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on behalf of himself and others similarly situated
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIN**

12 TAMBA BANDABAILA, an individual on
behalf of himself and all others similarly
13 situated,

14 Plaintiff,

15 vs.

16 MARIN GENERAL HOSPITAL, a
California corporation doing business as
17 MARINHEALTH MEDICAL CENTER;
MARIN GENERAL HOSPITAL, INC., a
18 business entity of unknown form; and DOES
1 through 50, inclusive,

19 Defendants.
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ELECTRONICALLY FILED
Superior Court of California
County of Marin
01/14/2025

James M. Kim, Clerk of the Court
By: D. Harrison, Deputy

Case No.: CV0004680

CLASS ACTION

Assigned for All Purposes To:
Hon. Andrew Sweet
Dept.: E

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
8. Failure to Reimburse Necessary Business Expenses § 2802; and
9. Violation of Business & Professions Code § 17200 *et seq.*
10. Penalites under the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 INTRODUCTION

2 1. Plaintiff Tamba Bandabaila (“Plaintiff”) brings this action on behalf of himself and
3 the Class Members who are defined as “all current and former employees within the State of
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were
5 employed as non-exempt hourly employees by Defendants MARIN GENERAL HOSPITAL, a
6 California corporation doing business as MARINHEALTH MEDICAL CENTER; MARIN
7 GENERAL HOSPITAL, INC., a business entity of unknown form; and DOES 1 through 50,
8 inclusive (all defendants being collectively referred to herein as “Defendants”).

9 2. Plaintiff alleges that Defendants, and each of them, violated various provisions of
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the
11 California Business & Professions Code, and seeks redress for these violations.

12 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
13 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
14 endured similar violations at the hands of Defendants as the other Class Members who served in
15 similar and related positions.

16 THE PARTIES

17 A. The Plaintiff

18 4. Plaintiff TAMBA BANDABAILA resides in California, during the time period
19 relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within
20 the State of California.

21 B. The Defendants

22 5. Defendant MARIN GENERAL HOSPITAL is a California corporation doing
23 business as MARINHEALTH MEDICAL CENTER and is registered with the California
24 Secretary of State. Defendant MARIN GENERAL HOSPITAL doing business as
25 MARINHEALTH MEDICAL CENTER has been the employer listed on the wage statements and
26 employment records issued to Plaintiff during the relevant time period that Plaintiff was employed
27 with Defendants.

28 6. Defendant MARIN GENERAL HOSPITAL, INC. is a business entity of unknown

1 form and has been the employer listed on the wage statements and employment records issued to
2 Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

3 7. The true names and capacities, whether individual, corporate, associate, or
4 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
5 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of
6 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
7 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
8 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
9 this Complaint to reflect the true names and capacities of the Defendants designated herein as
10 Does 1 through 50 when their identities become known.

11 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
12 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
13 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
14 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
15 all respects as the employers or joint employers of Class Members. Defendants, and each of them,
16 exercised control over the wages, hours or working conditions of Class Members, or suffered or
17 permitted Class Members to work, or engaged, thereby creating a common law employment
18 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
19 employed Class Members.

20 9. Whenever and wherever reference is made in this Complaint to any act by a
21 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
22 failures to act of each defendant acting individually, jointly, and severally.

23 10. Whenever and wherever reference is made to individuals who are not named as a
24 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
25 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
26 of their employment.

27 JURISDICTION AND VENUE

28 11. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
2 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
3 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
4 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
5 the obligations and liabilities giving rise to this lawsuit occurred in part in Marin County.
6 Defendants maintain and operate facilities in Marin County and employs Plaintiff and other Class
7 Members in Marin County, while doing business throughout California.

8 **FACTUAL BACKGROUND**

9 12. Class Members consistently worked at Defendants behest without being paid all
10 wages due. Class Members were either not paid by Defendants for all hours worked or were not
11 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
12 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
13 clock work, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing
14 to furnish accurate wage statements, failing to timely pay wages including final wages, failing to
15 maintain accurate records, and failing to reimburse necessary business expenses all in violation of
16 various provisions of the California Labor Code and applicable Wage Orders.

