

Exhibit 1

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

MARILOU MOYA,
Plaintiff,

v.

SAINT AGNES MEDICAL CENTER, a
California Corporation; TRINITY
HEALTH CORPORATION, an Indiana
Corporation dba TRINITY HEALTH, and
DOES 1 through 10, inclusive,
Defendants.

Case No. 20CECG00975

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AND STIPULATION**

ASSIGNED FOR ALL PURPOSES TO JUDGE
KRISTI CULVER KAPETAN

Complaint Filed: March 16, 2020

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Attorneys for Plaintiff

1 This Class and Representative Action Settlement Agreement is entered into by and
2 between Plaintiff Marilou Moya ("Plaintiff"), individually and on behalf of all others similarly
3 situated, and Defendants Saint Agnes Medical Center and Trinity Health Corporation, and is approved
4 by their respective counsel of record, subject to the terms and conditions hereof and the Court's
5 approval. The settlement memorialized in this Settlement Agreement is referred to hereinafter as the
6 "Settlement."

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Marilou Moya v. Saint*
9 *Agnes Medical Center et al.*, Fresno County Superior Court Case No. 20CECG00975, as amended
10 pursuant to the Settlement as described herein.

11 2. "Agreement" or "Settlement Agreement" shall mean this Class and Representative
12 Action Settlement Agreement.

13 3. "Class Counsel" refers to David R. Markham, Maggie Realin and Lisa Brevard of the
14 Markham Law Firm and Walter Haines of United Employees Law Group.

15 4. "Class Data" means a complete list of all Settlement Class Members that Saint Agnes
16 Medical Center will diligently and in good faith compile from its records in its possession, custody
17 and control and provide to the Settlement Administrator within fourteen (14) calendar days of the
18 Preliminary Approval Order. The Class Data shall be on one spreadsheet and shall include the
19 Settlement Class Members' full names; last known addresses; telephone numbers; Social Security
20 Numbers; and the total Weeks Worked during the Class Period for each Settlement Class Member.

21 5. "Class Period" is deemed to be the period between March 16, 2016 and the
22 Preliminary Approval Date.

23 6. "Class Representative" or "Plaintiff" means and refers to Marilou Moya.

24 7. "Complaint" refers to the Second Amended Complaint as described and defined in
25 Paragraph 37 herein, and filed in accordance with this Agreement.

26 8. "Court" (or "Judge") means the California Superior Court, County of Fresno.

27 9. "Defendants" means and refers to Saint Agnes Medical Center and Trinity Health
28 Corporation, as further defined herein.

1 10. “Defendants’ Counsel” or “Defense Counsel” means and refers to Jason H. Borchers
2 of Littler Mendelson P.C. (counsel for Defendants).

3 11. “Effective Date” means the date upon which the last of the following has occurred: (i)
4 the Stipulation has been executed by all Parties, Class Counsel and Defense Counsel; (ii) the Court
5 has given preliminary approval to the Settlement; (iii) the Class Notice has been sent to the Class
6 Members, providing them with an opportunity to object to the terms of the Settlement; (iv) the Court
7 has held a Final Approval Hearing and entered a Final Order and Judgment, and approved the
8 Stipulation, and no objections or motions to intervene have been filed, or they were withdrawn
9 before the Court entered a Final Order and Judgment; or, if an objection or motion to intervene have
10 been filed and were not subsequently withdrawn, the next business day after the period for filing any
11 appeal, writ or other appellate proceeding opposing the Court’s Final Order and Judgment has
12 elapsed without any appeal, writ or other appellate proceeding having been filed; or (v) if a Class
13 Member objects, intervenes or files a motion to vacate the judgment approving the Settlement
14 Agreement, and if a timely appeal is filed, the date of final resolution of that appeal (including any
15 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the
16 Settlement Agreement.

17 12. “Final Approval” refers to the order of the Court granting final approval of this
18 Settlement Agreement.

19 13. “Final Settlement Class” means, collectively, all Settlement Class Members who have
20 not opted out of the Settlement Class by submitting timely Requests for Exclusion.

21 14. “Individual Settlement Amount”; “Settlement Amount”; and “Net Settlement
22 Amount” shall have the meanings ascribed in Paragraph 43 below.

23 15. “Notice” means the notice of settlement of class action and hearing that will be sent
24 to the Settlement Class Members, as set forth in Exhibit A hereto.

25 16. “Notice Response Deadline” is forty-five (45) calendar days from the date the Notice
26 is mailed to the Settlement Class Members, unless the Notice is re-mailed as specified in Paragraph
27 57, in which case the deadline is extended by fourteen (14) calendar days.

1 17. “Objecting Settlement Class Member” means a Settlement Class Member, other than
2 Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant to
3 Paragraph 61(d) below.

4 18. “Participating Class Member” means any Settlement Class Member who does not
5 submit timely and valid Request for Exclusion.

6 19. “Parties” or “Settling Parties” mean Plaintiff, Participating Class Members, and
7 Defendants, collectively.

8 20. “Preliminary Approval Date” means the date the Court preliminarily approves the
9 Settlement Agreement, and any exhibits thereto, and enters the Preliminary Approval Order.

10 21. “Preliminary Approval Order” means the judicial order to be entered by the Court,
11 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing
12 for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an
13 opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the
14 terms of Settlement, including approval of attorneys’ fees and costs. Defendants will not oppose
15 Plaintiff’s motion for preliminary approval unless the motion is inconsistent with the terms set forth
16 in this Settlement Agreement. Defendants will be provided with an opportunity to review and
17 comment upon the motion before it is filed.

18 22. “Saint Agnes” means Defendant Saint Agnes Medical Center. “Trinity Health”
19 means Defendant Trinity Health Corporation.

20 23. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
21 for the benefit of the Final Settlement Class, and from which the settlement payments shall be made.

22 24. “Released Claims” includes all claims contained in the Second Amended Complaint
23 against the Released Parties, for work performed during the Class Period, including the following:

- 24 a. Any claims for working “off the clock”, unpaid overtime, unpaid minimum wages,
25 unreimbursed business expenses, untimely wage payments both during and at the end
26 of employment, failure to keep requisite payroll records, non-compliant meal periods,
27 non-compliant rest periods, non-compliant wage statements, and claims for interest,
28 penalties (including but not limited to waiting time penalties), or premiums in

connection therewith, as well as any claims under the California Labor Code sections 201-203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2802, 2698 and 2699, California Wage Orders, or the FLSA alleged or which could have been alleged under the facts pleaded in the Lawsuit;

- b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts pleaded in the complaints filed as part of the Lawsuit; and
- c. Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act California Labor Code sections 2698, *et seq.*, California Wage Orders, FLSA and the California Business and Professions Code section 17200 *et seq.* alleged in or that could have been alleged under the facts pleaded in the Lawsuit or in the PAGA letter submitted to the Labor and Workforce Development Agency in conjunction with this Lawsuit.
- d. The claims set forth in subparagraphs (a)-(c) hereinabove shall be collectively referred to as the "Released Claims".

25. "Released Parties" means Defendants and any of their subsidiaries, predecessors, successors, members, managers, affiliates, and otherwise related entities, and any of their past, present and/or future, direct and/or indirect, officers, directors, partners, investors, shareholders, administrators, parent companies, divisions, assigns, attorneys, and joint ventures.

26. "Release Period" shall be the time period governing the Released Claims, which shall be from March 16, 2016 through the Preliminary Approval Date (which is identical to the Class Period).

27. "Release" shall mean the release and discharge of the Released Claims by Plaintiff and all of the Participating Class Members, as set forth in Sections D and E below.

28. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 61(a) below.

1 29. “Service Payment” or “Service Award” means an amount not to exceed Six Thousand
2 Dollars (\$6,000), and approved by the Court to be paid to the Class Representative, Marilou Moya,
3 that is in addition to her Individual Settlement Amount as a Participating Class Member.

4 30. “Settlement Administrator” means and refers to the third-party administrator
5 Simpluris, Inc., or any other third-party administrator designated by the Parties and approved by the
6 Court, who will provide the Notice to the Settlement Class Members, administer the settlement as
7 described in this Agreement and any Court orders, and distribute the Settlement Amounts as
8 described in this Agreement.

9 31. “Settlement Administration Costs” means the costs payable from the Settlement
10 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
11 to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
12 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties.
13 The Settlement Administration Costs, which are estimated to be Four Thousand Five Hundred
14 Dollars (\$4,500), shall be paid from the Settlement Amount, including, if necessary, any such costs
15 in excess of the amount represented by the Settlement Administrator as being the maximum costs
16 necessary to administer the Settlement.

17 32. “Settlement Amount” shall mean \$362,500.00 that Defendants must pay in
18 connection with the settlement of this Action, as outlined in Paragraph 43(a) below.

19 33. “Settlement Class” is defined as: All current and former hourly-paid or non-exempt
20 employees employed with the job title Patient Access Representative who worked for Defendants
21 within the State of California at any time during the period from March 16, 2016 to the date of
22 preliminary approval of this Settlement.

23 34. “Settlement Class Member” or “Class Member(s)” refers to individual members of
24 the Settlement Class.

25 35. “Weeks Worked” for each Settlement Class Member means the number of weeks
26 during the Class Period in which the Settlement Class Member worked at least one (1) shift.

27 **B. General Terms**
28

1 36. Plaintiff initially filed a class action complaint March 16, 2020 in the Court against
2 Defendants which alleged claims for (1) failure to provide meal periods; (2) failure to provide rest
3 periods; (3) failure to pay minimum and regular wages; (4) failure to pay overtime wages; (5) failure
4 to reimburse necessarily incurred business expenses; (6) failure to provide timely and accurate wage
5 statements; (7) failure to pay all wages due upon termination; (7); violation of Business &
6 Professions Code Section 17200 *et seq.* On May 4, 2020, Plaintiff filed an amended class action
7 complaint which added a cause of action under Private Attorneys General Act of 2004 (Lab. Code
8 §2698, *et seq.*)

9 37. Second Amended Complaint. To effectuate this Settlement, Plaintiff will file an
10 amended complaint (the “Second Amended Complaint”), attached hereto as Exhibit B, for settlement
11 purposes only, to include allegations under the Fair Labor Standards Act arising from the claims
12 alleged in the First Amended Complaint. For purposes of this Settlement only, Defendants agree that
13 the filing of the Second Amended Complaint relates back to the filing of the original Complaint in
14 this Action for purposes of the applicable statutes of limitations for the causes of action alleged in
15 the Second Amended Complaint. Further, Defendants will be deemed to have generally denied the
16 allegations of the Second Amended Complaint without the need to file and serve an Answer thereto.
17 Should, for whatever reason, the settlement set forth in this Settlement Agreement not become final,
18 the Second Amended Complaint shall be deemed stricken without further order of the Court.

19 38. Defendants deny Plaintiff’s claims and allegations and contend that the Action is not
20 suitable for class certification.

21 39. The Parties have conducted a thorough investigation into the facts of the Action. This
22 includes conducting an extensive exchange of informal discovery, including but not limited to Saint
23 Agnes’ written policies and practices and the production of a sampling of payroll and timekeeping
24 records for Settlement Class Members. Class Counsel is both knowledgeable about and has done
25 extensive research with respect to the applicable law and potential defenses to the claims of the
26 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members’
27 claims against Defendants. Based on the foregoing data and on their own independent investigation
28 and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the

1 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
2 adequate and is in the best interest of the Settlement Class Members in light of all known facts and
3 circumstances, including the risk of significant delay and uncertainty associated with litigation,
4 various defenses asserted by Defendants, and numerous potential appellate issues.

5 40. Plaintiff and Defendants participated in a full day mediation with Michael Loeb, an
6 experienced mediator specializing in complex class and Private Attorneys Generals Act matters.

7 41. The Parties agree that the Parties' Settlement, this Agreement, and any acts to be
8 performed or judgments to be entered pursuant to the terms of the Settlement and Agreement shall
9 not be construed as an admission by Defendants of any wrongdoing, violation of any statute or law,
10 or liability on the claims or allegations in the Action. Defendants expressly do not admit any guilt,
11 wrongdoing, or liability of any kind whatsoever in the Action.

12 42. Stipulation for Class Certification. For settlement purposes only, the Parties stipulate
13 that the Settlement Class, as defined herein, may be conditionally certified. This stipulation to
14 certification is in no way an admission that class action certification is proper and shall not be
15 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
16 Should the Court fail to issue Final Approval for any reason, the Parties' stipulation to class
17 certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing
18 on, and shall not be admissible in connection with, the issue of whether or not certification would be
19 appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that
20 they will continue to oppose class certification and contest the substantive merits of the case should
21 the Court fail to issue Final Approval. Plaintiff expressly reserves her rights and declares that she
22 will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

23 **C. Terms of Settlement**

24 43. The financial terms of the Settlement are as follows:

25 (a) Settlement Amount: The Parties agree to settle this Action for Three Hundred
26 Sixty Two Thousand Five Hundred Dollars (\$362,500.00) ("the Settlement Amount"). The
27 Settlement Amount is the maximum amount that will be paid in connection with the Action, subject
28 to subsection (b), below, and includes the sum of Individual Settlement Payments (*i.e.*, the amounts

1 payable to each of the Participating Class Members), the Class Representative Service Award,
2 Administration Costs, PAGA penalties, attorneys' fees, and litigation costs. This amount is
3 exclusive of the employer's share of payroll taxes due on the Individual Settlement Amounts, which
4 shall be paid by Defendants separate and apart from the Settlement Amount.

