty. Further, PAGA recoveries do not preclude an employee from pursuing any other claim he or she may have available under the law, including those for any unpaid wages.

133. As such, Plaintiffs, in their individual capacities, hold a substantive right to bring PAGA claims by standing in the shoes of, and on behalf of, the State of California to enforce California labor laws.

PRAYER

Plaintiffs seek recovery of all wages and compensation due and owing to Plaintiffs under California law for the maximum period allowed in addition to all other remedies available to Plaintiffs arising from Defendants' unlawful practices.

WHEREFORE, Plaintiffs, on behalf of themselves, and/or other aggrieved employees, pray for judgment against Defendants, and each of them, as follows:

1. That Defendants are found to have violated the overtime provisions of the Labor Code as to Plaintiffs;
2. That Defendants are found to have violated the meal period provisions of IWC Wage Order No. 5 and the Labor Code as to Plaintiffs;
3. That Defendants are found to have violated the rest period provisions of IWC Wage Order No. 5 and the Labor Code as to Plaintiffs;
4. That Defendants are found to have violated the paid sick leave provisions of the Labor Code and Berkeley Municipal Code § 13.100 as to Plaintiffs;
5. That Defendants are found to have violated the itemized wage statement

requirements of the Labor Code as to Plaintiffs;

6. That Defendants are found to have violated the wage theft notice requirements of Labor Code § 2810.5 as to Plaintiffs;

7. That Defendants are found to have violated the requirement to pay all wages owed at the time of termination of employment as to Plaintiffs Roberts and Lundeen;

8. That Defendants are found to have withheld amounts from Plaintiffs' wages in violation of the Labor Code;

9. That Defendants are found to have violated Business and Professions Code § 17200 et seq. by failing to pay and/or withholding Plaintiffs' wages;

10. An award to Plaintiffs of damages for the amount of unpaid overtime compensation, including interest thereon, and waiting-time penalties, subject to proof at trial;

11. An award to Plaintiffs of damages for the amount of unpaid meal and rest period compensation, including interest thereon, and waiting-time penalties, subject to proof at trial;

12. An award to Plaintiffs of damages for the amount of unpaid sick leave compensation, including interest thereon, and waiting-time penalties, subject to proof at trial;

13. An award to Plaintiffs of damages or penalties for Defendants' failure to provide timely, accurate itemized wage statements in accordance with Labor Code § 226;

14. An award to Plaintiffs Roberts and Lundeen of damages or penalties for Defendants' failure to pay all wages due at the time of their separation from employment in accordance with Labor Code §§ 201-203;

15. An award to Plaintiffs of damages or penalties, including interest thereon, for Defendants' illegal withholding of wages in accordance with Labor Code § 203;

16. That Defendants be ordered to pay restitution to Plaintiffs due to Defendants' unlawful activities, pursuant to Business and Professions Code § 17200 et seq., for the four years preceding the filing of the instant lawsuit;

17. That Plaintiffs be awarded penalties under Labor Code § 2699 for Defendants'

violations of Labor Code §§ 201, 202, 203, 221, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, and 2810.5;

18. That Plaintiffs be awarded reasonable attorney's fees and costs pursuant to statute, including Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5;

19. For interest pursuant to applicable provisions of law, including but not limited to Labor Code §§ 218.6 and 1194, Civil Code §§ 3287, 3288 and 3289, and Business and Professions Code § 17203;

20. For an award of damages and/or penalties pursuant to Labor Code §§ 558, 558.1;

21. For damages, including but not limited to compensatory, incidental, and consequential damages, according to proof; and

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

Dated: January 15, 2025

DUNN DESANTIS WALT & KENDRICK, LLP

By: ______________________________

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