17 13. During the course of Class Members' employment with Defendants, they were not
18 paid all wages they were owed, including for all work performed resulting in off the clock work.
19 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
20 instance, at the beginning of Class Members' shift, they were required to put on their personal
21 protective equipment and then wait in line to clock in for their shift. Similarly, at the end of their
22 shift, Class Members were required to clock out of the timekeeping system and then take off their
23 personal protective equipment. Class Members were also constantly forced to work off the clock
24 in order to assist patients and their family members. Additionally, Class Members were required to
25 spend time working off-the-clock in order to complete their charting duties for the day. Class
26 Members were specifically told to only clock in for eight hours and that they would not be allowed
27 overtime. Class Members were also forced to field calls on their personal cell phones from their
28 supervisors to answer work related inquiries while off-the-clock. Additionally, Class Members

1 were required to comply with Covid-19 testing and security procedures prior to clocking in.

2 14. Moreover, Defendants had a consistent policy and practice of unlawfully rounding
3 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
4 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
5 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
6 30-minute time increment), and generally did so to the detriment of the Class Members, and
7 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
8 Members by systematically under-compensating them. Rather than reflecting the actual hours
9 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
10 work time rather than the actual hours worked. These unlawfully rounded time entries were
11 inputted into Defendants' payroll system from which wage statements and payroll checks were
12 created.

13 15. By implementing policies, programs, practices, procedures and protocols which
14 resulted in off the clock work and unlawful rounding by Defendants, Defendants' willful actions
15 resulted in the systematic underpayment of wages to Class Members, including underpayment of
16 overtime pay to Class Members over the relevant time period. For example, the above described
17 off the clock work addressed above caused Plaintiff to begin receiving overtime pay later than
18 they should have.

19 16. As a result of the above described requirements to work off the clock, unlawful
20 rounding by Defendants and the other wage violations they endured at Defendants' hands, Class
21 Members were not properly paid all wages earned and all wages owed to them by Defendants,
22 including when working more than eight (8) hours in any given day and/or more than forty (40)
23 hours in any given week.

24 17. As a result of Defendants' unlawful policies and practices, Class Members incurred
25 overtime hours worked for which they were not adequately and completely compensated, in
26 addition to the hours they were required to work off the clock. To the extent applicable,
27 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
28 the first eight hours of the seventh consecutive work day in a week and overtime payments at the

1 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
2 day, as required under the Labor Code and applicable IWC Wage Orders.

3 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
5 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
6 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
7 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
8 Orders as the actual times when Class Members were under the control and direction of
9 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
10 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
11 including underpayment of overtime pay to Class Members over a period of time.

12 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
14 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
15 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
16 Class Members their true and correct overtime compensation at premium overtime rates for all
17 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
18 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
19 and the corresponding sections of IWC Wage Orders.

20 20. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
21 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
22 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
23 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
24 without receiving a lawful and timely meal break. In addition to untimely meal periods,
25 Defendants also required Class Members to respond to work demands. Defendants placed their
26 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
27 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
28 ones, because the demands of the job would not avail them the opportunity to take a lawfully

uninterrupted and off duty meal and/or rest break.

21. On the occasions when Class Members worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

22. Therefore, for at least four (4) years prior to the filing of this action and through to the present, Defendants have regularly required Class Members to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

23. Meal period violations thus occurred in one or more of the following manners:

- (a) Class Members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class Members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were restricted in their ability to take a full thirty-minute

meal period.

24. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

25. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

26. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements fail to provide the full name of the legal entity that is the employer. Labor Code § 226(a)(8) requires that an employer shall provide wage statements with the name and address of the legal entity that is the employer. However, Defendants failed to provide its full name on the wage statements. Thus, the wage statements do not comply with Labor Code § 226(a)(8). Additionally, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours

1 worked were under-reported due to off the clock work. Additionally, the wage statements given to
2 Class Members failed to accurately account for premium pay for deficiently provided meal periods
3 and rest breaks.

