

James R. Hawkins (SBN 192925)
james@jameshawkinsaplc.com
Christina M. Lucio (SBN 253677)
christina@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff ERIC KINGERY
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ERIC KINGERY, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ACERA HEALTH, LLC, a limited
liability company in Delaware; and DOES
1 through 50, inclusive,

Defendants.

Case No. 30-2024-01402619-CU-OE-CXC

CLASS ACTION COMPLAINT

Assigned for All Purposes To:

Hon. Judge Lon F. Hurwitz

Dept.: CX103

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Pay On-Call Time Pay;**
- 4) **Failure to Provide Lawful Meal Periods;**
- 5) **Failure To Authorize And Permit Lawful Rest Periods;**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Furnish Accurate Itemized Wage Statements;**
- 8) **Failure to Pay Earned Vacation Wages;**
- 9) **Failure to Reimburse Necessary Expenses;**
- 10) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC KINGERY (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, asserts claims against defendant ACERA HEALTH, LLC, a Delaware limited liability
3 company, and DOES 1 through 50, inclusive (collectively “ACERA” or “Defendant(s)”) as
4 follows:

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiff and all non-exempt employees who are or were employed by Defendants in
8 the State of California, however titled, within four (4) years prior to the filing of the Complaint in
9 this action until the resolution of this lawsuit (collectively referred to as the “Class” or “Class
10 Members”).

11 2. During the “liability period,” as defined as the applicable statute of limitations for
12 each and every cause of action contained herein – i.e. Plaintiff’ claims under the Unfair Competition
13 Law is four (4) years; Plaintiff’ claims for either unpaid wages or actual damages is three (3) years;
14 and Plaintiff’ claims for statutory penalties is one (1) year from the filing of this action through the
15 present (referred to as “the liability period(s)”) – Defendants consistently maintained and enforced
16 against the Class unlawful practices and policies in violation of California state wage and hour
17 laws, including failing to lawfully and accurately pay Plaintiff and Class Members for all hours
18 worked, including minimum wages and overtime; failing to lawfully provide meal and rest periods;
19 failing to pay one hour of pay at the employee’s regular rate of pay when legally mandated meal or
20 rest periods were not lawfully provided; failing to accurately pay overtime; failing to reimburse
21 necessary expenses; failing to provide accurate itemized wage statements; failing to pay vested
22 vacation wages; and failing to keep accurate records.

23 3. Defendants implemented uniform policies and practices that deprived Plaintiff and
24 Class Members of earned wages, including minimum wages; straight time wages; overtime wages;
25 premium wages; earned vacation wages; failing to reimburse necessary expenses; and lawful meal
26 and/or rest breaks.

27 4. Such actions and policies, as described above and further herein, were and continue
28 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class

1 members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,
2 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 515, 516, 558, 1174, 1194, 1194.2, 1195,
3 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations,
4 Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation,
5 penalties, liquidated damages, and reasonable attorneys' fees and costs.

6 5. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
7 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to
8 pay to Plaintiff and Class Members all of their wages, including overtime and premium wages.

9 **JURISDICTION AND VENUE**

10 6. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
11 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
12 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the
13 California Superior Court and will be established according to proof at trial.

14 7. This Court has jurisdiction over this action pursuant to the California Constitution
15 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
16 those given by statute to other courts. The statutes under which this action is brought do not give
17 jurisdiction to any other court.

18 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

20 9. This Court has jurisdiction over Defendants because, upon information and belief,
21 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
22 otherwise intentionally avails itself of the California market so as to render the exercise of
23 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
24 substantial justice. Defendants have done and are doing business throughout California.

25 10. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
26 similarly situated Class Members within Orange County and it is believed that Defendants have
27 employed over one hundred Class Members as Class Members throughout the state.

28 11. The California Superior Court also has jurisdiction in this matter because the

individual claims of the Class Members described herein are presently believed to be under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

12. Venue is proper in this Court because one or more of the Defendants reside, transact business, or have offices in this County, and the acts or omissions alleged herein took place in this County.

PARTIES

13. Plaintiff Eric Kingery is and during the liability period has been a resident of Orange County, California. Plaintiff Kingery was employed by Defendants during the liability period as an hourly, non-exempt employee working in Orange County, California.

