

Julian Burns King (Bar No. 298617)
Julian@KingSiegel.com
Elliot J. Siegel (Bar No. 286798)
Elliot@KingSiegel.com
KING & SIEGEL LLP
724 South Spring Street, Suite 201
Los Angeles, California 90014
tel: (213) 465-4802
fax: (213) 465-4803

Navid Barahmand (Bar No. 340934)
navid@barahmandlaw.com
BARAHMAND LAW GROUP
7324 Sepulveda Boulevard, Suite B
Van Nuys, CA 91405
tel: (818) 574-3355
fax: (818) 573-3757

Attorneys for Plaintiff and Putative Class

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/26/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

CGC-24-618497

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Estefany Gonzalez Salazar, individually and
on behalf of all similarly situated individuals,

Plaintiff,

vs.

PNC Management, LLC, a Delaware Limited
Liability Company; **Johnny Kamon**, an
individual; **Gavin Ripp**, an individual; and
Does 1-100;

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Wages;**
- 3) **Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;**
- 4) **Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;**
- 5) **Failure to Provide and Maintain Accurate Records;**
- 6) **Failure to Reimburse Necessary Business Expenses; and**
- 7) **Violation of California Business & Professions Code §§ 17200, et seq.**

1 Plaintiff hereby brings this action on behalf of herself and all other similarly situated current and
2 former employees, by and through her counsel of record, and alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Estefany Gonzalez Salazar** is and has been
5 a resident of San Francisco County, California. Plaintiff was employed as an hourly non-exempt employee
6 by PNC Management from on or around August 26, 2023 to on or around August 24, 2024. Plaintiff was
7 subject to the policies and practices described in this Complaint at all times during her employment at PNC
8 Management.

9 2. Defendant **PNC Management, LLC**. (“PNC Management”) is a Delaware Limited
10 Liability Company whose primary business consists of medical facilities that specialize in podiatry and
11 orthopedics operating under the brand “Balance Health.” On information and belief, PNC Management
12 employs at least 100 hourly, non-exempt employees. PNC Management is a domestic limited liability
13 corporation registered and organized under the laws of Delaware. PNC Management’s principal place of
14 business in California is 222 Berkeley Street, 18th Floor, Boston, Massachusetts 02116.

15 3. Defendant **Johnny Kamon** (“Kamon”) is a Member of PNC Management. Upon
16 information and belief, he is a resident of the County of Los Angeles in the State of California. Upon
17 information and belief, Mr. Kamon is a managing agent, director, and/or officer of Defendants and he
18 caused or directed to be caused some or all of the Labor Code violations alleged herein. Since Kamon is a
19 managing agent, director, and/or officer of Defendants and because he caused or directed the acts described
20 herein, he is personally liable for the Labor Code violations set forth in this Complaint under Labor Code
21 Section 558.1.

22 4. Defendant **Gavin Ripp** (“Ripp”) is a Member of PNC Management. Upon information and
23 belief, he is a resident of the County of Sacramento in the State of California. Upon information and belief,
24 Mr. Ripp is the Chief Executive Office of PNC d/b/a Balance Health and he caused or directed to be caused
25 some or all of the Labor Code violations alleged herein. Since Kamon is a managing agent, director, and/or
26 officer of Defendants and because he caused or directed the acts described herein, he is personally liable for
27 the Labor Code violations set forth in this Complaint under Labor Code Section 558.1.

28 5. Plaintiff is not currently aware of the names and true identities of defendants Does 1-100,

1 inclusive, (hereinafter “Doe Defendants” together with Defendants PNC Management, Kamon, and Ripp
2 as “Defendants”). Plaintiff reserves the right to amend this complaint to allege their true names and
3 capacities when this information is available. Each Doe defendant is responsible for the damages alleged
4 pursuant to each of the causes of action asserted, either through its own conduct, or vicariously through the
5 conduct of others. All further references in this complaint to any of the named Defendants includes the
6 fictitiously named defendants.