5 (b) Escalation Clause: Any finding of Weeks Worked during the time frame from
6 March 16, 2016 until November 19, 2020 that exceeds the Weeks Worked count of 13,016
7 workweeks by more 10% shall result in an increase of the Settlement Amount by the same
8 percentage in excess of 10% (*i.e.*, a 12 percent difference shall require an additional 2% added to the
9 Settlement Amount).

10 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the
11 Settlement Amount minus the Class Representative Service Award, Settlement Administration
12 Costs, attorneys' fees and litigation costs, and PAGA payment to the Labor and Workforce
13 Development Agency ("LWDA"). In the event that the Court reduces the attorneys' fees, litigation
14 costs, Settlement Administration Costs or the Class Representative Service Award, the amount of
15 any such reduction shall be placed in the Net Settlement Amount.

16 (d) Calculation Of Individual Settlement Amounts: The Individual Settlement
17 Amount is the portion of the Net Settlement Amount allocated to each Participating Class Member,
18 and will be calculated by the Settlement Administrator based on Weeks Worked using the provided
19 Class Data. Total Workweeks means all Weeks Worked by the Settlement Class Members during
20 the Class Period. A Workweek Value will be calculated by dividing the Net Settlement Amount by
21 Total Workweeks. An Individual Settlement Amount is determined by multiplying a Class
22 Member's Weeks Worked by the Workweek Value. If there are any timely submitted Requests for
23 Exclusion, and the number of Requests do not result in Defendants rescinding/voiding the Settlement
24 as set forth herein, the Settlement Administrator shall proportionately increase the Individual
25 Settlement Amount for each Participating Class Member so that the amount actually distributed to
26 Participating Class Members equals 100% of the Net Settlement Amount.

27 (e) Allocation of Individual Settlement Amounts: The Individual Settlement
28 Amounts will be allocated based on the allegations in the Action as follows:

1 (i) In regard to the Settlement Class payments, one-third (1/3) of each
2 Individual Settlement Amount will be paid as wages subject to withholding of all applicable local,
3 state and federal taxes and two-thirds (2/3) will be paid as interest and penalties from which no taxes
4 will be withheld;

5 The Settlement Administrator will issue to each Settlement Class Member an Internal
6 Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a
7 Form 1099 with respect to the penalties and interest allocations.

8 (f) Service Award Payment to Class Representative: The amount, if any,
9 awarded to the Class Representative as a Service Payment will be set by the Court in its discretion,
10 not to exceed Six Thousand Dollars (\$6,000). Defendants agree not to oppose this request. The
11 Service Payment to Plaintiff will be paid out of the Settlement Amount. The Service Payment is in
12 addition to the Class Representative's Individual Settlement Amount as a Participating Class
13 Member. The Class Representative will be bound by the Release as well as a General Release, set
14 forth below, in exchange for the Service Payment and will be issued an IRS Form 1099 in
15 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
16 applicable taxes on the Service Payment. Any Court order awarding Plaintiff less than the amount
17 she requests for the Service Award shall not be grounds for rescinding or voiding the Settlement
18 Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall
19 be added to the Net Settlement Amount to be distributed to the Participating Class Members.

20 (g) Attorneys' Fees and Litigation Costs: Defendants agree to not oppose a
21 request by Class Counsel to the Court for an award of attorneys' fees of one third (1/3) of the
22 Settlement Amount, or One Hundred Twenty Thousand Eight Hundred Thirty Three Dollars and
23 Thirty Three Cents (\$120,833.33), plus reasonable litigation costs not to exceed Fifteen Thousand
24 Dollars (\$15,000). Should the Court approve a lesser amount than what is sought by Class Counsel,
25 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
26 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not
27 be grounds for rescinding or voiding the Settlement Agreement. Class Counsel retains the right to
28 appeal an order by the Court awarding less than the full amounts requested. The Settlement

1 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys'
2 fees and litigation costs awarded by the Court.

3 (h) Settlement Administration Costs: The fees and other charges of the
4 Settlement Administrator will be paid from the Settlement Amount. It is estimated that Settlement
5 Administration costs will be Four Thousand Five Hundred Dollars (\$4,500).

6 (i) PAGA Payment: A total amount of \$10,000 will be allocated from the
7 Settlement Amount for payment of civil penalties under the Private Attorneys General Act (PAGA).
8 Of that amount, 75%, or \$7,500, shall be paid to the California Labor Workforce Development
9 Agency (LWDA) and 25%, or \$2,500 shall be paid to Settlement Class Members.

10 (j) Tax Liability: Defendants make no representation as to the tax treatment or
11 legal effect of payments called for hereunder, and Plaintiff and the Settlement Class Members are
12 not relying on any statement or representation by Defendants in this regard. Plaintiff and
13 Participating Class Members understand and agree that they will be solely responsible for the
14 payment of any taxes and penalties assessed on their respective payments described herein.

15 (k) Circular 230 Disclaimer. Each party to this Agreement (for purposes of this
16 section, the "Acknowledging Party" and each party to this Agreement other than the Acknowledging
17 Party, an "Other Party") acknowledges and agrees that (1) no provision of this Agreement, and no
18 written communication or disclosure between or among the Parties or their attorneys and other
19 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be
20 construed or be relied upon as, tax advice within the meaning of United States Treasury Department
21 Circular 230 (31 CFR part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively
22 upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in
23 connection with this Agreement, (b) has not entered into this Agreement based upon the
24 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
25 entitled to rely upon any communication or disclosure by any attorney or adviser to any other party
26 to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or
27 adviser to any other party has imposed any limitation that protects the confidentiality of any such
28 attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon

disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

44. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendants. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. Any funds represented by Individual Settlement Payment checks remaining un-cashed for more than 180 calendar days after issuance shall be delivered to a cy pres beneficiary mutually agreed to by the Parties and identified by Plaintiff in their Motion for Final Approval of the Settlement. Participating Class Members who fail to cash their checks within the 180-day period shall remain bound by the Settlement as set forth herein.

45. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

46. Subject to the obligation(s) of mutual full cooperation that will be set out in the final Settlement Agreement, either Party may terminate this Settlement if any Court declines to enter the preliminary approval order, the final approval order, or final judgment in substantially the form submitted by the Parties. The terminating Party shall give to the other Party (through its counsel) written notice of its decision to terminate no later than ten (10) calendar days after receiving notice that one of the enumerated events has occurred. Termination shall have the following effects:

- a. The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms.
- b. In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any party, class member or attorney.
- c. The preliminary approval Order, final approval order and final judgment, including any order of class certification, shall be vacated.
- d. The Stipulation of Settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.

e. Except as otherwise discoverable, neither this Agreement nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Lawsuit or any other action for any purpose whatsoever.

D. Release by the Participating Class Members

47. Upon the Effective Date, the Participating Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. This Release does not apply to any obligations the Released Parties may have to the Participating Class Members under the express provisions of this Agreement.

48. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it. All Settlement checks issued to Participating Settlement Class Members shall contain, on the back of the check, the following language, which shall be the opt-in consent required by the Fair Labor Standards Act: "By endorsing this check, I consent to join the Settlement Class in *Moya v. Saint Agnes Medical Center, et al.* and elect to participate in the Settlement and agree to release all of my claims that are covered by the Settlement, including under FLSA and state law." Any Participating Settlement Class Member who cashes the check will be considered to have "opted-in" to the settlement of FLSA claims and in addition to waiving his or her state law claims, he or she will have also waived any claims available under the FLSA. If a Settlement Class Member attempts to alter this language on the back of the check, any such alterations will be null and void and have no legal effect.

49. Plaintiff and Defendants intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not apply to any Class Member who timely and validly opts out of the Settlement by submitting a Request for Exclusion.

50. The Class Representative, on behalf of herself and the Settlement Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the

1 Action, are disputed, and that the payments set forth herein constitute payment of all sums allegedly
2 due to her and the Settlement Class. The Class Representative, on behalf of herself and the
3 Settlement Class, acknowledges and agrees that California Labor Code Section 206.5 is not
4 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

5
6 An employer shall not require the execution of any release of any claim
7 or right on account of wages due, or to become due, or made as an
8 advance on wages to be earned, unless payment of those wages has been
made.

9 **E. Release by Class Representative**

10 51. As a material inducement to Defendants to enter into this Settlement Agreement, the
11 Class Representative does hereby, for herself and for her respective spouses, heirs, successors,
12 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
13 personal representatives, and assigns, forever and completely release and discharge the Released
14 Parties from, without limitation, any and all claims whatsoever arising out of her employment and/or
15 the termination of her employment including, but not limited to, any claims for wages, bonuses,
16 severance pay, employment benefits, stock options, violation of any personnel policy, any claims
17 based on discrimination, harassment, unlawful retaliation, violation of public policy, or damages of
18 any kind whatsoever, arising out of any common law torts, contracts, express or implied, any
19 covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence,
20 any theory of retaliation, any legal restriction on Defendants' right to terminate the employment
21 relationship, or any federal, state, or other governmental statute, executive order, regulation or
22 ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law.
23 Named Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have,
24 expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and
25 benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or
26 state law that purports to limit the scope of a general release. Named Plaintiff, for herself, has read
27 Section 1542 of the Civil Code of the State of California, which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR
5 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 52. Named Plaintiff understands that Section 1542 gives the right not to release existing
8 claims of which she is not now aware, unless Named Plaintiff voluntarily chooses to waive this right.
9 Having been so apprised, Named Plaintiff nevertheless voluntarily waives the rights described in
10 Section 1542, and elects to assume all risks for claims that now exist in her favor, known or
11 unknown. The release of the claims of Named Plaintiff as set forth in this paragraph is a condition
12 precedent to enforcement of this Settlement Agreement.

13 **G. Notice Process**

14 53. Appointment of Settlement Administrator. The Parties have agreed to the
15 appointment of Simpluris, Inc. (or such other third-party administrator as may be agreed upon by the
16 parties and approved by the Court) as the Settlement Administrator to perform the duties of a
17 settlement administrator, including mailing the Notice, using standard devices to obtain forwarding
18 addresses, independently reviewing and verifying documentation associated with any objections or
19 opt-out requests, resolving any disputes regarding the calculation or application of the formula for
20 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
21 Participating Class Members, and performing such other tasks as set forth herein or as the Parties
22 mutually agree or that the Court orders. The Settlement Administrator shall also be responsible for
23 issuing to Plaintiff, Settlement Class Members, and Class Counsel any W-2, 1099, or other Tax
24 Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement
25 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all
26 payroll taxes and penalties to the appropriate government authorities.

27 54. Disputes Regarding Settlement Administration. Any and all disputes relating to
28 administration of the Settlement by the Settlement Administrator (except for disputes regarding
Class Data), to the extent they cannot be resolved by counsel for the Parties, shall be referred to the

1 Court, if necessary, which will have exclusive and continuing jurisdiction over the terms and
2 conditions of this Settlement Agreement. Prior to presenting any issue to the Court, counsel for the
3 Parties will confer in good faith to resolve the dispute without the necessity of Court intervention.

4 55. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
5 Approval Order, Saint Agnes shall provide to the Settlement Administrator on one spreadsheet a list
6 of all Settlement Class Members, including the Class Members' full names, last known addresses,
7 telephone numbers, social security numbers, and the total Weeks Worked by each Class Member
8 during the Class Period. The Settlement Administrator will run a check of the Class Members'
9 addresses against those on file with the U.S. Postal Service's National Change of Address List and
10 update the mailing address. The Class Data provided to the Settlement Administrator will remain
11 confidential and will not be used or disclosed to anyone, except as required by applicable tax
12 authorities, pursuant to Defendants' express written consent, or by order of the Court. Within seven
13 (7) calendar days after receiving Class Data from Defendants, the Settlement Administrator will mail
14 Notices to Settlement Class Members by First Class United States Mail.

15 56. Notices. Class Members will have forty-five (45) days from the mailing of the notice
16 (the "Notice Period") to file with the Court their objection to the Settlement or to indicate their
17 decision to opt out, or to dispute their number of workweeks estimated in the settlement notice. This
18 date shall be extended by fourteen (14) calendar dates if the notice is returned as undeliverable and
19 then remailed to a correct/forwarding address of a Class Member. The Parties agree that if any
20 member of the Settlement Class objects to the settlement of Released Claims or disputes the basis for
21 determining their share of the Net Settlement Amount, Defendants' records shall presumptively
22 control, unless the Class Member can establish he or she worked a different number of workweeks
23 based on documentary evidence. The Parties further agree that any dispute that cannot be resolved
24 by Class Counsel (as defined below) and Defendants' counsel may be brought before the Court
25 before final approval of the Settlement.