4 27. From at least four (4) years prior to filing this lawsuit and continuing to the present,
5 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
6 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
7 required by California wage-and-hour laws. Specifically, Class Members were not paid all regular
8 and overtime wages because Defendants failed to pay for all hours worked by requiring off the
9 clock work and unlawfully rounding time entries to the detriment of Class Members. Additionally,
10 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
11 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
12 was willful within the meaning of Labor Code § 203.

13 28. Additionally, from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants have regularly required Class Members to incur business
15 expenses in the course of performing their required job duties for Defendants including for cell
16 phone expenses and uniform expenses. Upon information and belief, Class Members incurred
17 similar costs. These expenses incurred by Class Members were necessary and required of them in
18 performing their assigned job duties, but Defendants failed to reimburse Class Members for all
19 such necessary expenditures, thus entitling them to reimbursement according to proof as required
20 under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

21 29. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
22 *inter alia*, Labor Code §§ 201, 202, 203, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558, 558.1,
23 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 et seq., 2802 and California
24 Code of Regulations, Title 8, section 11000 *et seq.*

25 30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
26 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
27 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
28 fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

31. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class Members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

g. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

i. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

33. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by Class Members, even though Defendants enjoyed the benefit of this work, required Class Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

34. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

35. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

36. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class Members.

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2 **B. Commonality**

3 37. There are questions of law and fact common to the Class that predominates over
4 any questions affecting only individual Class Members. These common questions of law and fact
5 include but are not limited to:

- 6 a. Whether Defendants failed to pay Class Members minimum wages;
- 7 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 8 c. Whether Defendants failed to pay Class Members overtime as required under Labor
9 Code § 510;
- 10 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
11 IWC Wage Orders, by failing to provide Class Members with requisite meal
12 periods or premium pay in lieu thereof;
- 13 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
14 Orders, by failing to authorize and permit Class Members to take requisite rest
15 breaks or provide premium pay in lieu thereof;
- 16 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
17 with inaccurate wage statements;
- 18 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
19 wages and compensation due and owing at the time of termination of employment;
- 20 h. Whether Defendants' conduct was willful;
- 21 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
22 Orders by failing to maintain accurate records of Class Members' earned wages and
23 work periods;
- 24 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
25 Members during the relevant time period for all hours worked, whether regular or
26 overtime;
- 27 k. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
28 necessary business expenses Defendants required them to incur in performing their

1 job duties;

2 1. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

3 m. Whether Class Members are entitled to equitable relief pursuant to Business and
4 Professions Code § 17200 *et seq.*

5 **C. Typicality**

6 38. The claims of the named plaintiff is typical of those of Class Members. The Class
7 Members all sustained injuries and damages arising out of and caused by Defendants' common
8 course of conduct in violation of statutes, as well as regulations that have the force and effect of
9 law, as alleged herein.

10 **D. Adequacy of Representation**

11 39. Plaintiff will fairly and adequately represent and protect the interest of the Class
12 Members. Counsel who represents Class Members are experienced and competent in litigating
13 employment class actions.

14 **E. Superiority of Class Action**

15 40. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
17 questions of law and fact common to all Class Members predominate over any questions affecting
18 only individual Class Members. Each Class Member has been damaged and is entitled to recovery
19 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
20 properly.

21 41. As to the issues raised in this case, a class action is superior to all other methods for
22 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
23 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
24 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
25 be relatively small, the expense and burden of individual actions makes it difficult for the Class
26 Members to individually redress the wrongs they have suffered. Moreover, in the event
27 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
28 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in

1 managing this case as a class action, and proceeding on a class-wide basis will permit Class
2 Members to vindicate their rights for violations they endured which they would otherwise be
3 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
4 them.