14. Plaintiff Kingery and the Class Members were employed by Defendants as non-exempt employees, however titled, in the State of California within the period of four (4) years prior to the filing of the Complaint in this action until the resolution of this lawsuit (the "Class Members")

15. Defendant Acera Health LLC, is a Delaware Limited Liability Company in good standing that is authorized to do business throughout the state. Acera Health, LLC's headquarters are located at 3151 Airway Avenue, Suite P3, Costa Mesa, CA 92626.

16. Defendant Acera Health, LLC operates in California and has at least one location in Orange County, CA where Plaintiff worked.

17. Acera Health, LLC provides mental health, nursing and rehabilitation services.

18. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was

1 actively engaged in the management, direction, control, or transaction of the ordinary business and
2 affairs of Defendants.

3 19. The true names and capacities of Defendants, whether individual, corporate,
4 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
5 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
6 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
7 capacities of the Defendants designated hereinafter as DOES when such identities become known.

8 20. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
9 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
10 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
11 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
12 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
13 liability of the Defendants as alleged herein.

14 21. Plaintiff is further informed and believes, and thereon alleges, that at all times
15 material herein, each Defendant was completely dominated and controlled by its co-Defendants
16 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
17 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
18 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
19 Whenever and wherever reference is made to individuals who are not named as Defendants in this
20 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
21 acted on behalf of Defendants named in this complaint within the scope of their respective
22 employments.

23 **FACTUAL ALLEGATIONS**

24 **APPLICABLE TO ALL CAUSES OF ACTIONS**

25 22. Defendants operate a evidence-based behavioral health programs for adults in
26 Orange County experiencing mental health challenges. Defendants operate facilities and provide
27 services in California, including in Costa Mesa.

28 23. During the relevant time, Plaintiff Kingery worked for Defendants as a non-exempt,

1 hourly behavioral health technician.

2 24. Plaintiff and the Class Members performed non-exempt functions and were subject
3 to the protections of the Labor Code.

4 25. At all times relevant, Plaintiff and the Class Members have been non-exempt
5 employees within the meaning of the California Labor Code, and the implementing rules and
6 regulations of the IWC California Wage Orders. They are covered by applicable California IWC
7 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title
8 8, section 11000 *et seq.* They are subject to the protections of the IWC Wage Orders and the Labor
9 Code.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
11 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
12 requirements of California's wage and employment laws.

13 27. All Class Members are similarly situated in that they are all subject to Defendants'
14 uniform policies and systemic practices as specified herein.

15 28. Plaintiff Kingery and the Class Members were required to clock in at the beginning
16 of their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their
17 shifts. Plaintiff Kingery and the Class Members were not paid for all hours worked because
18 employees were required to work off the clock.

19 29. By way of example, Plaintiff Kingery and the Class Members were required to
20 report to work early before their scheduled shifts and clock in to begin working, but were not paid
21 until their scheduled start time.

22 30. By way of further example, Plaintiff Kingery and the Class Members were required
23 to work during purported meal periods.

24 31. In addition, Plaintiff Kingery and the Class Members had their hours worked
25 rounded against their interests. As a result, Plaintiff Kingery and the Class Members were not paid
26 for all hours worked.

27 32. Further, Plaintiff and the Class Members were required to be on call during
28 purported days off and, if called in, employees were required to report to work, were not given the

option not to report, and were required to report within time frames that restrained their ability to use their time off for their own purposes. Plaintiff and the Class Members were subject to employer control during on-call shifts, and should have been compensated for said time.

33. In addition, Plaintiff and the Class Members worked in excess of eight (8) hours in day and/or over forty (40) hours in a workweek but were not properly paid for such time at a rate of time and one-half the employee's regular rate of pay per hour.

34. Upon information and belief, Defendants failed to incorporate all forms of non-discretionary compensation into the regular rate, including differentials and incentives.

35. Plaintiff and the Class Members were also required to work shifts in excess of five hours without being provided a lawful meal period and, on occasion, over ten hours in a day without being provided a second lawful meal period as required by law.

36. Indeed, during the relevant time, as a consequence of Defendants' scheduling practices, work demands, lack of coverage, staffing requirements, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal periods as required by law. Not only were Plaintiff and the Class Members' first meal breaks frequently not provided, untimely or short, but also Plaintiff and the Class Members were not provided a second meal period when working shifts in excess of 10 hours and in excess of 12 hours. On information and belief, Plaintiff and the Class Members did not waive their rights to a second meal period.