26 57. Returned Notices. If any Notices are returned, the Settlement Administrator shall
27 take all reasonable steps to ensure that the Notice is received by all Settlement Class Members,
28 including utilization of standard devices, including a skip trace, to obtain forwarding addresses of

1 Settlement Class Members. If the Settlement Administrator learns of a failed mailing and obtains an
2 updated address for that mailing, the Notice will be re-mailed to that Class Member within five (5)
3 calendar days of notice of the failed mailing. The Notice shall be identical to the original Notice,
4 except that it shall notify the Class Member that the Notice Response Deadline for an exclusion (opt-
5 out) request or objection is extended by fourteen (14) calendar days.

6 58. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an
7 envelope has not been returned within forty-five (45) days of the mailing, the Settlement Class
8 Member received the Notice.

9 59. Disputes Regarding Class Data. Class Members are deemed to participate in the
10 Settlement, and therefore to release the Released Claims, unless they opt-out. The Notice will inform
11 each Class Member of his/her estimated Individual Settlement Amount and the dates of his/her
12 employment during the Class Period. Class Members may dispute their dates of employment by
13 timely submitting evidence to the Settlement Administrator. Saint Agnes' records will be presumed
14 determinative absent reliable evidence to rebut such records, but the Settlement Administrator will
15 evaluate any evidence submitted by a Class Member and provide the evidence submitted to Class
16 Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to
17 determine the Class Member's actual number of workweeks and estimated Individual Settlement
18 Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute
19 to the Settlement Administrator to render a final decision. Class Members will have until the Notice
20 Response Deadline to dispute dates of employment, object, or opt out, unless that deadline is
21 extended by the re-mailing of the notice, or by the Court.

22 60. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
23 for the Parties, at least twenty (20) court days prior to the final approval hearing, a declaration of due
24 diligence and proof of mailing with regard to the mailing of the Notice.

25 61. Settlement Class Members' Rights. Each Settlement Class Member will be fully
26 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request
27 exclusion from the Settlement. The Notice will inform the Settlement Class Members of the Court-
28

1 established deadlines for filing objections or requesting exclusion from the Settlement in accordance
2 with the following guidelines:

3 (a) Requests for Exclusion/Opt-Out from Settlement Class. Any Settlement Class
4 Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a
5 written “Request for Exclusion” to the Settlement Administrator, postmarked or faxed or e-mailed
6 on or before the Notice Response Deadline that includes (1) the full name, address, telephone
7 number, last four digits of the social security number or date of birth, (2) an express statement that
8 the Settlement Class Member wishes to be excluded from the terms of this Agreement; and (3) the
9 signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be
10 returned by mail, e-mail, or fax to the Settlement Administrator at the specified address/fax number.
11 Any Request for Exclusion must be made in accordance with the terms set forth in the Notice in
12 order to be valid. A Request for Exclusion will be timely only if postmarked, faxed, or e-mailed by
13 the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class
14 Member who timely requests exclusion in compliance with these requirements: (i) will not have any
15 rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii)
16 will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this
17 Agreement, or the Judgment. If more than ten percent (10%) class members opt out of the
18 settlement, Defendants have the option, in their sole discretion, of rescinding/voiding the settlement

19 (b) Binding Effect on Participating Settlement Class Members. Except for those
20 Settlement Class Members who exclude themselves in compliance with the procedures set forth
21 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all
22 purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the
23 Judgment, and the releases set forth herein, including the Released Claims; and (iii) except as
24 otherwise provided herein, will be deemed to have waived all objections and oppositions to the
25 fairness, reasonableness, and adequacy of the Settlement.

26 (c) No Solicitation of Exclusions/Opt-Outs. The Parties, Class Counsel, and
27 Defendants’ Counsel will not solicit or otherwise encourage directly or indirectly any Settlement
28 Class Member to request exclusion from the Settlement.

1 (d) Objections to Settlement. Any Settlement Class Member, other than Plaintiff,
2 may object to the terms of this Agreement. To object, a Settlement Class Member shall inform the
3 Settlement Administrator, in writing, of his or her objection which must be postmarked, faxed, or e-
4 mailed by the Notice Response Deadline at the contact information set forth in the Notice. Any
5 objection shall include (1) the full name, address, telephone number, and dates of employment of the
6 Objecting Settlement Class Member; (2) the case name and number; (3) the basis for the objection,
7 including any legal support and each specific reason in support of the objection, as well as any
8 documentation or evidence in support thereof; and (4) signed by the Class Member or if the
9 Objecting Settlement Class Member is represented by counsel, the signature of his or her counsel.
10 Objecting Settlement Class Members may appear at the Final Approval Hearing either in person, or
11 through counsel retained at Class Member's own expense, to have their objection heard, whether or
12 not they had submitted a prior written objection as specified in this section. The Court will rule on
13 any objections to the settlement at the Final Approval Hearing. An objection may be withdrawn at
14 any time. The Settlement Administrator shall provide objections, if any, to Class Counsel and
15 Defense Counsel via email within three (3) calendar days of receipt, and the Settlement
16 Administrator shall attach any objections to its declaration of due diligence, which is to be filed with
17 the Court prior to the Final Approval Hearing. Any Participating Class Member who files an
18 objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and
19 Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class Member
20 and/or his or her counsel related to any objections to the Settlement.

21 (e) Failure to Object. Any Settlement Class Member who desires to object but
22 fails to timely submit a written objection or fails to appear at the Final Approval Hearing, either in
23 person, or through counsel retained at Class Member's own expense, and present his or her objection
24 then, waives any right to object and will be foreclosed from making any objection to this Settlement.
25 Any Settlement Class Member who does not timely and properly become a party of record by
26 intervening or filing a motion to vacate the Judgment waives any and all rights to appeal from the
27 Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a
28 motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure

1 section 473, and extraordinary writs.

2 (f) Responses to Objections. Counsel for the Parties may file a response to any
3 objections submitted by Objecting Settlement Class Members at least five (5) court days before the
4 date of the Final Approval Hearing.

5 62. Settlement Class Members will have until the Notice Response Deadline to object or
6 submit a Request for Exclusion to the Settlement Administrator by U.S. Mail, fax and/or email. The
7 Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what
8 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request
9 of Class Counsel or Defense Counsel.

10 63. Funding of the Settlement Amount. Within fourteen (14) days after the Effective
11 Date, Defendants shall be responsible for making a one-time deposit into the QSF of the Settlement
12 Amount, plus Defendants' additional amount owed for the employer's share of payroll taxes due on
13 the Individual Settlement Amounts (as calculated by the Settlement Administrator).

14 64. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
15 Settlement Amount plus the employer's share of payroll taxes into the QSF, the Settlement
16 Administrator will mail the payments to the Participating Class Members, the payment for the
17 attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representative, the
18 payment to the LWDA, and will pay itself the Settlement Administration Costs.

19 65. Deadline for Cashing Settlement Checks/Uncashed Checks. Participating Class
20 Members shall have one hundred and eighty (180) calendar days after mailing by the Settlement
21 Administrator to cash their settlement checks. If any Participating Class Member's check is not
22 cashed within that period, the check will be void and a stop-payment will be issued, and the
23 Settlement Administrator shall issue the unclaimed funds on a *cy pres* basis to an organization or
24 organizations agreed upon by the parties, as provided by Code of Civil Procedure section 384. The
25 Release will be binding upon all Participating Class Members, including those who do not cash their
26 checks, as of the Effective Date. In the event that any settlement check is returned to the Settlement
27 Administrator within one hundred and twenty (120) days of mailing, the Settlement Administrator
28 will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to

1 locate the individual and re-mail the check. Neither Defendants, Defense Counsel, Class Counsel,
2 Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks,
3 forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
4 limiting the foregoing, in the event a Participating Class Member notifies the Settlement
5 Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement
6 Administrator shall immediately stop payment on such check. If the check in question has not been
7 negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement
8 check.

9
10 **H. Duties of the Parties Prior to the Court's Approval**

11 66. Promptly after execution of this Settlement Agreement, Plaintiff will move the Court
12 for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
13 accomplishing the following:

14 (a) Filing a Second Amended Complaint adding claims pursuant to the Fair Labor
15 Standards Act arising under the same facts alleged in the original and First Amended Complaints,
16 attached hereto as Exhibit B.

17 (b) Scheduling the Final Approval Hearing on the issue of whether this
18 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and
19 a hearing on fees, costs and the Service Payment;

20 (c) Approving as to form and content the proposed Notice, attached hereto as
21 Exhibit A;

22 (d) Directing the mailing of the Notice by first class mail to the Settlement Class
23 Members;

24 (e) Preliminarily approving this Settlement; and

25 (f) Preliminarily certifying the class for purposes of this Settlement.
26
27
28

1 **I. Duties of the Parties Following Court's Final Approval**

2 67. In connection with the Final Approval Hearing provided for in this Settlement
3 Agreement, Class Counsel shall submit a proposed Final Approval Order:

4 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable
5 and adequate, and directing consummation of its terms and provisions as expressed in this
6 Settlement Agreement;

7 (b) Approving Class Counsel's application for an award of attorneys' fees and
8 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
9 and the payment to the Settlement Administrator for costs of administering the settlement, consistent
10 with the terms and provisions herein; and

11 (c) Entering judgment approving the Settlement, thereby permanently barring all
12 Participating Class Members from prosecuting any Released Claims against any of the Released
13 Parties.

14 **J. Waiver of Right to Appeal**

15 68. Provided that judgment is consistent with the terms and conditions of this Settlement
16 Agreement, Participating Class Members, the Parties, and their respective counsel waive any and all
17 rights to appeal from judgment, including but not limited to all rights to any post-judgment
18 proceeding and appellate proceeding, such as a motion to vacate or set aside the judgment, and any
19 extraordinary writ, and the judgment will become non-appealable at the time it is entered. The
20 waiver of appeal does not include any waiver of the right to oppose any invalid appeal, appellate
21 proceedings or post-judgment proceedings. This waiver of right to appeal does not preclude Class
22 Counsel from appealing from a refusal by the Court to award the full amount of the requested
23 attorneys' fees and litigation costs, Settlement Administration costs, and the Service Payment.

24 **K. Voiding the Agreement**

25 69. If the Court fails or refuses to issue the Final Approval Order or fails to approve any
26 material condition of this Settlement Agreement which effects a fundamental change of the
27 Settlement, the entire Settlement Agreement shall be rendered null and void and unenforceable as to
28 all Parties herein.

70. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement Agreement.

71. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by the Parties.

L. Other Terms

72. No Publicity. Named Plaintiff, Defendants, and their respective counsel will not make any public disclosure of the Settlement until after the filing of the motion for preliminary approval of the Settlement. Named Plaintiff, Defendants, and their respective counsel represent that they have not made any such disclosure. Notwithstanding the foregoing, the Parties agree that Defendants may make such disclosures that in Defendants' judgment are required in the ordinary course of business, except that Defendants and its counsel shall not encourage members of the Settlement Class to opt-out. Nor shall Named Plaintiff and Class Counsel encourage members of the Settlement Class to opt-out. Class Counsel will take all steps necessary to ensure that Named Plaintiff is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the Settlement until after the Settlement is preliminarily approved by the Court. Thereafter, Class Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including but not limited to, any newspaper, journal, magazine, website and/or on-line reporter of settlements.

73. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement by any Party.

74. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind their respective Parties hereto to the terms and conditions hereof.

75. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents and taking such other actions as may reasonably be necessary to implement the terms of

1 this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
2 including all efforts contemplated by this Settlement Agreement and any other efforts that may
3 become necessary by order of the Court or otherwise, to effectuate this Settlement Agreement and
4 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
5 Class Counsel shall, with the assistance and cooperation of Defendants and Defendants' counsel,
6 take all necessary steps to secure the Court's preliminary and final approval of the settlement, and
7 the final entry of judgment.

8 76. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
9 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
11 or rights released and discharged by this Settlement Agreement.

12 77. No Admission. Defendants deny any and all liability to Plaintiff and/or any
13 Settlement Class Member in this Action, as to any and all causes of action that were asserted or that
14 might have been asserted in this Action. Nonetheless, Defendants wish to settle and compromise the
15 matters at issue in the Action to avoid further substantial expense and the inconvenience and
16 distraction of protracted and burdensome litigation. Defendants also have taken into account the
17 uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that
18 they have asserted or could assert against Plaintiff and/or the Settlement Class, have determined that
19 it is desirable and beneficial that the claims of Plaintiff and the Settlement Class be settled in the
20 manner and upon the terms and conditions set forth in this Agreement.