7 6. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee,
8 partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants’
9 relationship; and the conduct of every Defendant was ratified by each other Defendant.

10 **VENUE AND JURISDICTION**

11 7. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,
12 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California
13 statutes and law, including the Labor Code and the Business & Professions Code. Because Defendant
14 transacts business within San Francisco County, Defendant is within the jurisdiction of the court for service
15 of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own
16 behalf may bring an action in any court of competent jurisdiction.

17 8. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
18 Procedure § 395. The unlawful acts alleged have directly affected Plaintiff in San Francisco County, where
19 Plaintiff provided services for Defendants and where she was injured by their failure to comply with the
20 Labor Code mandates discussed in this Complaint. Accordingly, this Court maintains appropriate
21 jurisdiction over this dispute.

22 **CLASS ACTION ALLEGATIONS**

23 9. At all times relevant to this complaint, Defendants have consistently denied their non-
24 exempt employees the opportunities to take compliant 30-minute meal periods in accordance with
25 California’s Labor Code. Upon information and belief, Class Members, including Plaintiff, were required
26 to skip or interrupt their meal and/or rest periods to assist patients, answer phone calls, otherwise interrupt
27 or cut short their meal and/or rest periods, or remain on duty and under Defendants’ control during their
28 meal periods to perform other tasks at Defendants’ direction.

10. This included, without limitation, Defendants requiring Class Members, including Plaintiff, to continue caring for patients during their meal breaks due to the press of their job duties and/or Defendants' decision to schedule patients in such a manner that there was insufficient time for Class Members to or complete all required deadlines, see scheduled patients, and timely take their meal breaks. In the same manner, and as a matter of uniform and systemic policy, Defendant requires non-exempt employees to continue working during their rest periods by caring for patients, answering phone calls, otherwise interrupting or cut short their rest periods, or remain on duty and under Defendants' control during their rest periods to perform other tasks at Defendants' direction, including their scheduling and staffing practices and policies.

11. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of failing to pay all required premium compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were denied compliant meal and rest periods.

12. Defendants further failed to compensate employees for all time worked time when employees were forced to interrupt and/or work through their meal periods but were clocked out under Defendants' time-keeping system during this time (and therefore treated as not working). This resulted in employees being denied both straight time and overtime pay, where applicable, for the time during which they were on call or under Defendants' control despite being off the clock for timekeeping purposes.

13. As a matter of uniform and systemic policy, Defendants required non-exempt employees to utilize their personal cell phones for work-related purposes, including using an application named Athena Capture to capture photos of patients' injuries, using Zoom and/or Microsoft Teams on their personal phone to communicate with Defendants' supervisory staff, answering client calls, and answering texts and calls from their supervisors while at work or on a break regarding scheduling and re-scheduling future work, being assigned tasks, or general administrative matters. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes. Additionally, Defendants required non-exempt employees to use their personal vehicles for work-related purposes, including, but not limited to traveling from office to office after arriving at their regularly scheduled reporting location, without receiving reimbursements for gas, mileage, or depreciation.

14. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt employees with accurate itemized wage statements in accordance with California's Labor Code. Upon information and belief, Defendants failed to furnish Plaintiff, or Class Members, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing sick pay, gross wages earned, all deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff worked, including the unpaid premium payments owed to Plaintiff and the Class Members for their missed meal and rest breaks.

15. Plaintiff therefore brings this action on behalf of herself and as a class action on behalf of the following defined Class:

Non-Exempt Employee Class:

All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

16. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

17. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 100 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

18. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

19. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands her obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel

1 experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class
2 counsel, are versed in the rules governing class action discovery, certification, and settlement, and will
3 vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs
4 and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action
5 for the substantial benefit of each Class Member.