37. Defendants' written policies are also unlawful in that they unlawfully shift the burden of providing meal periods to Class Members:

Meal Periods

....

During meal periods, non-exempt employees are relieved of all duty and are free to use their meal periods entirely for their own purposes. There will be no control by AH over the employees' activities during their meal periods. Non-exempt employees are free to leave the Company's premises and are free to use meal periods in any way they choose. Employees may not divide up the meal break. Employees working at a location that requires an employee to be on the premises at all times will be relieved by an employee from another location, and must schedule their rest periods [sic] with the person providing relief so that at no time is the house unattended.

1 38. Despite the above-mentioned meal period violations, Defendants failed to
2 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
3 additional hour of pay at their regular rate as required by California law when meal periods were
4 not timely or lawfully provided in a compliant manner.

5 39. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
6 should know, knew, and/or should have known that Plaintiff and the other Class Members were
7 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
8 accurately calculated compensation.

9 40. In addition, during the relevant time frame, Plaintiff and the Class Members were
10 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
11 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
12 order.

13 41. Defendants lacked adequate coverage, imposed staffing requirements, and
14 maintained and enforced scheduling practices, policies, and imposed work demands that
15 frequently required Plaintiff and Class Members to forego their lawful, paid rest periods of a net
16 ten minutes for every four hours worked or major fraction thereof. Such requisite rest periods
17 were not timely authorized and permitted.

18 42. Defendants' written policies are also unlawful in that they unlawfully shift the
19 burden of authorizing and permitting rest periods to Class Members:

20
21 Rest breaks should occur, insofar as practicable, in the middle of each work period (i.e., 4
22 hours or major fraction thereof). Rest periods may not be combined with or added on to
23 meal periods, nor may they be used to come in 10 minutes late or leave 10 minutes early.
24 With these guidelines in mind, employees may generally decide when to take their rest
breaks. Employees are to inform their supervisor or lead person on shift when taking a rest

25 Employees may use this time to relax, use the restroom, eat a snack, etc. Employees are
26 expected to be prompt in returning from their breaks. Employees working at a location
27 that requires an employee to be on the premises at all times will be relieved by an
employee from another location, and must schedule their rest periods with the person
providing relief so that at no time is the house unattended.

28 43. Despite the above-mentioned rest period violations, Defendants did not

1 compensate Plaintiff, and on information and belief, did not pay the Class Members one
2 additional hour of pay at their regular rate as required by California law, including Labor Code
3 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
4 not authorized and permitted.

5 44. Defendants also failed to provide accurate, lawful itemized wage statements to
6 Plaintiff and the Class Members in part because of the above specified violations.

7 45. Defendants have also made it difficult to determine applicable rates of pay and
8 account with precision for the unlawfully withheld wages and deductions due to be paid to the
9 Class Members, including Plaintiff, during the liability period because they did not implement and
10 preserve a lawful record-keeping method to record all hours worked, and non-provided rest and
11 meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
12 211(c), California Labor Code section 226, and applicable California Wage Orders.

13 46. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
15 thereof for resignations without prior notice as the case may be) they had a duty to accurately
16 compensate Plaintiff and the Class Members for all wages owed including straight time, overtime,
17 meal and rest period premiums, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
19 because of the above-specified violations.

20 47. Further, during the relevant time period, Plaintiff and the Class Members were
21 required to incur necessary expenses in the discharge of their duties, including without limitation
22 for cellular phone expenses, remote working and home office expenses, laptop, internet, office
23 supplies, electricity, and mileage, but were not reimbursed for such necessary expenses.

24 48. Finally, Defendants also maintained and enforced practices and policies to
25 systematically not pay Plaintiff and Class Members' vested vacation wages and effectuating
26 unlawful forfeitures thereof.

1 **CLASS ACTION ALLEGATIONS**

2 49. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
3 other person similarly situated, and thus, seeks class certification under California Code of Civil
4 Procedure §382.

5 50. All claims alleged herein arise under California law for which Plaintiff seek relief
6 as authorized by California law.

7 51. The proposed class is comprised of and defined as: **all non-exempt, hourly**
8 **employees who are or were employed by Defendants in the State of California, however titled,**
9 **within four (4) years prior to the filing of the Complaint in this action until the resolution of**
10 **this lawsuit** (hereinafter collectively referred to as the “Class” or “Class Members”).