21 78. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
22 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
23 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
24 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
25 Settlement Agreement with the intention of avoiding further disputes and litigation with the
26 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it,
27 along with all related documents such as the notices, and motions for preliminary and final approval,
28 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be

1 inadmissible as evidence in any proceeding, except an action or proceeding to approve the
2 Settlement, and/or interpret or enforce this Settlement Agreement or a related court order. The
3 stipulation for class certification as part of this Settlement Agreement is for settlement purposes only
4 and if for any reason the settlement is not approved, the stipulation will be of no force or effect.

5 79. Notices. Unless otherwise specifically provided herein, all notices, demands or other
6 communications given hereunder shall be in writing and shall be deemed to have been duly given as
7 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
8 mail, return receipt requested, addressed:

9 To the Settlement Class:

10 David R. Markham
11 Maggie Realin
12 Lisa Brevard
13 The Markham Law Firm
14 750 B Street, Suite 1950
San Diego, California 92101
lbrevard@markham-law.com

15 To Defendants:

16 Jason H. Borchers
17 Littler Mendelson, P.C.
18 5200 N. Palm Ave., Suite 302
Fresno, California 93704
jborchers@littler.com

19 80. Construction. The Parties hereto agree that the terms and conditions of this Settlement
20 Agreement are the result of lengthy, intensive arms-length negotiations among the Parties and that
21 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
22 to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.
23 Plaintiff and Defendants expressly waive the common-law and statutory rule of construction that
24 ambiguities should be construed against the drafter of an agreement and further agree, covenant, and
25 represent that the language in all parts of this Agreement shall be in all cases construed as a whole,
26 according to its fair meaning.
27
28

1 81. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
4 Settlement Agreement is contractual and not merely a recital.

5 82. Modification. This Settlement Agreement may not be changed, altered, or modified,
6 except in writing and signed by all Parties hereto, and approved by the Court. This Settlement
7 Agreement may not be discharged except by performance in accordance with its terms or by a
8 writing signed by all of the Parties hereto.

9 83. Disputes. If the Parties dispute the interpretation of this Settlement Agreement, then
10 they will attempt to resolve the dispute informally. If those efforts fail, they will mediate the dispute.
11 The Parties will split the costs of the mediator, Michael Loeb, Esq., and the Parties will bear their
12 own fees and costs.

13 84. Exclusive and Continuing Jurisdiction. The Parties expressly request that, after entry
14 of judgment, the Court retain exclusive and continuing jurisdiction over the Action and all Parties,
15 including Participating Class Members for purposes of (a) enforcing this Settlement Agreement, (b)
16 addressing settlement administration matters, and (c) addressing any post-judgment matters as may
17 be appropriate.

18 85. Choice of Law. This Settlement Agreement shall be governed by and construed,
19 enforced, and administered in accordance with the laws of the State of California, without regard to
20 its conflicts-of-law rules.

21 86. Integration Clause. This Settlement Agreement contains the entire agreement between
22 Plaintiff, on the one hand, and Defendants, on the other hand, relating to the Complaint, the Action,
23 the Released Claims, and the Settlement, and all prior or contemporaneous agreements,
24 understandings, representations, and statements, whether oral or written and whether by a Party or
25 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in a
26 writing signed by the Party purporting to waive such right or rights.
27
28

1 87. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
2 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
3 successors and assigns.

4 88. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
5 because the members of the Settlement Class are numerous, it is impossible or impractical to have
6 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
7 Settlement Class Members of the binding nature of the release provided herein and such Release
8 shall have the same force and effect as if this Settlement Agreement were executed by each
9 Settlement Class Member.

10 89. Counterparts. This Settlement Agreement may be executed in counterparts, and when
11 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
12 an original, and, when taken together with other signed counterparts, shall constitute one fully-
13 signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
14 signatures shall have the same force and effect as an original.

1 Dated: January 28, 2021

MARILOU MOYA
Plaintiff

4 Dated: January __, 2021

[name, title]
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION dba
TRINITY HEALTH

9 Dated: January __, 2021

JASON H. BORCHERS
LAURA E. DEVANE
JULIA REMER
LITTLER MENDELSON, P.C.
Attorneys for Defendants
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION DBA
TRINITY HEALTH

16 Dated: January __, 2021

THE MARKHAM LAW FIRM

By: _____
David Markham
Maggie Realin
Lisa Brevard
Attorneys for Plaintiff

21 Dated: January __, 2021

UNITED EMPLOYEES LAW GROUP

By: _____
Walter L. Haines
Attorney for Plaintiff

1 Dated: January __, 2021

MARILOU MOYA
Plaintiff

4 Dated: January __, 2021

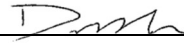
[name, title]
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION dba
TRINITY HEALTH

9 Dated: January __, 2021

JASON H. BORCHERS
LAURA E. DEVANE
JULIA REMER
LITTLER MENDELSON, P.C.
Attorneys for Defendants
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION DBA
TRINITY HEALTH

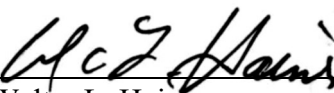
16 Dated: January 27, 2021

THE MARKHAM LAW FIRM

By: 
David Markham
Maggie Realin
Lisa Brevard
Attorneys for Plaintiff

21 Dated: January 27, 2021

UNITED EMPLOYEES LAW GROUP

By: 
Walter L. Haines
Attorney for Plaintiff

1 Dated: February __, 2021

MARILOU MOYA
Plaintiff

4 Dated: February 4, 2021


NANCY HOLLINGSWORTH
President and Chief Executive Officer
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION dba
TRINITY HEALTH


JASON H. BORCHERS
LAURA E. DEVANE
JULIA REMER
LITTLER MENDELSON, P.C.
Attorneys for Defendants
SAINT AGNES MEDICAL CENTER;
TRINITY HEALTH CORPORATION DBA
TRINITY HEALTH

15 Dated: February __, 2021

THE MARKHAM LAW FIRM

By: _____
David Markham
Maggie Realin
Lisa Brevard
Attorneys for Plaintiff

21 Dated: February __, 2021

UNITED EMPLOYEES LAW GROUP

By: _____
Walter L. Haines
Attorney for Plaintiff

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

MARILOU MOYA, on behalf of herself and other class members,

Plaintiff,

v.

SAINT AGNES MEDICAL CENTER, a California Corporation;
TRINITY HEALTH CORPORATION, an Indiana Corporation
dba TRINITY HEALTH, et al.

Defendants.

Case No. 20CECG00975

THIS NOTICE AFFECTS YOUR RIGHTS.

PLEASE READ IT CAREFULLY.

YOU MAY BE ENTITLED TO MONEY UNDER THIS SETTLEMENT.

Notice is hereby given that a proposed settlement (the “Settlement”) of the above-captioned class and representative action lawsuit has been reached by the Named Plaintiff Marilou Moya (“Plaintiff”) and Defendants Saint Agnes Medical Center and Trinity Health Corporation dba Trinity Health. The proposed Settlement has been granted preliminary approval by the Superior Court of California, County of Fresno.

The proposed Settlement will resolve all claims against the Defendants Saint Agnes Medical Center and Trinity Health Corporation dba Trinity Health (jointly “Defendants”) in the above-captioned lawsuit (the “Action”). A final fairness hearing addressing the fairness, adequacy, and reasonableness of the Settlement will be held on [insert date of Final Approval Hearing] to determine whether the Settlement should receive the Court’s final approval. **Because your rights may be affected, it is extremely important that you read this Notice carefully. You do not need to do anything to participate in the Settlement. If you do not want to participate in the Settlement, you must opt-out of the Settlement by no later than [insert date].**

1. PURPOSE OF THIS NOTICE.

The Superior Court of California, County of Fresno has ordered that this Notice be sent to you because you have been identified as a potential member of the Settlement Class. The relevant time period is from March 16, 2016 through [insert date], the date on which the Court entered an Order Granting Preliminary Approval (“Class Period”).

The Settlement Class is defined as follows: All current and former hourly-paid or non-exempt employees employed with the job title Patient Access Representative who worked for Defendants within the State of California at any time during the period from March 16, 2016 to [the date of preliminary approval]. The court granted preliminary approval of the Settlement on [redacted].

Receipt of this Notice means that you are in the Settlement Class and that you are entitled to share in the proceeds from the proposed Settlement. The purpose of this Notice is to: (a) provide a brief description of the Action; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Action and the Settlement.

2. DESCRIPTION OF THE ACTION.

In the Second Amended Complaint, Named Plaintiff seeks injunctive relief, damages, penalties, attorneys' fees, costs and any other further relief deemed appropriate by the Court by alleging that Defendants failed to pay minimum, regular and overtime wages, and also failed to provide legally-required meal and rest periods, failed to reimburse necessarily incurred business expenses, failed to provide accurate wage statements, failed to timely pay wages due during employment and at termination, violated the Private Attorneys General Act of 2004 ("PAGA"), and engaged in unfair competition.

Defendants deny each and every allegation asserted in the Action and assert that they have no liability for the claims of Plaintiff or the Class.

The Superior Court of California, County of Fresno has made no ruling on the merits of Plaintiff's claims or Defendants' defenses. The Court has preliminarily approved the proposed Settlement of the Action. The Court will decide whether to give final approval to the Settlement at a hearing scheduled for [insert date of Final Approval Hearing], 2021.

Attorneys for the Settlement Class ("Class Counsel") in the Action are:

The Markham Law Firm
David R. Markham
dmarkham@markham-law.com
Maggie Realin
mrealin@markham-law.com
Lisa Brevard
lbrevard@markham-law.com
750 B Street, Suite 1950
San Diego, California 92101
Telephone: (619) 399-3995
Facsimile: (619) 615-2067

United Employees Law Group
Walter L. Haines
walter@whaines.com
5500 Bolsa Avenue, Suite 201
Huntington Beach, California 92649
Telephone: (888) 474-7242
Facsimile: (562) 256-1006

Attorneys for Defendants in this Action are:

Littler Mendelson PC
Jason H. Borchers
jborchers@littler.com
Laura E. Devane
lstecker@littler.com
Julia Remer
jremmer@littler.com
5200 North Palm Avenue, Suite 302
Fresno, California 93704
Telephone: (559) 244-7548
Facsimile: (559) 570-0279

3. WHAT YOU MAY BE ENTITLED TO UNDER THE SETTLEMENT

Your share of the Settlement will be based on the number of weeks you were employed as a Patient Access Representative in California from March 16, 2016 until [date of preliminary approval] ("Weeks Worked"). As set forth below, Defendants have agreed to pay a total of \$362,500.00 to settle this matter. After attorneys' fees and other required payments are deducted from that payment, it is estimated that approximately \$208,666.67 will remain for distribution to Settlement Class Members ("Net Settlement Amount"). To calculate your individual settlement payment, first, a Workweek Value will be determined by dividing the Net Settlement Amount by Total Workweeks worked by all Settlement Class Members during the Class Period. Then, your Individual Settlement Amount will be determined by multiplying your Weeks Worked by the Workweek Value.

According to Defendants' records, you have [redacted] Weeks Worked during the Class Period as a Patient Access Representative. Based on the settlement formula described above, your estimated total distribution (gross) will be approximately \$[redacted]. That number may go up or down, depending upon such factors as the total amount of attorneys' fees and costs awarded to Plaintiff's counsel by the Court, and the total number of Class Members who decide to participate in the Settlement.

4. **SETTLEMENT ADMINISTRATOR**

[redacted] has been appointed as the Settlement Administrator.

5. **YOUR OPTIONS**

If you fit the above description of the Settlement Class, you have several options that are explained below. Each option will affect your rights, which you should understand before making your decision.

(a) **You Can Do Nothing and Receive Money under the Settlement.**

You do not need to do anything if you want to receive benefits under the Settlement. If you do nothing, and if the Court grants final approval of the Settlement on or after [redacted], 2021, you will receive payment as estimated in Section 3, above. **If you choose to do nothing and accept the Settlement, you will be bound by the terms of the Settlement Agreement, including the release of claims described in section 8, below.**

(b) **You Can Dispute the Number of Weeks Worked with Which You Have Been Credited**

If you believe that the number of Weeks Worked calculated for you in Section 3, above, is incorrect, you may dispute the calculation. If you dispute the number of Weeks Worked, it is your responsibility to supply documentation supporting your position. If you choose to dispute the calculation, you must send a written dispute, along with any evidence you have to support your calculation of Weeks Worked, to the Settlement Administrator at the following address:

[NAME]

[address/e-mail/fax number]

In order to be timely, any dispute must be sent, faxed or e-mailed to the Settlement Administrator on or before [redacted], 2021. If you timely dispute the total number of Weeks Worked listed in Section 3, above, the dispute shall be submitted to the Settlement Administrator, who shall examine the records and either verify the calculation or provide a corrected calculation. The Settlement Administrator will make every effort to resolve any such disputes prior to final approval of this Settlement Agreement. The Settlement Administrator's determination of disputes will be final.