5 42. Class action treatment will allow those persons similarly situated to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
8 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
9 set forth the subject and nature of the instant action. The Defendants' own business records can be
10 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
11 that any further notice is required additional media and/or mailings can be used.

12 43. Defendants, as prospective and actual employers of the Class Members, had a
13 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
14 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
15 as the effect of any alleged arbitration agreements that may have been forced upon them. In
16 addition, Defendants knew they possessed special knowledge about pay practices and policies,
17 most notably intentionally refusing to pay for all hours actually worked which should have been
18 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
19 and policies and practices on Class Members.

20 44. Class Members did not discover the fact that they were entitled to all pay under the
21 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
22 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
23 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
24 preventing such practices from continuing. As a result, the applicable statutes of limitation were
25 tolled until such time as Plaintiff and the Class Members discovered their claims.

26 **FIRST CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM WAGES**
28 **(Against All Defendants)**

1 45. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
2 full herein.

3 46. Defendants failed to pay Class Members minimum wages for all hours worked.
4 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
5 Class Members for all hours worked. Class Members would work hours and not receive wages,
6 including as alleged above in connection with off the clock work and unlawful rounding of hours.
7 Defendants, and each of them, have intentionally and improperly changed, adjusted and/or
8 modified the hours of Class Members, which resulted in off the clock work and underpayment of
9 all wages owed to Class Members over a period of time, while benefiting Defendants. During the
10 relevant time period, Defendants thus regularly failed to pay minimum wages to Class Members,
11 to their detriment. Additionally, Defendants had a consistent policy of failing to pay Class
12 Members for hours worked during alleged meal and rest periods for which Class Members were
13 consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and
14 hour practices manifested, without limitation, applicable to the Class as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to Class Members
16 as to minimum wage pay.

17 47. In California, employees must be paid at least the then applicable state minimum
18 wage for all hours worked. (IWC Wage Order MW-2014).

19 48. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
20 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
21 employees, and the payment of a less wage than the minimum so fixed is unlawful."

22 49. The applicable minimum wages fixed by the commission for work during the
23 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

24 50. The minimum wage provisions of California Labor Code are enforceable by private
25 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
26 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to recover in a civil action the
28 unpaid balance of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees and costs of suit."

2 51. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
3 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
4 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
5 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
6 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
7 be used as a credit against a minimum wage obligation.

8 52. In committing these violations of the California Labor Code, Defendants
9 inaccurately recorded, or required Class Members to input times that did not reflect their actual
10 hours worked, or calculated the correct time worked and consequently underpaid the actual time
11 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
12 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
13 Commission requirements and other applicable laws and regulations. As a result of these
14 violations, Defendant also failed to timely pay all wages earned in accordance with California
15 Labor Code § 1194.

16 53. California Labor Code § 1194.2 also provides for the following remedies: "In any
17 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
18 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

20 54. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
21 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
22 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
23 employee minimum wages.

24 55. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
25 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

26 56. Defendants have the ability to pay minimum wages for all time worked and have
27 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
28 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

1 57. Wherefore, Class Members are entitled to recover the unpaid minimum wages
2 (including double minimum wages), liquidated damages in an amount equal to the minimum
3 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
4 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
5 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
6 assessment of any statutory penalties against Defendants, in a sum as provided by the California
7 Labor Code, including § 558, and/or other applicable statutes.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

10 **(Against All Defendants)**

11 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 59. California Labor Code § 1194 provides that "any employee receiving less than the
14 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
15 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
16 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
17 may be maintained directly against the employer in an employee's name without first filing a
18 claim with the Division of Labor Standards and Enforcement.

19 60. By their conduct, as set forth herein, Defendants violated California Labor Code §
20 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
21 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
22 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
23 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
24 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
25 eight (8) hours on any seventh day of work in a workweek.