11 52. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
12 are composed of Class Members satisfying the following definitions:

13 a. All Class Members who were not paid at least minimum wage for all hours
14 worked (collectively **“Minimum Wage Subclass”**);

15 b. All Class Members who were required to work on-call shifts or remain on-
16 call (collectively **“On-Call Subclass”**);

17 c. All Class Members who were not accurately paid overtime for hours worked
18 over eight in a day or over forty in a workweek (**collectively “Overtime Subclass”**);

19 d. All Class Members who worked more than five (5) hours in a workday and
20 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
21 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
22 thereof (hereinafter collectively referred to as the **“Meal Period Subclass”**);

23 e. All Class Members who worked more than three and a half hours in a
24 workday and were not authorized and permitted to take a net 10-minute rest period for every four
25 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
26 premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to
27 as the **“Rest Period Subclass”**);

28 f. All Class Members who were not reimbursed for all necessary expenditures

(collectively “**Indemnification Subclass**”);

g. All Class Members whose vacation wages were forfeited or not completely paid at termination (collectively “**Vacation Pay Subclass**”).

h. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement Subclass**”);

i. All Class Members who were employed by Defendants and subject to Defendants’ Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business Practices Subclass**”).

53. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Classes to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiff’s Class includes the members of each of the Subclasses.

54. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Classes are easily ascertainable through Defendants’ records.

a. Numerosity: The members of the Classes are so numerous that joinder of all members of the Classes would be unfeasible and impractical. The membership of the entire Classes is unknown to Plaintiff at this time; however, the Class is estimated to be hundreds of individuals. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

b. The proposed class is easily ascertainable. The number and identity of the class members are determinable from Defendants’ payroll records and time records for each class member.

1 c. Commonality: There are common questions of law and fact as to the Class
2 that predominate over questions affecting only individual Class Members. These common
3 questions of law and fact include, without limitation:

- 4 i. Whether Defendants accurately paid Class Members for all hours worked;
- 5 ii. Whether Defendants knew or should have known that Class Members were
6 required to perform work off the clock;
- 7 iii. Whether Defendants were required to compensate Class Members for on-
8 call time;
- 9 iv. Whether Defendants accurately calculated and paid all Class Members
10 overtime premiums for the hours which Plaintiff and Class Members worked
11 in excess of eight (8) hours per day and/or forty (40) hours per week;
- 12 v. Whether Defendants accurately paid employees double time for hours
13 worked in excess of 12 hours in one day or for work over 8 hours in a day
14 on the seventh day of work in a workweek;
- 15 6. Whether Defendants had a policy and practice of providing lawful, timely
16 meal periods in accordance with Labor Code § 512, as well as the applicable
17 Industrial Welfare Commission (“IWC”) wage order;
- 18 7. Whether Defendants had a policy and practice of complying with Labor
19 Code section 226.7 and IWC Wage Order on each instance that a lawful,
20 timely 30-minute uninterrupted meal period was not provided;
- 21 8. Whether Defendants failed to authorize and permit a lawful, net 10-minute
22 rest period to the Class Members for every four (4) hours or major fraction
23 thereof worked;
- 24 9. Whether Defendants had a policy and practice of complying with Labor
25 Code section 226.7 and the IWC Wage Order on each instance that a lawful
26 rest period was not provided;
- 27 10. Whether Defendants failed to timely pay all wages upon separation in
28 accordance with Labor Code sections 201-202;

11. Whether Defendants omitted required information from itemized wage statements;
12. Whether Defendants maintained accurate records of Class Members' earned wages, work periods, meal periods and deductions;
13. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
14. Whether Defendants provided all necessary materials, tools, and equipment to Class Members;
15. Whether Defendants reimbursed Class Members for expenses incurred;
16. Whether Defendants paid vested vacation wages to Class Members;
17. Whether Defendants' conduct was willful and/or reckless;
18. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and
19. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.
20. The proper measure of statutory damages and punitive damages.

d. Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests of each member of the Classes with whom they have a well-defined community of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by any member of the Classes, and the relief sought is typical of the relief which would be sought by each member of the Classes in separate actions. All members of the Class have been similarly harmed by Defendants' failure to reimburse expenses, failure to provide accurate wage statements, failure to timely pay wages at termination, failure to pay minimum wages, rounding practices, failure to provide lawful meal and rest periods, failure to pay vacation wages, failure to reimburse expenses, and failure to accurately pay all wages earned including all owed premium and overtime wages, all due to Defendants' policies and practices that affected each member of the Class similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to each member of the Classes.