(c) **You Can Opt Out of the Class.**

If you do not want to settle claims in accordance with the Settlement, you can request exclusion from the Settlement Class (i.e., opt out) by doing all of the following on or before [insert opt-out deadline], 2021:

1. Prepare a written statement with all of the following items printed: your full name, your current mailing address, your phone number, the last four digits of your Social Security number or date of birth, and an affirmative statement saying words to the effect that, "I choose to opt out of the class action settlement in *Moya v. Saint Agnes, et. al.*"
2. Sign the statement.
3. Send the statement to the Settlement Administrator by taking one of the following steps **no later than [insert opt-out deadline], 2021**: (1) mailing it to the address listed in Section 5(b), above via First Class or certified U.S. Mail **postmarked no later than the date indicated**, (2) sending it via facsimile to (XXX) XXX-XXXX, or (3) sending it via-email to [redacted]@[redacted] no later than [insert opt-out deadline], 2021.

Requests for exclusion that do not include all required information, or that are not postmarked or sent by other authorized means on or before the deadline, will be deemed null, void, and ineffective. If you exclude yourself from the class, you will not be considered a member of the Settlement Class, you will not receive any benefits under the Settlement, and you will be barred from objecting to the Settlement. By opting out of the class, you will retain whatever rights or claims you may have, if any, against the Defendants.

(d) You Can Object to the Settlement.

If you are a Settlement Class Member who does not opt out of the class, you may object to the Settlement, personally or through an attorney, at your own expense, by mailing, e-mailing or faxing a written objection, and supporting papers, if any, to Settlement Administrator on or before [redacted], 2021 at the following address:

[Administrator's name]

[address]

[Facsimile]:

[E-mail]:

All objections must be signed and must include the name and case number of the Action, your full name, your current address and telephone number, and your dates of employment with Defendants. Your written objection must clearly explain why you object to the Settlement. If you have any supporting papers – such as briefs, written evidence or declarations – they must be submitted along with the objection.

However, even if you do not submit a written objection in the manner and by the deadline specified above, you may appear, personally or through an attorney, at your own expense, at the Final Fairness and Approval Hearing to present your objection directly to the Court. If you object to the Settlement and if the Court approves the Settlement, you will be bound by the terms of the Settlement Agreement in the same way as a Class Member who does not object.

6. SUMMARY OF TERMS OF SETTLEMENT AGREEMENT.

The principal terms of the Settlement Agreement are summarized in this Notice. If you have any questions about the Settlement Agreement, please contact Class Counsel at the address or telephone numbers provided above.

(a) Establishment of the Settlement Amount.

Defendants shall pay a total of Three Hundred Sixty-Two Thousand Five Hundred Dollars And No Cents (\$362,500.00), plus any employer-side payroll taxes on the wage portion of the settlement awards (“Settlement Amount”). The Settlement Amount shall be used to satisfy (1) the payments to all Settlement Class Members for all Released Claims (defined below), including, but not limited to, unpaid minimum, regular and overtime compensation, missed meal and rest period penalties, unreimbursed business expenses, liquidated damages, restitution, penalties, interest, attorneys’ fees and costs, at any time between March 16, 2016 and [date of preliminary approval] (“Release Period”), by all members of the Settlement Class; (2) Plaintiff Counsel’s Attorneys’ fees and litigation costs; (3) the Class Representative Service Award; (4) penalties to the Labor and Workforce Development Agency under PAGA; and (5) the settlement administration costs. The Settlement Amount will be distributed in accordance with the terms of this Agreement.

(b) Class Representative Service Award.

The Settlement Administrator will distribute out of the Settlement Amount no more than Six Thousand Dollars And No Cents (\$6,000.00) to Plaintiff Moya. This payment constitutes a Class Representative Service Award paid to the Plaintiff in recognition of the role she played in obtaining the Settlement for the Class.

(c) Attorneys’ Fees and Costs.

All attorneys’ fees and costs awarded by the Court to Class Counsel will be paid out of the Settlement Amount. Class Counsel is asking the Court to award no more than One Hundred Twenty Thousand Eight Hundred Thirty-Three Dollars And Thirty-Three Cents (\$120,833.33) in attorneys’ fees and up to Fifteen Thousand Dollars And No Cents (\$15,000.00) in litigation costs. Plaintiff and Class Counsel support this amount because of the benefits obtained by Class Counsel for Settlement Class Members.

(d) Payment to the California Labor and Workforce Development Agency.

The Settlement allocated Ten Thousand Dollars And No Cents (\$10,000.00) to the settlement of the Private Attorneys General Act (“PAGA”) claims asserted in the Action. This means that, if the Settlement is approved, Seven Thousand Five Hundred Dollars And No Cents (\$7,500.00) of the Settlement Amount will be paid to the California Labor

and Workforce Development Agency. The remaining Two Thousand Five Hundred Dollars And No Cents (\$2,500.00) allocated to the PAGA claims will be payable to the Net Settlement Amount for distribution to Settlement Class Members.

(e) Settlement Administrator.

The Settlement will be administered by [REDACTED]. The settlement administration costs, estimated at \$ [REDACTED], will be deducted from the Settlement Amount.

7. ALLOCATION OF PAYMENTS AND TAX MATTERS.

(a) Allocation of Payments.

The Individual Settlement Payments for Settlement Class Members shall be characterized as thirty-three percent (33%) wages and sixty-seven percent (67%) penalties and interest. The portion of the Individual Settlement Payments deemed wages shall be subject to the withholding of all applicable local, state, and federal income and employment taxes. The portion of the Settlement Payments deemed interest or penalties will be reported on IRS Form 1099, or similar form, to the appropriate taxing authorities.

(b) Tax Matters.

Settlement Class members should consult with their tax advisors concerning the tax consequences of any payment they receive. No provision of the Settlement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended). You must rely exclusively upon your own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement. Your participation in this Settlement is not based upon the recommendation of any other party or any attorney or advisor to any other party. You are not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on you. No attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by you of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

8. RELEASES.

Upon entry of the Order Granting Final Approval, each member of the Settlement Class releases Defendants and all of Defendants' subsidiaries, predecessors, successors, members, managers, affiliates, and otherwise related entities, and any of their past, present and/or future, direct and/or indirect, officers, directors, partners, investors, shareholders, administrators, parent companies, divisions, assigns, attorneys, and joint ventures (collectively, the "Released Parties") from all claims for contained in the Second Amended Complaint for work performed during the Class Period, including the following:

- a. Any claims for working "off the clock", unpaid overtime, unpaid minimum wages, unreimbursed business expenses, untimely wage payments both during and at the end of employment, failure to keep requisite payroll records, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the California Labor Code sections 201-203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2802, 2698 and 2699, California Wage Orders, or the FLSA alleged or which could have been alleged under the facts pleaded in the Lawsuit;
- b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts pleaded in the complaints filed as part of the Lawsuit; and
- c. Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act California Labor Code sections 2698, *et seq.*, California Wage Orders, FLSA and the California Business and Professions Code section 17200 *et seq.* alleged in or that could have been alleged under the facts pleaded in the Lawsuit or in the PAGA letter submitted to the Labor and Workforce Development Agency in conjunction with this Lawsuit.

This release shall extend through the date of preliminary approval.

In addition to the claims enumerated above, if you execute and cash the compensation check received in connection with this settlement, you will be deemed to have opted in for Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* (“FLSA”) collective action settlement purposes, which results in release of your claims under the FLSA. The back of the settlement check will contain a legend making clear that by signing and cashing the check, you are agreeing and consenting to participate in the Action and in the Settlement and resolution of the action, that you waive and release all claims under the FLSA.

9. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT.

You are not required to attend the Final Approval Hearing or file an objection, although you may do both. The Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, and Class Counsel’s request for attorneys’ fees and costs will be held on [insert date/time/location of fairness hearing]. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, you may contact the Settlement Administrator to confirm the date and time.

Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. Settlement Class Members who wish to appear at the Final Approval Hearing should contact Class Counsel to arrange a telephonic appearance through CourtCall, at least three calendar days before the hearing if possible.

10. ADDITIONAL INFORMATION.

This Notice only summarizes the Action, the Settlement Agreement and related matters. For more information, and to access other documents related to this Settlement, please visit Settlement Administrator’s website at [www.\(list Administrator’s website\)](#). you may inspect the Court file at the Office of the Clerk of the Superior Court of California, County of Fresno, located at [1130 O Street, Fresno, California 93721](#). Any questions regarding this Notice or Action may also be sent to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DIRECT ANY QUESTIONS TO PLAINTIFF’S COUNSEL OR THE SETTLEMENT ADMINISTRATOR. DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Exhibit B

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Attorneys for Plaintiff on behalf of herself and all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

MARILOU MOYA, an individual, on behalf of
herself and all others similarly situated

Plaintiff,

v.

SAINT AGNES MEDICAL CENTER, a
California Corporation, TRINITY HEALTH
CORPORATION an Indiana Corporation dba
TRINITY HEALTH, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 20CECG00975
CLASS ACTION

Hon. Jeffrey Y. Hamilton

SECOND AMENDED COMPLAINT FOR:

- 1) VIOLATION OF FAIR LABOR STANDARDS ACT (29 U.S.C. §§207; 211(C), 215(A), 216(B), 255(A)); 29 C.F.R. §516 *ET SEQ.***
- 2) FAILURE TO PROVIDE MEAL PERIODS;**
- 3) FAILURE TO PROVIDE REST PERIODS;**
- 4) FAILURE TO PAY MINIMUM/REGULAR WAGES;**
- 5) FAILURE TO PAY OVERTIME WAGES;**
- 6) FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES;**
- 7) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 8) FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
- 9) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), BUS. & PROF. CODE § 17200 *et seq.*;**
- 10) VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA) (Lab. Code §2698, *et seq.*)**

DEMAND FOR JURY TRIAL

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1 Plaintiff MARILOU MOYA (“Plaintiff”), by and through her attorneys of record, brings this
2 Second Amended Class Action Complaint (“Complaint”) against Defendants SAINT AGNES
3 MEDICAL CENTER, a California Corporation and TRINITY HEALTH CORPORATION, an Indiana
4 Corporation dba TRINITY HEALTH (“TRINITY” or “Defendants”). Plaintiff hereby alleges, on
5 information and belief, except for information based on personal knowledge, which allegations are
6 likely to have evidentiary support after further investigation and discovery, as follows:

7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of Defendants’ failure to
9 pay wages for all time worked and failure to provide timely and uninterrupted meal and rest periods.

10 2. As more fully set forth below, Defendants failed to provide timely and uninterrupted
11 meal and rest periods to its California non–exempt Patient Access Representatives/Patient Registrants in
12 violation of California Labor Code §§ 512 and 226.7, and the applicable Industrial Wage Order; failed to
13 pay its employees one hour of pay at the regular rate of compensation for each instance that Defendants
14 failed to provide statutorily mandated rest periods and timely off–duty meal periods; failed to pay its
15 employees straight time wages for off–the–clock work performed; failed to pay them overtime for work
16 in excess of eight hours a day or 40 hours a week, failed to furnish timely and accurate wage statements;
17 failed to pay all wages due upon termination; and, is in violation of California’s Unfair Competition
18 Law (“UCL”).

19 3. Plaintiff seeks to represent and prosecute claims against Defendants in class action
20 proceedings on behalf of all those similarly situated who are or were residents of the State of California.

21 **JURISDICTION AND VENUE**

22 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure, section 395.
23 Defendants have several locations in Fresno, California. Defendants conduct business and commit Labor
24 Code violations in Fresno, California. The unlawful acts alleged have a direct effect on Plaintiff and
25 other employees within the State of California and Fresno County, and to employees in Defendants’
26 locations within the state of California. Defendants employ numerous employees in Fresno County and
27 surrounding counties.

5. Based on information and belief, Plaintiff alleges this entire action arises solely under state law of the State of California. Plaintiff alleges, on information and belief, that no federal question is raised warranting removal of the action the federal court.

PARTIES

6. Plaintiff MARILOU MOYA is a resident of Fresno, California. At all relevant times herein, Plaintiff was employed by Defendants and DOES 1 through 10, inclusive, at Saint Agnes Medical Center in Fresno, California, as a Patient Access Representative/Patient Registrant. During her employment, Plaintiff was not allowed to take timely meal breaks, due to Defendants' illegal meal break policy and/or practice, which made Plaintiff work through her meal breaks, or her meal breaks were shortened and/or interrupted due to workload and shortage of relief. Further, Defendants' policies and practices regarding work conditions and expectations for their non-exempt employees caused Plaintiff to miss one or more rest breaks or receive late rest breaks. Plaintiff was not paid premiums for missed or late meal and rest breaks. Furthermore, Plaintiff was not reimbursed for business-related expenses, nor paid for overtime wages owed. As a result, Plaintiff was not paid timely wages at the termination of her employment. Additionally, Plaintiff's wage statements were not properly itemized to reflect all hours worked and premium wages owed.