6 20. **Existence and Predominance of Common Issues.** Common questions of law and fact exist
7 as to all Class Members and predominate over issues affecting individual Class Members, including, but not
8 limited to:

- 9 a) Whether Defendants had a common policy and/or practice of requiring Class
10 Members to remain under Defendants' control and direction while off-the-clock;
- 11 b) Whether Defendants were required to pay Class Members at least minimum wages
12 for all time spent under its control and direction;
- 13 c) Whether Defendants paid Class Members all owed minimum wages;
- 14 d) Whether Defendants' policies and/or practices required Class Members to work
15 over eight hours per day or over forty hours per week without being paid all legally required
16 overtime compensation;
- 17 e) Whether Defendants unlawfully and/or willfully failed to compensate Class
18 Members required overtime wages;
- 19 f) Whether Defendants have a common policy and/or practice of authorizing compliant
20 meal periods to all non-exempt employees;
- 21 g) Whether Defendants have a common policy and/or practice of permitting compliant
22 rest periods to all non-exempt employees;
- 23 h) Whether Defendants have a common policy and/or practice of depriving Plaintiff
24 and Class Members of compliant, off-duty meal and/or rest periods;
- 25 i) Whether Defendants unlawfully and/or willfully deprived Class Members of
26 compliant, off-duty meal and/or rest periods;
- 27 j) Whether Defendants paid Class Members all required premium wages for non-
28 compliant meal and/or rest periods;

- 1 k) Whether Defendants have a common policy and/or practice of failing to maintain
2 accurate payroll records in the State of California;
- 3 l) Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll
4 records in the State of California;
- 5 m) Whether Defendants have a policy and/or practice of failing to provide accurate wage
6 statements reflecting hours worked and wages earned by Class Members;
- 7 n) Whether Defendants unlawfully and/or willfully failed to provide accurate wage
8 statements reflecting hours worked and wages earned by Class Members;
- 9 o) Whether Defendants have a common policy and/or practice of failing to reimburse
10 Plaintiff and Class Members for reasonable business expenses;
- 11 p) Whether Plaintiff and Class Members sustained damages as a result of any of the
12 aforementioned violations, and, if so, the proper measure of those damages, including
13 interest, penalties, costs, attorneys' fees, and equitable relief;
- 14 q) Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code
15 § 17200, et seq., by violating the above provisions of law; and
- 16 r) Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code
17 § 17200, et seq., by treating Plaintiff and Class Members unfairly by depriving them of rest
18 and/or meal periods, failing to provide them with compensation in lieu of meal and/or rest
19 periods, failing to compensate them for all wages earned, failing to pay wages upon
20 termination, and failing to furnish accurate and timely itemized wage statements upon
21 payment of wages.

22 21. **Superiority.** A class action is superior to other available means for the fair and efficient
23 adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small
24 compared to the burden and expense of individual prosecution of the complex and expensive litigation
25 necessary to address Defendants' conduct. Even if Class Members themselves could afford individual
26 litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought
27 redress. In addition, individualized litigation increases the delay and expense to all parties and to the court
28 system resulting from the complex legal and factual issues of this case. Individualized litigation also presents

1 a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far
2 fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed
3 because of the relative expense of bringing individual lawsuits, and it provides the benefits of single
4 adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates
5 providing individual notice to members of the Class through Defendants' records.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

9 ***Failure to Pay Minimum Wages***

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

11 22. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
12 paragraphs as if fully set forth herein.

13 23. California law requires employers to compensate employees for all time that an employee is
14 "suffered or permitted to work," which includes all time "when any employer 'directs, commands or
15 restrains' an employee." *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified
16 (May 10, 2000); see also Code Regs. tit. 8, § 11070 ("'Hours worked' means the time during which an
17 employee is subject to the control of an employer and includes all the time the employee is suffered or
18 permitted to work, whether or not required to do so.").