1 e. Adequacy: Plaintiff is qualified to and will fairly and adequately protect the
2 interests of each member of the Classes with whom they have a well-defined community of interest
3 and typicality of claims, as demonstrated herein. Plaintiff acknowledges that they have an
4 obligation to make known to the Court any relationships, conflicts, or differences with any member
5 of the Classes, and no such relationships or conflicts are currently known to exist. Plaintiff's
6 attorneys and the proposed counsel for the Classes are versed in the rules governing class action
7 discovery, certification, litigation, and settlement and experienced in handling such matters. Other
8 former and current employees of Defendants may also serve as representatives of the Classes if
9 needed.

10 f. Superiority: The nature of this action makes the use of class action
11 adjudication superior to other methods. A class action will achieve economies of time, effort,
12 judicial resources, and expense, which would not be achieved with separate lawsuits. The
13 prosecution of separate actions by individual members of the Classes would create a risk of
14 inconsistent and/or varying adjudications with respect to the individual members of the Classes,
15 establishing incompatible standards of conduct for the Defendants, and resulting in the impairment
16 of the rights of the members of the Classes and the disposition of their interests through actions to
17 which they were not parties. Thus, a class action is superior to other available means for the fair
18 and efficient adjudication of this controversy because individual joinder of all Class Members is
19 not practicable, and questions of law and fact common to the Class predominate over any questions
20 affecting only individual Class Members. Each member of the Class has been damaged and is
21 entitled to recovery by reason of Defendants' unlawful policies and practices that affected each
22 member of the Classes similarly. Class action treatment will allow those similarly situated persons
23 to litigate their claims in the manner that is most efficient and economical for both parties and the
24 judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
25 management of this action that would preclude its maintenance as a class action.

26 g. Public Policy Considerations: Employers in the State of California violate
27 employment and labor laws every day. However, current employees are often afraid to assert their
28 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions

1 because they believe their former employers may damage their future endeavors through negative
2 references and/or other means. The nature of this action allows for the protection of current and
3 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
4 California have a significant interest in ensuring employers comply with California's labor laws
5 and in ensuring those employers who do not are prevented from taking further advantage of their
6 employees.

7 **CLASS ACTION CLAIMS**

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(By Plaintiff and the Class Against Defendants)**

11 55. Plaintiff incorporates each and every allegation set forth in all of the foregoing
12 paragraphs as if fully set forth herein.

13 56. Labor Code section 204 establishes the fundamental right of all employees in the
14 State of California to be paid wages, including minimum wage, straight time and overtime, in a
15 timely fashion for their work.

16 57. Labor Code section 1194(a) provides that notwithstanding any agreement to work
17 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
19 of the full amount of this minimum wage or overtime compensation, including interest thereon,
20 reasonable attorney's fees, and costs of suit.

21 58. Labor Code section 1197 provides: The minimum wage for employees fixed by the
22 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
23 and the payment of a lower wage than the minimum so fixed is unlawful.

24 59. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
25 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
26 Wage Order(s).

27 60. The applicable wage orders and California Labor Code sections 1197 and 1182.12
28 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by

1 state law.

2 61. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
3 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
4 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
5 equal to the unpaid wages and interest accrued thereon.

6 62. During all relevant periods, the California Labor Code and wage orders required that
7 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
8 hours worked.

9 63. The IWC Wage Orders define "hours worked" as "the time during which an
10 employee is subject to the control of an employer, and includes all the time the employee is suffered
11 or permitted to work, whether or not required to do so."

12 64. At all times relevant, Plaintiff and the Class Members consistently worked hours for
13 which they were not paid because Defendants frequently required Plaintiff and the Class Members
14 to work off the clock.

15 65. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
16 Class Members were working off the clock and that they should have been paid for this time.

17 66. Defendants' policy and practice of not paying all minimum wages violates
18 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
19 applicable wage order 4-2001 and 5-2001.