7. Defendants are headquartered in Fresno, California and have locations throughout California. Defendants employed Plaintiff at their Saint Agnes Medical Center in Fresno, California, and employ/employed other Patient Access Representatives/Patient Registrants, and other non-exempt, hourly-paid employees with similar job duties and/or job titles throughout California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1-10, inclusive, are currently unknown to Plaintiff who therefore sues Defendants by such fictitious names under Cal. Code Civ. Proc. §474. Plaintiff alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereafter as DOES when such identities become known.

9. Plaintiff alleges that each Defendant acted in all respects pertinent to this action as the

1 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
2 hereto, and the acts of each defendant are legally attributable to the other Defendants. Further,
3 Defendants in all respects acted as the employer and/or joint employer of Plaintiff and other non-
4 exempt, hourly-paid similarly situated employees.

5 FACTS

6 10. Between January 2016 and August 2019, Plaintiff was employed by Defendants as a non-
7 exempt, hourly-paid Patient Access Representative/Patient Registrant in Fresno, California.

8 11. In her role as a non-exempt, hourly-paid Patient Access Representative/Patient Registrant
9 Plaintiff's duties included patient data entry; making telephone calls to the patients to register, schedule,
10 or remind of appointments; entering patients' demographics, verifying and authorizing patients'
11 insurance; calculating deductibles and collecting co-pays, among other similar duties. Plaintiff was
12 originally assigned to the Administration Department/Patient Service and the Breast Center Department,
13 rotating between the two. However, due to Defendants' shortage of staff, Plaintiff would also perform
14 the above-mentioned duties at several specialty departments such as endoscopy, orthopedics, and eye
15 surgery. Plaintiff was scheduled to work 8-hour shifts from Monday to Friday with a variable schedule,
16 starting between 6:45 a.m. and 8:30 a.m. Plaintiff's hourly rate as of August 2019 was approximately
17 \$18.64.

18 12. During the relevant time period, Defendants failed to provide Plaintiff and other class
19 members with timely and off-duty meal periods, in violation of California law. At the beginning of her
20 employment, Plaintiff's meal breaks were scheduled. However, due to the press of business, the
21 schedule was never followed.

22 13. Due to the high patient flow and staff shortage, it was difficult, if not impossible, for
23 Plaintiff to take her meal break before the end of the fifth hour of work. Thus, Plaintiff's meal breaks
24 were usually late.

25 14. Furthermore, every day at 1:00 p.m. Plaintiff was scheduled for a huddle meeting in the
26 second floor of the building. So, Plaintiff would have to shorten her meal break by at least five (5)
27 minutes to have enough time to attend the meeting on time. Notwithstanding, Plaintiff was instructed to
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1 record a 30-minute meal break, even though she did not take it.

2 15. Also, when Plaintiff and class members had been holding calls for over 10 minutes or
3 when Plaintiff and class members had 3 calls on hold, Plaintiff and class members were instructed by
4 their supervisor to delay their break until the calls were managed.

5 16. The press of business and duties imposed on Plaintiff and class members by the
6 Defendants prevented them from taking timely and uninterrupted meal breaks as prescribed by
7 California law. Plaintiff and other class members were not paid meal period premiums for each day an
8 uninterrupted and timely 30-minute meal break was not provided. This unlawful practice occurred
9 systematically and was always done with the full knowledge and consent of the Defendants.

10 17. Further, Defendants required Plaintiff and class members to be logged into their
11 computer systems to begin fielding calls from patients by the start of their scheduled shifts, before they
12 were allowed to clock in. To be able to do it, Plaintiff and class members had to arrive at their
13 workstations at least 10 minutes before the start of their scheduled shifts. The boot-up process took even
14 longer on days when Defendants' system was not properly functioning. Plaintiff and class members
15 were not paid for this time.

16 18. Also, after clocking out at the end of their shift, Plaintiff and class members would spend
17 additional five to ten minutes performing duties such as cleaning and setting up the fax and copy
18 machines for the next day. At times, Plaintiff and class members had to take care of patients after
19 clocking-out, which necessitated an additional 10 to 15 minutes of work time. When Plaintiff and class
20 members attempted to record their overtime, their managers and/or supervisors would deny overtime
21 due to an alleged failure of obtaining overtime pre-approval. Because pre-approval was often
22 impossible to obtain due to the unpredictability of additional work time, Plaintiffs and other class
23 members had no other choice but to clock out and continue working off-the-clock. Plaintiff and class
24 members were not paid for this time.

25 19. Additionally, Defendants' policies and practices regarding work conditions and
26 expectations for its non-exempt employees caused Plaintiff and other class members to miss one or
27 more rest breaks, and/or receive late or short rest breaks. There was typically a high patient flow and
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1 shortage of staff, which prevented Plaintiff from taking uninterrupted rest breaks. Thus, Defendants did
2 not relieve Plaintiff or other class members from their duties, even when their supervisors would see
3 them working through their rest breaks. This unlawful practice occurred systematically and was always
4 done with the full knowledge and consent of the Defendants.

5 20. Upon information and belief, the above-mentioned unlawful employment practices by
6 Defendants were applied the same to all non-exempt, hourly-paid Patient Access Representatives/Patient
7 Registrants. Plaintiff and class members were not paid for this time throughout Defendants' locations in
8 California.

9 21. Further, at times when budget was reached and Defendants would stop providing office
10 supplies, Plaintiff and class members would have to buy their own supplies, such as pencils, binders, and
11 post-it notes, which were necessary for Plaintiff and class members to perform their work duties.
12 Plaintiff and class members were not reimbursed for those necessary business expenses.

13 22. Defendants' conduct, as alleged here, caused Plaintiff and other class members damages
14 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
15 class for failing to pay meal and rest break premiums, failing to pay all straight-time and overtime
16 wages owed for each pay period, failing to reimburse incurred business expenses, failing to provide
17 timely and accurate wage statements, and failing to pay all wages due upon termination, which are
18 violations of California's unfair competition law.

19 23. Plaintiff is member of, and seeks to be a representative for, the class of similarly situated
20 employees who all have been exposed to, have suffered, and/or were permitted to work under
21 Defendants' unlawful employment practices as alleged in this complaint.

22 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

23 24. Plaintiff Moya exhausted the notice requirement by filing a complaint with the Labor and
24 Workforce Development Agency ("LWDA") in her letter dated February 26, 2020, as required under the
25 California Labor Code Private Attorney General Act ("PAGA"). A true and correct copy of Plaintiff's
26 letter is attached hereto as **Exhibit A**. The LWDA did not assume jurisdiction over the applicable
27 penalty claims alleged; therefore, Plaintiff has exhausted the procedural requirement under PAGA to
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1 pursue any and all penalty claims as provided under PAGA.

2 **COLLECTIVE CLASS ALLEGATIONS**

3 25. Plaintiff brings the First Cause of Action for violations of the FLSA as a collective action
4 pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b) on behalf of all current and former employees
5 of Defendants, who held the position of “Patient Access Representatives/Patient Registrants,” including
6 any of Defendants’ job positions with substantially similar titles and duties in California at any time
7 within the applicable statutory time period (the “FLSA Collective Action Members.”)

8 26. Plaintiff and FLSA Collective Action Members performed the same or substantially
9 similar duties for Defendants; were subject to Defendants’ common policy and practice of failing to pay
10 wages, failing to pay overtime wages for all hours worked over forty in one workweek; have otherwise
11 been subject to common compensation plans, policies, and practices; and are otherwise “similarly
12 situated” employees within the meaning of the FLSA.

13 27. The First Cause of Action for violations of the FLSA may be brought and obtained as an
14 “opt-in” action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b), because Plaintiff’s claims and
15 all FLSA Collective Action Members are similarly situated.

16 28. The names and addresses of the FLSA Collective Action Members are available from
17 Defendants. Accordingly, Plaintiff prays for an order requiring Defendants to provide the names and all
18 available contact information for all FLSA Collective Action Members so that notice can be provided to
19 them of the pendency of this action, and their right to opt-in to this action. Plaintiff further prays that the
20 applicable statute of limitations be tolled based on, among other reasons, Defendants’ violations
21 regarding its Patient Access Representatives/Patient Registrants’ entitlement to regular and overtime
22 pay.

23 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

24 29. Plaintiff brings this action on behalf of herself, on behalf of all others similarly situated,
25 and as a member of the Class she seeks to represent. The class period is from four years prior to the
26 filing of the Complaint in this action until the trial of this action (“Class Period”). The Class is defined
27 as:

28 *All current and former non-exempt, hourly-paid Patient Access Representatives/Patient*

Registrants, including positions with similar duties and/or job titles employed by Defendants in California during the Class Period.

30. Further, Plaintiff brings this action on behalf of herself and all other similarly situated persons in Subclasses of the Plaintiff's Class, defined as:

a. Meal Period Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than five hours in a workday.

b. Rest Period Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than three and a half hours in a workday.

c. Regular/Minimum Wage Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift less than eight hours in a workday and/or worked less than 40 hours during the workweek.

d. Overtime Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than eight hours in a workday and/or worked more than 40 hours during the workweek.

e. Unreimbursed Business Expenses Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who incurred business expenses necessary to perform their

1 job duties for which they were not reimbursed.

2 **f. Itemized Wage Statement Subclass**

3 All current and former non–exempt, Patient Access Representatives/Patient Registrants,
4 including positions with similar duties and/or job titles, employed by Defendants in California
5 during the Class Period who received at least one wage statement from Defendants within the
6 statute of limitations period applicable to claims under Section 226 of the California Labor Code.

7 **g. Waiting Time Penalties Subclass**

8 All members of the Class and Subclasses (a) through (d) who separated employment with the
9 Defendants within the statute of limitations period applicable to claims under Section 203 of the
10 California Labor Code.

11 **h. UCL Subclass**

12 All current and former non–exempt, hourly-paid Patient Access Representatives/Patient
13 Registrants, including positions with similar duties and/or job titles, employed by Defendants in
14 California during the Class Period, regarding whom Defendants have engaged in unlawful, unfair
15 and/or fraudulent business acts or practices prohibited by Business & Professions Code § 17200
16 *et. seq.* as specifically described herein.

17 31. Plaintiff reserves the right to amend or otherwise alter the class definition, or to propose
18 or eliminate subclasses, in response to facts learned through discovery, legal arguments advanced by
19 Defendants or otherwise.

20 32. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous
21 that individual joinder is unfeasible and impracticable. Plaintiff estimates, on information and belief, that
22 there are hundreds of current and former non–exempt, hourly-paid Patient Access Representatives/
23 Patient Registrants, including individuals holding positions with similar duties and/or job titles,
24 Defendants employed, or formerly employed, at Defendants’ locations in California during the Class
25 Period. The identity of individuals qualifying for class membership is readily ascertainable via
26 inspection of the personnel records and other documents maintained by Defendants in the normal course
27 of business. Class members may be notified of the pendency of this action by mail, electronic mail, the
28

Internet, or published notice.

33. **Commonality and Predominance**: Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual class members such that a class action is superior to other forms of action. The claims of the named Plaintiff are typical of those of every other member of the Plaintiff Class. All Class Members were treated in a similar fashion and suffered similar harm as a consequence of Defendants' conduct, as alleged. Common legal and factual questions include, but are not limited to:

- a. Whether Defendants have a policy or practice of not paying meal or rest period premium wages;
- b. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a pattern or practice of failing to provide timely, off-duty meal periods to Plaintiff and class members;
- c. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the class from taking statutory off-duty meal periods on a timely basis;
- d. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the class for missed, untimely or on-duty meal periods as required by California law;
- e. Whether Defendants violated Labor Code §510, 1194, 1194. 2, 1197, 1198 and the applicable California Industrial Welfare Commission Order by failing to pay Plaintiff and class members minimum, regular and overtime wages;
- f. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and class members necessary business-related expenses and costs;
- g. Whether Defendants violated the applicable California Industrial Welfare Commission Order by failing to provide Plaintiff and the members of the class with timely off-duty meal periods;
- h. Whether Defendants engaged in unfair practices and violated California Business and Professions Code § 17200 by failing to provide Plaintiff and the members of the class with their statutory off-duty meal and rest periods on a timely basis;

- i. Whether Defendants engaged in unfair practices and violated California Business and Professions Code § 17200 by failing to pay Plaintiff and the members of the class for all time worked, including overtime;
- j. Whether Defendants maintained accurate time records of off-duty meal breaks taken by Plaintiff and members of the class in accordance with the applicable IWC Wage Order;
- k. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiff and members of the class that failed to include payments for missed, untimely, and/or on-duty meal periods among wages earned throughout the Class period;
- l. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiff and members of the class that failed to include payment for all hours worked, including overtime;
- m. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiff and members of the class that failed to accurately state the total hours worked, to the detriment of Plaintiff and the class;
- n. Whether Defendants failed to compensate, and therefore violated Labor Code § 226.7 and the applicable Wage Order by failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;
- o. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the class for failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;
- p. Whether Defendants violated Labor Code § 1197 due to failure to compensate Plaintiff and members of the class for those acts Defendants required Plaintiff and members of the class to perform for the benefit of Defendants;
- q. Whether Defendants violated Labor Code § 201-203 by failing to pay all wages due upon termination to all Class members who were terminated or voluntarily quit; and
- r. The nature and extent of class-wide injury and the measure of damages or restitution for the

injury.

34. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class she seeks to represent because Plaintiff, as non-exempt, hourly paid Patient Access Representative/Patient Registrant employed by Defendants, was exposed and subjected to the same unlawful business practices and conduct as other non-exempt, hourly paid Patient Access Representatives/Patient Registrants employed by Defendants during the class period. Named Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the members of the class and are based on the same legal theories. Plaintiff and the members of the class she seeks to represent sustained the same types of damages and losses.

35. **Adequacy:** Plaintiff is an adequate representative of the class she seeks to represent because her interests do not conflict with the interests of the members of the class. There is a well-defined community of interest in the questions of law and fact affecting the class of persons that Plaintiff represents as a whole.

36. Plaintiff retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Neither Plaintiff nor her attorneys have any interests contrary to or in conflict with the Class. The interests of the members of the class will be fairly and adequately protected by Plaintiff and her counsel.

37. Plaintiff does not anticipate any difficulty managing this litigation.

38. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiff's and the Class members' claims. Individual employees such as Plaintiff have a difficult time prosecuting an individual action against large corporate employers such as Defendants. The damages suffered by each individual class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system due to the

1 complex legal and factual issues of the case. By contrast, the class action device presents far fewer
2 management difficulties and provides the benefits of single adjudication, economy of scale, and
3 comprehensive supervision by a single court.

4 39. The Class should also be certified because:

- 5 a. The prosecution of separate actions by individual members of the Class would create
6 a risk of inconsistent or varying adjudications with respect to individual class
7 members which would establish incompatible standards of conduct for Defendants;
8 b. The prosecution of separate actions by individual members of the Class would create
9 a risk of adjudication with respect to them, which would, as a practical matter, be
10 dispositive of the interests of the other class members not parties to the adjudications,
11 or substantially impair or impede their ability to protect their interests; and
12 c. Defendants acted or refused to act on grounds generally applicable to the Class,
13 and/or the general public, thereby making appropriate final and injunctive relief with
14 respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF FAIR LABOR STANDARDS ACT**
17 **(Violation of 29 U.S.C. §§207; 211(c), 215(a), 216(b), 255(a)); 29 C.F.R. §516, et seq.)**
18 **(Against all defendants)**

19 40. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

20 41. At all relevant times hereto, Defendants have been, and are, an employer engaged in
21 commerce, as defined under 29 U.S.C. §203(b) and (d). As such, Defendants employed members of the
22 FLSA Collective Action Class as “Patient Access Representatives/Patient Registrants,” employment
23 which engaged the employees in commerce, as defined under 29 U.S.C. §§ 203(b), (e), (g), and 29
24 U.S.C. §207(a)(1). At all times relevant hereto, Defendants have been an “enterprise engaged in
25 commerce or in the production of goods for commerce,” as defined under 29 U.S.C. §203(s)(1).

26 42. Plaintiff is informed and believes, and thereon alleges, that Defendants have required, or
27 require, the FLSA Collective Action Members, as part of their employment, to work without additional
28 compensation, such as overtime, in excess of the forty hours per week maximum under 29 U.S.C.

§207(a)(1). That Section provides the following:

43. Except as otherwise provided in this section, no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate which is not less than one and one-half times the regular rate at which he is employed.

44. Indeed, in the performance of their duties for Defendants, the FLSA Collective Action Members often did work over forty hours per week, yet did not receive overtime compensation for the work, labor and services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206 and 207. The precise number of unpaid overtime hours will be proven at trial.

45. Plaintiff proposes to undertake appropriate proceedings to have such FLSA Collective Action Members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. §216(b), by filing written consents to joinder with the Court.

46. Defendants' violations of the FLSA were willful.

47. As a result of the foregoing, Plaintiff seeks judgment against Defendants on their own behalf, and on behalf of those FLSA Collective Action Members similarly situated who file written consents to joinder in this action, for all unpaid wages, including overtime wages owed by Defendants to the Plaintiff and FLSA Collective Action Members, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. §216(b).

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order) (Against all defendants)

48. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

49. California Labor Code § 226.7(b) provides, "An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission."

1 50. IWC Order No. 7-2001(11)(A) provides, in pertinent part: “[n]o employer shall employ
2 any person for a work period of more than five (5) hours without a meal period of not less than 30
3 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the
4 meal period may be waived by mutual consent of the employer and the employee.”

5 51. § 512(a) of the California Labor Code provides, in pertinent part: “[a]n employer may not
6 employ an employee for a work period of more than five hours per day without providing the employee
7 with a meal period of not less than 30 minutes, except that if the total work period per day of the
8 employee is no more than six hours, the meal period may be waived by mutual consent of both the
9 employer and employee. An employer may not employ an employee for a work period of more than 10
10 hours per day without providing the employee with a second meal period of not less than 30 minutes,
11 except that if the total hours worked is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period was not waived.”

13 52. As alleged herein, Defendants failed to authorize and permit timely and uninterrupted
14 meal periods during the Class Period. Plaintiff and members of the class were routinely required to work
15 without a timely and uninterrupted meal break at the direction of Defendants and/or with Defendants’
16 knowledge and acquiescence.

17 53. By its actions in requiring its employees to work through meal periods and/or its failure
18 to relieve the employees of their duties for their off-duty meal periods, Defendants have violated
19 California Labor Code §§ 226.7, 512 and the applicable Wage Order, and are liable to Plaintiff and the
20 class.

21 54. As a result of the unlawful acts of Defendants, Plaintiff and the class have been deprived
22 of timely off-duty meal periods and are entitled to recovery under Labor Code §§ 226.7(c), 512 and the
23 applicable Wage Order, in the amount of one additional hour of pay at the employee’s regular rate of
24 compensation for each workday in which Defendants failed to provide its employees with timely
25 statutory off-duty meal periods.

26 55. Plaintiff, and the other members of the class, are entitled to seek and recover reasonable
27 attorneys’ fees and costs pursuant to Labor Code §§ 226.7 and 512.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Violation of Labor Code §§ 226.7 and the applicable Wage Order)
(Against all defendants)

56. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

57. California Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission”.

58. IWC Order No. 5-2001(12)(A) provides, in pertinent part: “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages”.

59. IWC Order No. 5-2001(12)(B) further provides: “[i]f an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided”.

60. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class Period. Plaintiff and members of the class were routinely required to work through rest periods at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

61. By its actions in requiring its employees during the class period to work through rest periods and/or its failure to relieve the employees of their duties for their rest periods, Defendants violated the Wage Order and California Labor Code § 226.7 and are liable to Plaintiff and the class.

62. Defendants’ unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all others similarly situated and such conduct has continued through the filing of this complaint.

63. As a direct and proximate result of Defendants’ unlawful action, Plaintiff and the class

1 have been deprived of timely rest periods and/or were not paid for rest periods taken during the Class
2 period and are entitled to recovery under Labor Code § 226.7(c) in the amount of one additional hour of
3 pay at the employee's regular rate of compensation for each workday in which Defendants failed to
4 provide employees with timely and/or paid rest periods.

5 64. Plaintiff, and the other members of the class, are entitled to seek and recover reasonable
6 attorneys' fees and costs pursuant to Labor Code §§ 226.7.

7 **FOURTH CAUSE OF ACTION**
8 **FAILURE TO PAY MINIMUM/REGULAR WAGES**
9 **(Violation of Labor Code § 204, 1194, 1194.2, 1197, 1198, and the applicable Wage Order)**
10 **(Against all defendants)**

11 65. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

12 66. California Labor Code § 1194(a) provides, "...any employee receiving less than the legal
13 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a
14 civil action the unpaid balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorneys' fees, and costs of suit."

15 67. Labor Code § 1197 provides, "the minimum wage for employees fixed by the
16 commission or by any applicable state or local law, is the minimum wage to be paid to employees, and
17 the payment of a lower wage than the minimum so fixed is unlawful."

18 68. Labor Code § 1198 states "The maximum hours of work and the standard conditions of
19 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
20 for employees. The employment of any employee for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful."

22 69. IWC Wage Order 5-2001(2)(G) defines hours worked as "the time during which an
23 employee is subject to the control of an employer, and includes all the time the employee is suffered or
24 permitted to work, whether or not required to do so."

25 70. IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than
26 the applicable minimum wage for all hours worked.

27 71. Pursuant to the IWC Wage Order, Defendants are required to pay Plaintiff, and the
28

1 members of the Class, for all hours worked, meaning the time which an employee is subject to the
2 control of the employer.

3 72. At all relevant times during the class period, Defendants failed to pay Plaintiff and other
4 members of the class for all hours worked including the time spent working before and after their shifts,
5 while attending meetings and/or participating in telephone calls with patients, and while on meal and
6 rest breaks.

7 73. Pursuant to Labor Code § 1194.2, liquidated damages are available to employees who file
8 an action under Labor Code § 1194, which Plaintiff and members of the class seek.

9 74. Labor Code § 204 requires all wages earned for labor in excess of the normal work period
10 shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code §
11 204 provides that the requirements of this section are deemed satisfied by the payment of wages for
12 weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
13 following the close of the payroll period. During the Class Period, Defendants failed to pay Plaintiff and
14 putative class members all wages due to them within the time period specified by § 204.

15 75. In committing the violations of state law as herein alleged, Defendants have knowingly
16 and willfully refused to perform their obligations to compensate Plaintiff and members of the class for
17 all wages earned and all hours worked at least minimum wage. As a direct result, Plaintiff and other
18 members of the class have suffered, and continue to suffer, substantial losses related to the use and
19 enjoyment of such compensation, wages and lost interest on such monies and expenses and attorney's
20 fees in seeking to compel Defendants to fully perform their obligation under state law, all to their
21 respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

22 76. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of unpaid
23 wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
24 attorney's fees and costs of suit, and liquidated damages to the fullest extent permissible pursuant to
25 Labor Code §§ 1194 and 1194.2.

26 **FIFTH CAUSE OF ACTION**
27 **FAILURE TO PAY OVERTIME WAGES**
28 **(Violation of Labor Code § 204, 510, 1194, 1198, and the applicable Wage Order)**

(Against all defendants)

77. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

78. Labor Code § 510 and the applicable Wage Order provide that employees in California shall not be employed more than eight hours in any workday or forty hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Specifically, Labor Code § 510(a) requires that: Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

79. Labor Code § 1194 establishes an employee's right to recover unpaid overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code § 1198 makes employment of an employee for longer hours than the IWC set or under conditions the IWC prohibits unlawful.

80. During the class period, Plaintiff and other class members have worked more than eight hours in a workday, and/or more than forty hours in a workweek.

81. During the class period, Defendants has failed to pay Plaintiff, and other class members the overtime compensation premium for those unpaid hours they have worked in excess of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the applicable Wage Order.

82. By virtue of Defendants' unlawful failure to pay the lawful overtime rate of compensation to the Plaintiff and other class members, Plaintiff and other class members have suffered, and will continue to suffer, damages in amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court and will be ascertained according to proof at trial.

83. Defendants acted and are acting intentionally and oppressively toward Plaintiff and other class members with a conscious disregard of their rights, or the consequences to them, with the intent of depriving them of property and legal rights and otherwise causing them injury. Defendants failed to pay Plaintiff and other class members for all hours worked including the time spent working through meal

1 periods and performing off-the-clock work. To the extent this time worked exceeded eight (8) hours in a
2 day and/or forty (40) hours in a week, Plaintiff and class members are entitled to overtime wages.

3 84. Plaintiff and other class members request recovery of overtime compensation according
4 to proof, interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil Code
5 §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendants, in a sum as
6 provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**
9 **(Violation of Labor Code § 2802)**
10 **(Against all defendants)**

11 85. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

12 86. California Labor Code section 2802 provides that an employer must reimburse
13 employees "for all necessary expenditures or losses incurred by the employee in direct consequence of
14 the discharge of his or her duties..."

15 87. At all relevant times during the class period, Plaintiff and other members of the class
16 incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants,
17 including, but not limited to office supplies that Defendants refused to provide.

18 88. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class
19 members for necessary business-related expenses and costs. Defendants' conduct violates California
20 Labor Code Section 2802.

21 89. Plaintiff and class members are entitled to recover from Defendants their business-related
22 expenses incurred during the course and scope of their employment, plus interest, pursuant to California
23 Labor Code section 2802.