19 24. Defendants required its non-exempt employees to work through their legally mandated meal
20 periods or remain on duty and under Defendants' control during their meal periods to perform other tasks
21 at Defendants' directions due to Defendants' policies and practices, however, Class Members were clocked
22 out under Defendants' time-keeping system during this time and therefore treated as not working. This
23 resulted in compensable time going unreported and unpaid by Defendants.

24 25. Accordingly, Defendants failed to pay Plaintiff and Class Members for all hours worked
25 where they were under the control of Defendants and/or suffered or permitted to work.

26 26. As a result of Defendants' failure and refusal to comply with California law, Plaintiff and
27 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive
28 relief and reasonable attorney's fees and costs. Lab. Code §§ 1194, 1197.1.

1 **SECOND CAUSE OF ACTION**

2 ***California Labor Code §§ 510 and 1198***

3 ***Failure to Pay Overtime Wages***

4 **(Class Against Defendants)**

5 27. Plaintiff incorporates by reference every allegation as if fully set forth herein.

6 28. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without
7 compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay,
8 depending on the number of hours worked by the person on a daily or weekly basis.

9 29. Plaintiff and Class Members who work more than eight hours in a day or more than forty
10 hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of
11 eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes all
12 remuneration for employment paid to, or on behalf of, the employee, including commissions, non-
13 discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573
14 (2018), as modified (Apr. 25, 2018).

15 30. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime
16 premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a
17 day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty
18 hours in a week.

19 31. Defendants required its non-exempt employees to work through their legally mandated meal
20 periods or remain on duty and under Defendants' control during their meal periods to perform other tasks
21 at Defendants' directions due to Defendants' policies and practices, however, Class Members were clocked
22 out under Defendants' time-keeping system during this time and therefore treated as not working. This
23 resulted in compensable time going unreported and unpaid by Defendants.

24 32. As Class members worked shifts of eight or more hours or worked weeks for 40 or more
25 hours, some or all of this time should have qualified for overtime pay.

26 33. Defendants knew or should have known that Plaintiff and Class Members did not receive
27 overtime at their appropriate overtime rate of pay. Accordingly, Defendants' failure to pay overtime
28 compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages.

34. Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Failure to Provide Meal Periods or Premium Pay In Lieu Thereof

(Plaintiff and Class Against Defendants)

35. Plaintiff incorporates by reference every allegation as if fully set forth herein.

36. Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

37. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

38. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7.

39. Defendants' policies and practices served to deprive the Class of a full 30-minute break period free of employer control or relieved of all duties. Upon information and belief, employees were required to skip breaks, interrupt their breaks, cut them short, take them after the fifth hour of work, work through them, or remain under Defendant's control during breaks due to Defendants' policies and practices.

40. Accordingly, Plaintiff and Class Members were denied compliant meal periods as a result of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

41. Defendant was aware that its actions were a violation of applicable law but failed to pay all premium pay as required by law.

42. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required meal period was not provided.

FOURTH CAUSE OF ACTION

California Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu thereof

(Plaintiff and Class Against Defendants)

43. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

44. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC, including the Wage Orders. Employers must authorize and permit employees to be relieved of all duty during their rest periods: “A rest period, in short, must be a period of rest.”¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

45. At all times relevant to this complaint, Defendant knew it was obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

46. Defendants’ policies and practices served to deprive the Class of the requisite number of compliant rest periods free of employer control based on their hours worked per shift. Upon information and belief, employees were required to skip breaks, interrupt their breaks, cut them short, work through them, or remain under Defendant’s control during breaks due to Defendants’ policies and practices.

47. Defendant was aware that its actions were a violation of applicable law but failed to pay all

¹ Employees must also be free to leave the employer’s premises during their rest period. *See id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”); *see also* Department of Industrial Relations, “Rest Periods,” available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”).

1 premium pay as required by law.

2 48. Pursuant to the relevant Wage Order and Labor Code § 226.7(b), Plaintiff and Class
3 Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for
4 each shift that a compliant rest period was not provided.