26 61. Defendants had a consistent policy of not paying Class Members wages for all
27 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
28 hours worked as addressed above. Defendants, and each of them, have intentionally and

1 improperly rounded, changed, adjusted and/or modified certain employees' hours, including
2 Plaintiff's, in order to avoid paying Class Members all earned and owed straight time and
3 overtime wages and other benefits, in violation of the California Labor Code, the California Code
4 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
5 Standards and Enforcement. Defendants have also violated these provisions by requiring Class
6 Members to work through portions of their meal period. Therefore, Class Members were not
7 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
8 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants
9 did not make available to Class Members a reasonable protocol for correcting time records when
10 Class Members worked overtime hours or to fix incorrect time entries or those that Defendants
11 unlawfully rounded to the Class Members' detriment.

12 62. Defendants' failure to pay Class Members the unpaid balance of regular wages
13 owed and overtime compensation, as required by California law, violates the provisions of Labor
14 Code §§ 510 and 1198, and is therefore unlawful.

15 63. Additionally, Labor Code § 558(a) provides "any employer or other person acting
16 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
18 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
19 pay period for which the employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
23 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
24 this section are in addition to any other civil or criminal penalty provided by law." Defendants
25 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
26 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
27 Code § 558.

28 64. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Class Members. Each such failure to make a timely
3 payment of compensation to Class Members constitutes a separate violation of California Labor
4 Code.

5 65. Class Members have been damaged by these violations of California Labor Code §
6 510 (and the relevant orders of the Industrial Welfare Commission).

7 66. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants
9 are liable to Class Members for the full amount of all their unpaid wages and overtime
10 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
11 assessment of any statutory penalties against Defendants, and each of them, and any additional
12 sums as provided by the Labor Code and/or other statutes.

13 **THIRD CAUSE OF ACTION**

14 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

15 **(Against All Defendants)**

16 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 68. Class Members regularly worked shifts greater than five (5) hours and in some
19 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
20 someone for a shift of more than five (5) hours without providing him or her with a meal period of
21 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
22 her with a second meal period of not less than thirty (30) minutes.

23 69. Defendants failed to provide Class Members with meal periods as required under
24 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
25 resulted in Class Members consistently having to work through their scheduled meal breaks
26 because the demands of the job would not avail them the opportunity to take a lawfully
27 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
28 when Class Members worked more than ten (10) hours in a given shift, they did so without

1 receiving a second uninterrupted thirty (30) minute meal period as required by law.

2 70. Defendants thus failed to provide Class Members with meal periods as required by
3 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
4 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
5 during breaks.

6 71. Moreover, Defendants failed to compensate Class Members for each meal period
7 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
8 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
9 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
10 pay at the employee's regular rate of compensation for each workday that the meal period is not
11 provided. Defendants failed to compensate Class Members for each meal period not provided or
12 inadequately provided, as required under Labor Code § 226.7.

13 72. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
14 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
15 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
16 sum to be proven at trial, as well as the assessment of any statutory penalties against the
17 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

18 **FOURTH CAUSE OF ACTION**

19 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

20 **(Against All Defendants)**

21 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 74. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
24 provide that employers must authorize and permit all employees to take rest periods at the rate of
25 ten (10) minutes net rest time per four (4) work hours.

26 75. Class Members consistently worked consecutive four (4) hour shifts and were
27 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
28 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC

1 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
2 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
3 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
4 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
5 consistently having to work through their scheduled rest breaks because the demands of the job
6 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
7 Thus, Class Members were consistently denied of their rest breaks.

8 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
9 provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

12 77. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
14 the applicable IWC Wage Orders.

15 78. Defendants failed to authorize and permit Class Members to take rest periods, as
16 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
17 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
18 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

19 79. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
20 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
21 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
22 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
23 of them, in a sum as provided by the Labor Code and/or other statutes.