20 67. Due to Defendants' violations of the California Labor Code and wage orders,
21 Plaintiff and the Class Members are entitled to recover from Defendants their unpaid wages,
22 statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-
23 judgment interest, as well as liquidated damages.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME OWED**

26 **(By Plaintiff and the Class Against All Defendants)**

27 68. Plaintiff incorporates each and every allegation set forth in all of the foregoing
28 paragraphs as if fully set forth herein.

1 69. During all relevant periods, Defendants required Plaintiff and the Class Members to
2 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
3 per workweek.

4 70. During all relevant periods, both the California Labor Code sections 1194, 1197,
5 510, 1198, and the pertinent wage order 4-2001 and 5-2001 required that all work performed by an
6 employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek,
7 or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times
8 the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is
9 required to be compensated at the rate of no less than twice the regular rate of pay for an employee.
10 In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is
11 required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

12 71. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
13 and the Class Members to work in excess of eight (8) hours in a workday and/or in excess of forty
14 (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their
15 regular rate of pay. Upon information and belief, Defendants also failed to properly compensate
16 Plaintiff and the Class Members for hours worked in excess of twelve (12) hours in one (1) day, or
17 eight (8) hours on the seventh (7th) day of a workweek.

18 72. The IWC Wage Orders define "hours worked" as "the time during which an
19 employee is subject to the control of an employer and includes all the time the employee is suffered
20 or permitted to work, whether or not required to do so."

21 73. At all times relevant, Plaintiff and the Class Members consistently worked hours for
22 which they were not paid because Plaintiff and the Class Members were required to work off the
23 clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40)
24 hours in a workweek and should have been paid at the overtime rate.

25 74. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
26 Class Members were working off the clock and that they should have been paid for this time.

27 75. In addition, upon information and belief, Defendants failed to incorporate all forms
28 of compensation, including without limitation bonuses, (shift) differentials, gift cards,

1 commissions, and incentives, into the regular rate for overtime purposes.

2 76. As a result, Defendants failed to pay Plaintiff and the Class Members earned
3 overtime wages and such employees suffered damages as a result.

4 77. Defendants knew or should have known Plaintiff and the Class Members were
5 undercompensated as a result of these practices.

6 78. Due to Defendants' violations of the California Labor Code, Plaintiff and the Class
7 Members are entitled to recover from Defendants their unpaid overtime wages, reasonable
8 attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory
9 penalties, and liquidated damages.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY ON-CALL TIME PAY**

12 **(By Plaintiff and the On-Call Subclass Against All Defendants)**

13 79. Plaintiff incorporates by reference and realleges each and every allegation contained
14 above, as though fully set forth herein.

15 80. Labor Code section 1197 makes it unlawful to pay an employee less than the
16 minimum wage as established by the Industrial Welfare Commission.

17 81. Labor Code section 1198 provides that the maximum hours of work and the standard
18 of conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees. The employment of any employee for longer hours
20 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

21 82. Labor Code section 1194(a) provides that notwithstanding any agreement to work
22 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
24 of the full amount of this minimum wage or overtime compensation, including interest thereon,
25 reasonable attorney's fees, and costs of suit.

26 83. The IWC Wage Orders define "hours worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is suffered
28 or permitted to work, whether or not required to do so."

84. The applicable wage orders and California Labor Code sections 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law.

85. During all relevant periods, Plaintiff and the On-Call Subclass were required to work on-call shifts and were required to remain subject to the control of the employer during said periods but were not paid unless they were actually called in to work.

86. By failing to pay hourly wages for on-call and reporting time, Defendants willfully violated Labor Code sections 1194, 1197, 1198, and IWC Wage Order 4-2001 and 5-2001, and Plaintiff and the Class Members are entitled to recover from Defendants their unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, as well as liquidated damages.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

87. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

88. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

89. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide Plaintiff and the Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

90. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing, Plaintiff and the Class Members were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

91. Upon information and belief, Plaintiff and the Class Members were not paid one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

92. Moreover, as a matter of policy and practice, upon information and belief, the Class Members were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal period. On information and belief, Plaintiff and the Class Members did not lawfully waive their rights to a second meal period on shifts in excess of ten hours.

93. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial.

94. Pursuant to Labor Code § 226.7, Plaintiff and the Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

95. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

(By Plaintiff and the Class Against All Defendants)

96. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

97. Pursuant to the IWC wage orders applicable to Plaintiff’ and the Class Members’ employment by Defendants, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.”

1 98. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
2 during any rest period mandated by an applicable order of the IWC.