5 **FIFTH CAUSE OF ACTION**

6 ***California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)***

7 ***Failure to Provide and Maintain Accurate Records***

8 **(Plaintiff and Class Against Defendants)**

9 49. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
10 paragraphs as if fully set forth herein.

11 50. Labor Code § 226 requires employers to furnish employees with an accurate, itemized
12 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the
13 employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the
14 inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four
15 digits of her or her social security number; (7) the name and address of the legal entity that is the employer;
16 *and* (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee.

18 51. At all times relevant to this complaint, Defendants' failure to pay premium wages for missed
19 meal and/or rest periods further ensured that Class Members' wage statements inaccurately reflected gross
20 and net wages earned. Defendants' failure to compensate all hours worked and/or pay all required overtime
21 rates further left the wage statements they provided to employees to be inaccurate.

22 52. Injury. Defendant knowingly and intentionally failed to comply with Labor Code § 226,
23 causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were
24 injured by these failures because, among other things, they were confused about whether they were paid
25 properly and/or they were misinformed about how much compensation was owed.

26 53. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not
27 being provided with an accurate itemized wage statement is entitled to recover the greater of all actual
28 damages suffered or fifty (\$50) dollars for the initial violation and one-hundred (\$100) dollars for each

subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

54. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

55. Labor Code section 2802 provides that "[a]n employer shall indemnify her or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

56. Defendants required Class Members to utilize their personal cell phones for work-related purposes, including using an application named Athena Capture to capture photos of patients' injuries, using Zoom, answering texts and calls from their supervisors while at work or on a break, being assigned tasks, and general administrative matters. Defendants also required non-exempt employees to use their personal vehicles for work-related purposes without receiving reimbursements for gas or mileage, Defendant further required employees purchase other work related equipment without providing reimbursement.

57. Defendants failure to reimburse a reasonable portion or all of these empenses violated Labor Code § 2802. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

58. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a

1 reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees
2 and costs. Lab. Code § 2802.

3 **SEVENTH CAUSE OF ACTION**

4 ***California Business and Professions Code §§ 17200, et seq.***

5 ***Unfair Competition Law***

6 **(Plaintiff and Class Against Defendants)**

7 59. Plaintiff repeats and incorporates by reference every allegation as if fully set forth herein.

8 60. Defendants are a "person" as defined by California Business & Professions Code § 17201,
9 as each is a natural person, corporation, firm, partnership, joint stock company, and/or association.

10 61. Unlawful Business Practices. Defendants' knowing violations of the Labor Code, relevant
11 IWC Wage Order, and California Code of Regulations, tit 8, § 3364 constitute an unlawful business practice
12 as set forth in Business & Professions Code § 17200, *et seq.*²

13 62. Defendants' failure to abide by the laws discussed herein provide Defendant an unfair
14 advantage over their competitors at the expense of their workers. Instead, Defendant cuts corners in the
15 name of higher profits and at the expense of employee well-being. Defendants' action thereby constitutes
16 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et seq.*

17 63. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
18 Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendant acquired
19 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks
20 an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

21 **DEMAND FOR JURY TRIAL**

22 64. Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all
23 issues so triable.

24
25
26 ² In *Solus Industrial Innovations, Inc. v. Superior Court of Orange County*, 4 Cal.5th 316 (2018), the Califor-
27 nia Supreme Court held that employees can sue their employers for workplace safety violations under
28 the State's consumer protection laws, including California's Unfair Competition Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

A. For an Order:

a. Certifying the Class;

b. Appointing Plaintiff as representative of the Class;

c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: September 25, 2024

Respectfully submitted,

KING & SIEGEL LLP

By: *Elliot J. Siegel*
Elliot J. Siegel, Esq.
Attorneys for Plaintiff and Putative Class

Dated: September 25, 2024

Respectfully submitted,

BARAHMAND LAW GROUP

By: */s/ Navid Barahmand*
Navid Barahmand, Esq.
Attorney for Plaintiff and Putative Class