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Against All Defendants)**

27 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 81. California Labor Code § 226(a) requires an employer to furnish each of his or her
2 employees with an accurate, itemized statement in writing showing the gross and net earnings,
3 total hours worked, and the corresponding number of hours worked at each hourly rate; these
4 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
5 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
6 statements may be given to the employee separately from the payment of wages; in either case the
7 employer must give the employee these statements twice a month or each time wages are paid.

8 82. Defendants failed to provide Class Members with accurate itemized wage
9 statements in writing, as required by the Labor Code. Specifically, the wage statements fail to
10 provide the full name of the legal entity that is the employer. Labor Code § 226(a)(8) requires that
11 an employer shall provide wage statements with the name and address of the legal entity that is the
12 employer. However, Defendants failed to provide its full name on the wage statements. Thus, the
13 wage statements do not comply with Labor Code § 226(a)(8). Additionally, the wage statements
14 given to Class Members failed to accurately account for unpaid wages and overtime because
15 Defendants had unlawfully rounded time entries to the detriment of the Class Members and their
16 actual hours worked were under-reported due to off the clock work. Additionally, the wage
17 statements given to Class Members failed to accurately account for premium pay for deficiently
18 provided meal periods and rest breaks.

19 83. Throughout the liability period, Defendants intentionally failed to furnish to Class
20 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
21 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
22 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
23 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
24 only the last four digits of his or her social security number or an employee identification number
25 other than a social security number, (8) the name and address of the legal entity that is the
26 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,
28 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide

1 Class Members with such timely and accurate wage and hour statements.

2 84. Class Members suffered injury as a result of Defendants' knowing and intentional
3 failure to provide them with the accurate wage and hour statements as required by law and are
4 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
5 Defendants have failed to provide wage statements with accurate and complete information as
6 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
7 Members cannot promptly and easily determine from the wage statement alone one or more of the
8 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
9 period or any of the other information required to be provided on the itemized wage statement
10 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
11 employer made from gross wages to determine the net wages paid to the employee during the pay
12 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
13 the last four digits of his or her social security number or an employee identification number other
14 than a social security number. For purposes of Labor Code § 226(e) "promptly and easily
15 determine" means a reasonable person [i.e. an objective standard] would be able to readily
16 ascertain the information without reference to other documents or information.

17 85. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
18 § 226(a), Class Members suffered injuries, including among other things confusion over whether
19 they received all wages owed them, the difficulty and expense involved in reconstructing pay
20 records, and forcing them to make mathematical computations to analyze whether the wages paid
21 in fact compensated them correctly for all hours worked.

22 86. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
23 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
26 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
27 reasonable attorneys' fees.

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2 **SIXTH CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 203**
4 **(Against All Defendants)**

5 87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 88. Numerous Class Members are no longer employed by Defendants; they either quit
8 Defendants' employ or were terminated by Defendants therefrom.

9 89. Defendants failed to pay these Class Members all wages due and certain at the time
10 of termination or within seventy-two (72) hours of resignation.

11 90. The wages withheld from these Class Members by Defendants remained due and
12 owing for more than thirty (30) days from the date of separation from employment.

13 91. Defendants failed to pay Class Members without abatement, all wages as defined
14 by applicable California law. Specifically, Class Members were not paid all regular and overtime
15 wages because Defendants failed to pay for all hours worked by requiring off the clock work and
16 unlawfully rounding time entries to the detriment of Class Members. Additionally, Defendants
17 failed to pay premium wages owed for unprovided meal periods and rest periods, as further
18 detailed in this Complaint. Defendants' failure to pay said wages within the required time was
19 willful within the meaning of Labor Code § 203.

20 92. Defendants' failure to pay wages, as alleged entitles these Class Members to
21 penalties under Labor Code § 203, which provides that an employee's wages shall continue until
22 paid for up to thirty (30) days from the date they were due.

23 **SEVENTH CAUSE OF ACTION**
24 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
25 **AND 1174.5**
26 **(Against All Defendants)**

27 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

94. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

95. During the course of Plaintiff's and Class Members' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

96. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

EIGHTH CAUSE OF ACTION

REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802

(Against All Defendants)

97. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in full herein.