3 99. Defendants were required to authorize and permit employees such as Plaintiff and
4 the Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total
5 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
6 thereof, with no deduction from wages.

7 100. Despite said requirements of the IWC wage orders applicable to the Class Members'
8 employment with Defendants, Defendants failed and refused to authorize and permit Plaintiff and
9 the Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours worked,
10 or major fraction thereof. Such rest breaks, when provided, were frequently untimely or less than
11 net ten minutes because of the work requirements imposed by Defendants, and frequent calls during
12 rest periods.

13 101. Defendants did not pay Plaintiff one additional hour of pay at their regular rate of
14 pay for each day that a rest period violation occurred. On information and belief, the other members
15 of the Class endured similar violations as a result of Defendants' rest period policies and practices
16 and Defendants did not pay Class Members premium pay as required by law.

17 102. By their failure to authorize and permit Plaintiff and the Class Members to take a
18 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
19 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
20 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
21 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
22 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
23 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

24 103. As a result of the unlawful acts of Defendants, Plaintiff, and the Class they seek to
25 represent have been deprived of premium wages in amounts to be determined at trial, and are
26 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
27 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

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1 111. Plaintiff repeat and incorporates herein by reference each and every allegation set
2 forth above, as though fully set forth herein.

3 112. Labor Code section 226(a) reads in pertinent part: “Every employer shall,
4 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
5 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
6 when wages are paid by personal check or cash, an accurate itemized statement in writing
7 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
8 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
12 pay period and the corresponding number of hours worked at each hourly rate by the
13 employee....”.

14 113. Further, the IWC Wage Orders require in pertinent part: Every employer shall
15 keep accurate information with respect to each employee including the following: (3) Time
16 records showing when the employee begins and ends each work period. Meal periods, split shift
17 intervals, and total daily hours worked shall also be recorded... (5) Total hours worked in the
18 payroll period and applicable rates of pay....”

19 114. Labor Code section 1174 of the California also requires Defendants to maintain
20 and preserve, in a centralized location, among other items, records showing the names and
21 addresses of all employees employed and payroll records showing the hours worked daily by, and
22 the wages paid to, its employees. On information and belief and based thereon, Defendants have
23 knowingly and intentionally failed to comply with Labor Code section 1174, including by
24 implementing the policies and procedures and committing the violations alleged in the preceding
25 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
26 unlawful pursuant to Labor Code section 1175.

27 115. Defendants have failed to record many of the items delineated in applicable
28 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section

1 1174, including by virtue of the fact that each wage statement which failed to accurately
2 compensate Plaintiff and the Class Members for all hours worked and for missed and non-
3 provided meal and rest periods, or which failed to include compensation for all minimum wages
4 earned or overtime hours worked, was an inaccurate wage statement. In addition, the wage
5 statements inaccurately stated total hours worked and hours worked at each hourly wage rate.

6 116. On information and belief, Defendants failed to implement and preserve a lawful
7 record-keeping method to record all non-provided meal and rest periods owed to employees or all
8 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
9 and applicable California Wage Orders. In order to determine if they had been paid the correct
10 amount and rate for all hours worked, Plaintiff and the Class Members have been, would have
11 been, and are compelled to try to discover the required information missing from their wage
12 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
13 the wage statements Defendants provided to them.

14 117. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
15 Wage Orders, Defendants did not and still do not furnish each of the members of the Class with
16 an accurate itemized statement in writing accurately reflecting all of the required information.
17 Here, Plaintiff assert the Defendants omitted required information, failed to accurately include all
18 applicable hourly rates on the wage statements and the corresponding number of hours worked at
19 such rates or hours paid at such rates. In addition, Defendants have failed to provide accurate
20 itemized wage statements as a consequence of the above-specified violations for failure to
21 accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and
22 rest period premiums as required by law.

23 118. Moreover, upon information and belief, as a pattern and practice, in violation of
24 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
25 accurate records pertaining to the total hours worked for Defendants by the members of the Class,
26 including but not limited to, beginning, and ending of each work period, meal period and split
27 shift interval, the total daily hours worked, and the total hours worked per pay period and
28 applicable rates of pay.