98. Under Labor Code § 2802(a) an employer must indemnify its employees 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.

99. Defendants have regularly required Class Members to incur business expenses in the course of performing their required job duties for Defendants including for cell phone expenses, uniform expenses, and protective equipment. These expenses incurred by Class Members were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Class Members for all such necessary expenditures. Class Members were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

100. As a result of the unlawful acts of Defendants, Class Members have been deprived

1 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such
2 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

3 **NINTH CAUSE OF ACTION**

4 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

5 **(Against All Defendants)**

6 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 102. Plaintiff, on behalf of himself, Class Members, and the general public, brings this
9 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
10 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
11 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
12 interest within the meaning of Code of Civil Procedure § 1021.5.

13 103. Plaintiff is a "person" within the meaning of Business & Professions Code
14 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
15 relief, restitution, and other appropriate equitable relief.

16 104. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
17 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
18 fraudulent in that Defendants' policy and practice failed to provide the required amount of
19 compensation for missed meal and rest breaks, and failed to adequately compensate Class
20 Members for all hours worked, due to systematic business practices as alleged herein that cannot
21 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
22 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
23 which this Court should issue injunctive and equitable relief, pursuant to California Business &
24 Professions Code § 17203, including restitution of wages wrongfully withheld.

25 105. Wage-and-hour laws express fundamental public policies. Paying employees their
26 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
27 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
28 vigorously to enforce minimum labor standards, to ensure that employees are not required or

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower costs to themselves by failing to
3 comply with minimum labor standards.

4 106. Defendants have violated statutes and public policies. Through the conduct alleged
5 in this Complaint Defendants have acted contrary to these public policies, have violated specific
6 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
7 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
8 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
9 guaranteed to all employees under the law.

10 107. Defendants' conduct, as alleged above, constitutes unfair competition in violation
11 of the Business & Professions Code § 17200 *et seq.*

12 108. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
13 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
14 reasonable care should have known that their conduct was unlawful; therefore their conduct
15 violates the Business & Professions Code § 17200 *et seq.*

16 109. By the conduct alleged herein, Defendants have engaged and continue to engage in
17 a business practice which violates California and federal law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
19 Code including Sections 203, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court should
20 issue declaratory and other equitable relief pursuant to California Business & Professions Code §
21 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
22 competition, including restitution of wages wrongfully withheld.

23 110. As a proximate result of the above-mentioned acts of Defendants, Class Members
24 have been damaged, in a sum to be proven at trial.

25 111. Unless restrained by this Court Defendants will continue to engage in such
26 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
27 should make such orders or judgments, including the appointment of a receiver, as may be
28 necessary to prevent the use by Defendants or their agents or employees of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
2 disgorgement of such profits as may be necessary to restore Class Members to the money
3 Defendants have unlawfully failed to pay.

4 **TENTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

6 **(Against All Defendants)**

7 112. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 113. Plaintiff and the Employees in the Class are also aggrieved employees as defined
10 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
11 either were or are employed by the alleged violators, Defendants (“Aggrieved Employees”) during
12 the relevant time period.

13 114. In failing to pay Aggrieved Employees minimum wages and overtime, not
14 providing proper meal and rest periods, failing to provide accurate wage statements, and failing to
15 Pay Employees upon termination or timely upon resignation, all discussed above, Defendants
16 failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor
17 Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and
18 the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the
19 applicable IWC Wage Orders.

20 115. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
21 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
22 the penalty provisions, without limitation, based, inter alia, on the following California Labor
23 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
24 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

25 116. More specifically, after complying with the notice procedures of Labor Code §
26 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
27 and other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
28 underlying claims and seeking penalties as specified by the applicable corresponding provisions,

including as follows:

- (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);
- (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);
- (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226€, 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation

1 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation,
2 ...”