119. Plaintiff and the members of the Class have suffered injury as a result of Defendants' failure to maintain accurate records for the members of the Class in that Class Members were not timely provided written accurate itemized statements showing all requisite information, such that the members of the Class were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

120. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed above, Plaintiff and the Class Members are each entitled to recover up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY EARNED VACATION WAGES

(By Plaintiff and Vacation Pay Subclass Against All Defendants)

121. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

122. Upon information and belief, Defendants employ policies that provide for vacation/PTO to Plaintiff and the Class Members.

123. Labor Code section 204 establishes the fundamental right of all employees in the State of California to be paid wages, including minimum wage, straight time and overtime, in a timely fashion for their work.

124. Labor Code section 227.3 requires employees to pay terminated employees for an unused vacation time that they have occurred at their final rate of pay.

125. Earned vacation time is considered wages under California law. Vacation pay accrues as it is earned, and cannot be forfeited. *Suastez v. Plastic Dress Up* (1982) 31 C.3d 774. Thus, Plaintiff and Class Members earned vacation/PTO wages while employed by Defendants. However, Defendants effectuated an unlawful forfeiture of Plaintiff and Class Members earned and vested vacation/PTO wages.

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costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Classes;
3. That counsel for Plaintiff be appointed as counsel for the Classes.

On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

1 **On the Third Cause of Action**

2 (Failure to pay minimum wages)

- 3 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
4 owed, as well as interest thereon,
- 5 2. Penalties according to statute,
- 6 3. Liquidated damages,
- 7 4. Reasonable attorneys' fees, and costs of suit;
- 8 5. For interest and
- 9 6. For such other and further relief as the Court deems proper.

10 **On the Fourth Cause of Action**

11 (Failure to Provide Lawful Meal Periods)

- 12 1. For one (1) hour of premium pay for each day in which a required meal period was
13 not lawfully provided;
- 14 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 15 3. For such other and further relief as the Court deems proper.

16 **On the Fifth Cause of Action**

17 (Failure to Authorize and Permit Lawful Rest Periods)

- 18 1. For one (1) hour of premium pay for each day in which a required rest period was
19 not lawfully authorized and permitted; and
- 20 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 21 3. For such other and further relief as the Court deems proper.

22 **On the Sixth Cause of Action**

23 (Failure to Timely Pay Wages At Separation)

- 24 1. For unpaid wages;
- 25 2. For penalties pursuant to Labor Code § 203;
- 26 3. For interest;
- 27 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 28 5. For such other and further relief as the Court deems proper.

1 **On the Seventh Cause of Action**

2 **(Failure to Provide Accurate Itemized Wage Statements)**

- 3 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
4 2. For reasonable attorneys' fees and costs; and
5 3. For such other and further relief as the Court deems proper;

6 **On the Eighth Cause of Action**

7 **(Failure to Pay Earned Vacation Wages)**

- 8 1. For all earned and unpaid vacation/PTO at the regular rate;
9 2. For interest;
10 3. For reasonable attorneys' fees and costs pursuant to statute; and
11 4. For such other and further relief as the Court deems proper.

12 **On the Ninth Cause of Action**

13 **(Failure to Reimburse Necessary Expenses)**

- 14 1. For all unreimbursed expenses;
15 2. For interest;
16 3. For reasonable attorneys' fees and costs pursuant to statute; and
17 4. For such other and further relief as the Court deems proper.

18 **On the Tenth Cause of Action**

19 **(Violation of the Unfair Competition Law)**

- 20 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
21 sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum, overtime,
22 on-call, vacation, and regular wages, for Defendants' past failure to reimburse necessary expenses,
23 and for premium wages for meal and rest periods that were not provided to Plaintiff and Class
24 Members over the last four (4) years in an amount according to proof;
25 2. For reasonable attorneys' fees that Plaintiff and the Class Members are entitled to
26 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,
27 1198 ;
28

1 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due
2 from the day that such amounts were due;

3 4. For costs of suit incurred herein that Plaintiff and Non-Exempt Class Members are
4 entitled to recover under the Labor Code; and

5 5. For such other and further relief as the Court deems proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of the Classes, respectfully demands a jury trial in this matter to the
8 fullest extent available under the law.

9
10 Respectfully submitted,

11 **JAMES HAWKINS APLC**

12 Dated: May 28, 2024

13 
14 James R. Hawkins, Esq.
 Christina M. Lucio, Esq.

15 Attorneys for Plaintiff
16 ERIC KINGERY, on behalf of himself and all others
17 similarly situated
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