3 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
4 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
5 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
6 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
7 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
8 § 2699(g)(1);

9 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:
10 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
11 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
12 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
13 applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to Labor Code §
14 2699(g)(1).

15 117. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
16 seeks the penalties and remedies set forth in Labor Code § 558, which states:

17 (a) Any employer or other person acting on behalf of an employer who violates, or
18 causes to be violated, a section of this chapter or any provision regulating hours and days
19 of work in any order of the Industrial Welfare Commission shall be subject to a civil
20 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
21 employee for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
23 hundred dollars (\$100) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
25 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

26 (b) If upon inspection or investigation the Labor Commissioner determines that a
27 person had paid or caused to be paid a wage for overtime work in violation of any
28 provision of this chapter, or any provision regulating hours and days of work in any order

1 of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The
2 procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
3 issued by the Labor Commissioner for a violation of this chapter shall be the same as those
4 set out in Section 1197.1.

5 (c) The penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.

7 118. Plaintiff has exhausted his administrative remedies by sending a certified letter to
8 the LWDA and Defendants postmarked on **November 8, 2024**, addressing in detail the specific
9 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
10 to support the alleged violations and requested penalties. The LWDA has not provided notice of
11 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
12 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
13 herein and in the PAGA Notice Letter and the original Complaint.

14 119.

15 **RELIEF REQUESTED**

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
20 to the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of all unpaid wages, including overtime
24 and double-time pay, as may be proven;
- 25 5. For compensatory damages in the amount of the hourly wage made by Class
26 Members for each missed or deficient meal period where no premium pay was paid therefor from
27 four (4) years prior to the filing of this action, as may be proven;
- 28 6. For compensatory damages in the amount of the hourly wage made by Class

Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;

8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

11. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

12. For other wages and penalties under the Labor Code as may be proven;

13. Penalties under the Private Attorneys General Act of 2004

14. For all general, special, and incidental damages as may be proven;

15. For an award of pre-judgment and post-judgment interest;

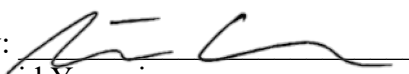
16. For an award providing for the payment of the costs of this suit;

17. For an award of attorneys' fees; and

18. For such other and further relief as this Court may deem proper and just.

DATED: January 14, 2025

D. LAW, INC.

By: 

David Yeremian

Natalie Haritonian

Matthew J. Carraher

Attorneys for Plaintiff TAMBA

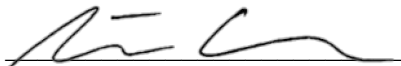
BANDABAILA, and all others similarly situated.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: January 14, 2025

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew J. Carraher

Attorneys for Plaintiff TAMBA
BANDABAILA, and all others similarly
situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Marin General Hospital doing business as MarinHealth Medical Center
AMANDA GARCIA Agent for Service
330 N. Brand Blvd.
Glendale, CA 91203

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on January 14, 2025, at Glendale, California.


Silvia Pimentel

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin Branch Name: Mailing Address: PO Box 4988 City, State and Zip Code: San Rafael CA 94913	
SHORT TITLE: Tamba Bandabaila, An Individual vs. MARIN GENERAL HOSPITAL, a California corporation doing business as MARINHEALTH MEDICAL CENTER et al	CASE NUMBER: CV0004680
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Marin. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 11389095_2025_01_14_16_50_51_873_7
 Submission Number: 25MC00028022
 Court Received Date: 01/14/2025
 Court Received Time: 4:53 pm
 Case Number: CV0004680
 Case Title: Tamba Bandabaila, An Individual vs. MARIN GENERAL HOSPITAL, a California corporation doing business as MARINHEALTH MEDICAL CENTER et al
 Location:
 Case Type: Civil Unlimited
 Case Category: Employment: Other (15)
 Jurisdictional Amount: Greater than 35K
 Notice Generated Date: 01/16/2025
 Notice Generated Time: 8:53 am

Documents Electronically Filed/Received

Status

Amended Complaint

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859