24 **SEVENTH CAUSE OF ACTION**
25 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
26 **(Violation of Labor Code §226)**
27 **(Against all defendants)**

28 90. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

91. California Labor Code § 226(a) provides: "[e]very employer shall, semimonthly or at the
time of each payment of wages, furnish each of her or her employees, either as a detachable part of the

1 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
2 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
3 worked by the employee [...], (3) the number of piece-rate units earned and any applicable piece rate if
4 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
5 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
6 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
7 last four digits of her or her social security number, [...], (8) the name and address of the legal entity that
8 is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee...".

10 92. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing
11 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of
12 all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for
13 each subsequent pay period.

14 93. Plaintiff is informed, believes, and thereon alleges that at all times relevant, Defendants
15 knowingly and intentionally failed to furnish, and continues to knowingly and intentionally fail to
16 furnish, Plaintiff and each Class member with timely and accurate itemized statements showing all
17 applicable hourly rates in effect and corresponding number of hours worked, and gross and net wages
18 earned by Plaintiff and each Class member, as required by Labor Code § 226(a).

19 94. Defendants' failure to provide Plaintiff and members of the Class with accurate itemized
20 wage statements during the Class period has caused Plaintiff and members of the Class to incur
21 economic damages in that they were not aware that they were owed and not paid compensation for all
22 hours worked. In addition, Defendants provided inaccurate information regarding hours worked, which
23 masked its underpayment of wages to Plaintiff and the Class.

24 95. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
25 and members of the Class in violation of Labor Code § 226(a), Plaintiff and the members of the Class
26 are each entitled to recover actual damages or penalties pursuant to § 226(e) of the Labor Code.

27 **EIGHTH CAUSE OF ACTION**

1 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
2 **(Violation of Labor Code §§ 201-203)**
3 **(Against all defendants)**

4 96. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

5 97. California Labor Code §§ 201-203 provide that if an employer discharges an employee,
6 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
7 employee voluntarily leaves his or her employment, his or her wages shall become due and payable not
8 later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice
9 of his or her intention to quit in which case the employee is entitled to her or her wages at the time of
10 quitting.

11 98. During the Class period, Defendants willfully failed to pay Plaintiff and Class members
12 who are no longer employed by Defendants all their earned wages, specifically, meal and rest period
13 premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked,
14 either at the time of discharge or within seventy-two hours of their leaving Defendants' employ in
15 violation of California Labor Code §§ 201, 202, and 203.

16 99. Therefore, Plaintiff and members of the Class are entitled to waiting time penalties for
17 each day that has passed that they have not received all wages owed to them, up to 30 days.

18 **NINTH CAUSE OF ACTION**
19 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
20 **(Violation of California's Unfair Competition Law,**
21 **Bus. & Prof. Code § 17200 *et seq.*)**
22 **(Against all defendants)**

23 100. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

24 101. § 17200 of the California Business and Professions Code (the "UCL") prohibits any
25 unlawful, unfair, or fraudulent business practices.

26 102. Through its action alleged herein, Defendants has engaged in unfair competition within
27 the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or
28 fraudulent business practices under the UCL.

 103. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure

1 to pay Class members wages and compensation they earned through labor provided, and failing to
2 otherwise compensate Class members for non-compliant meal and rest periods as alleged herein.
3 Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false
4 and/or misleading information about the time the Class members worked and the amount of wages or
5 compensation due.

6 104. Plaintiff has standing to assert this claim because she has suffered injury in fact and has
7 lost money as a result of Defendants' conduct.

8 105. Plaintiff and the Class seek restitutionary disgorgement from Defendants of monies owed
9 for all hours worked and for unpaid meal and rest period premiums, and unreimbursed business
10 expenses.

11 106. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
12 specified here by suing on behalf of herself and other similarly situated Class members previously or
13 presently working for Defendants in California. Plaintiff's success in this action will enforce important
14 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the
15 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to
16 Code of Civil Procedure section 1021.5.

17 **TENTH CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)**
19 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**

20 107. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

21 108. Labor Code sections 2698 and 2699 (The California Private Attorney General Act of 2004,
22 or "PAGA"), expressly establish that any provision of the California Labor Code which provides for a
23 civil penalty to be assessed and collected by The Labor and Workforce Development Agency
24 ("LWDA"), or any of its departments, divisions, commissions, boards, agencies or employees for a
25 violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved
26 employee on behalf of himself or herself, and other current or former employees.

27 109. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies
28 or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized to

1 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

2 110. Plaintiff is an “aggrieved employee” as defined by Labor Code section 2699, because she is
3 an employee of Defendant, and one or more of the Labor Code violations was committed against her.

4 111. Plaintiff asserts all of her claims in this Complaint against Defendant on behalf of herself,
5 and all other members of the Class and/or on behalf of all aggrieved employees, as well as the general
6 public, in her capacity as “private attorney general”, and seek all statutory penalties available under the
7 Labor Code.

8 112. By reason of the above and pursuant to Labor Code section 2699, Plaintiff Moya on behalf
9 of herself, and all other members of the Class and/or on behalf of all aggrieved employees, as well as the
10 general public, are entitled to payment of a penalty of \$100 per pay period for each employee for the
11 initial violation, and \$200 per pay period for each employee for each subsequent violation, plus interest.

12 113. In addition, Plaintiff Moya, on behalf of herself, and all other members of the Class and/or
13 behalf of all aggrieved employees, as well as the general public, seek and are entitled to have 75% of all
14 recovered penalties and interest allocated to the LWDA and 25% to the Plaintiff Class. Further, Plaintiff
15 is entitled to seek and recover reasonable attorneys’ fees, expenses and costs pursuant to Labor Code
16 section 2699, and any other applicable statutes.

17 114. Plaintiff complied with the notice requirements of Labor Code section 2699.3(a)(1) prior to
18 commencing this action. A copy of the letter submitted to the California LWDA on February 26, 2020,
19 via online filing, and copied to Defendants’ Agent for Service of Process in California on the same date,
20 via certified mail, in accordance with section 2699.3(a)(1), is attached hereto, as **Exhibit A**, and by
21 reference incorporated herein.

22 115. As of today’s date, the LWDA has not responded to Plaintiff’s notice.

23 116. Plaintiff and the Plaintiff Class are also entitled to reasonable attorneys’ fees and costs,
24 pursuant to California Labor Code section 2699(g)(1).

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26 ///

27 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
3 judgment against Defendants as follows:

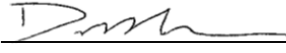
- 4 A. That the Court declare, adjudge, and decree that Defendants violated Fair Labor Standards
5 Act (29 U.S.C. §§207; 211(c), 215(a), 216(b), 255(a)); 29 C.F.R. §516, *et seq.*;
- 6 B. An order that this class be certified as a class action;
- 7 C. That Plaintiff MARILOU MOYA be the representative of the class;
- 8 D. For one hour of wages due to Plaintiff and each Class member for each work period of more
9 than three and one-half (3 ½) hours when they did not receive an uninterrupted ten (10)
10 minute rest period for each four (4) hours or major fraction thereof worked;
- 11 E. For one hour of wages due to Plaintiff and each Class member for each work period of more
12 than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
- 13 F. For all minimum, straight-time and overtime wages owed to Plaintiff and each Class member
14 for all hours worked;
- 15 G. For reimbursement of necessary business-related expenses and costs incurred and due to
16 Plaintiff and each Class member;
- 17 H. For actual damages or statutory penalties under Labor Code § 226(e);
- 18 I. For waiting time penalties pursuant to Labor Code § 203;
- 19 J. For liquidated damages pursuant to Labor Code § 1194.1;
- 20 K. For restitutionary disgorgement pursuant to the UCL;
- 21 L. Prejudgment interest at the maximum legal rate;
- 22 M. Reasonable attorney's fees;
- 23 N. General, special and consequential damages, to the extent allowed by law;
- 24 O. Costs of suit;
- 25 P. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;
- 26 Q. For penalties for each violation of the Private Attorneys General Act ("PAGA");
- 27 R. Pre-judgment and post-judgment interest, as provided by law;
- 28

1 S. For reasonable attorneys' fees and costs; and

2 T. Such other equitable relief as the Court may deem just and proper.

3
4 Dated: February 8, 2021

THE MARKHAM LAW FIRM

5 By: 
6 David R. Markham
7 Maggie Realin
8 Lisa Brevard

UNITED EMPLOYEES LAW GROUP
Walter L. Haines

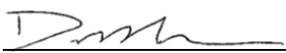
9 Attorneys for Plaintiff

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

13 Dated: February 8, 2021

THE MARKHAM LAW FIRM

14
15 By: 
16 David R. Markham
17 Maggie Realin
18 Lisa Brevard

UNITED EMPLOYEES LAW GROUP
Walter L. Haines

19 Attorneys for Plaintiff
20
21
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23
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25
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27
28

EXHIBIT A

THE MARKHAM LAW FIRM

• 750 B Street, Suite 1950 • San Diego, California 92101 •
• Phone: (619) 399-3995 • Fax: (619) 615-2067 •
• EMAIL: MREALIN@MARKHAM-LAW.COM

February 26, 2020

Via Online Filing:

<https://dir.tfaforms.net/260>
Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

Re: Wage/Hour Claims of Marilou Moya (“The Aggrieved Employee”) against Saint Agnes Medical Center, a California Corporation, Trinity Health Corporation an Indiana Corporation dba Trinity Health and DOES 1 to 10 inclusive, (“Employers” or “Trinity”)

To: PAGA Administrator, California Labor and Workforce Development Agency (“LWDA”)

From: Marilou Moya, who was subjected to the wage and hour practices set forth below

The Aggrieved Employee submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3 subdivisions (a) and (f), and allege as follows:

MARILOU MOYA is a resident of Fresno, California and a former employee of Trinity. Within the relevant time period, she worked as a non-exempt, hourly-paid Patient Access Representative/Patient Registrant at Saint Agnes Medical Center, in Fresno, California.

Employers employ Patient Access Representatives/Patient Registrants among other employees with similar job titles and/or job duties, throughout California. During the relevant time period, the Employers utilized consistent policies and procedures regarding the Aggrieved Employee and other similarly aggrieved employees, in violation of Labor Code sections 201-203, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 1194, 1197, 1198 and 2802. The following is a summary of the violations. For a more detailed explanation, see Attachment A (the Aggrieved Employee’s proposed Complaint).

During the relevant time period, Employers failed to provide the Aggrieved Employee and other aggrieved employees with timely and off-duty meal periods, in violation of California law. At the beginning of her employment, the Aggrieved Employee’s meal breaks were scheduled. However, due to the pressure of business, the schedule was never followed.

Due to the high patient flow and staff shortage, it was difficult - if not impossible - for the Aggrieved Employee to take her meal break before the end of the fifth hour of work. Thus, her meal breaks were late.

Furthermore, the Aggrieved Employee was scheduled for daily, mandatory huddle meetings so she had to shorten her meal breaks by at least 5 minutes to have enough time to attend the meeting on time. Notwithstanding, Ms. Moya was instructed to record a 30-minute meal break, even though she did not take it.

Also, when patient calls were on hold for over 10 minutes, or there were at least 3 calls on hold, the the Aggrieved Employee and other aggrieved employees were instructed by their supervisors to delay their breaks until the calls were managed.

The press of business and duties imposed on the Aggrieved Employee and other aggrieved employees by the Employers prevented them from taking timely and uninterrupted meal breaks as prescribed by the California law. The Aggrieved Employee and other aggrieved employees were not paid meal period premiums for each day an uninterrupted and timely 30-minute meal break was not provided. This unlawful practice occurred systematically and was always done with the full knowledge and consent of the Employers.

Further, Employers required the Aggrieved Employee and other aggrieved employees to be logged into their computer systems to begin fielding calls from patients by the start of their scheduled shifts, before they were allowed to clock in. To be able to do it, the Aggrieved Employee and other aggrieved employees had to arrive at their workstations at least 10 minutes before the start of their scheduled shifts. The boot-up process took even longer on days when Employers' system was not properly functioning. The Aggrieved Employee and other aggrieved employees were not paid for this time.

Also, after clocking out at the end of their shift, the Aggrieved Employee and other aggrieved employees would spend additional 5 to 10 minutes performing duties such as cleaning and setting up the fax and copy machines for the next day. At times, the Aggrieved Employee and other aggrieved employees had to take care of patients after clocking-out, which necessitated additional 10 to 15 minutes of work time, off the clock. When the Aggrieved Employee and other aggrieved employees had to record their overtime, their managers and/or supervisors would deny overtime due to an alleged failure of obtaining overtime pre-approval. Because pre-approval was often impossible to obtain due to the unpredictability of additional work time, the Aggrieved Employee and other aggrieved employees had no other choice but to clock out and continue working, off-the-clock. The Aggrieved Employee and other aggrieved employees were not paid for this time.

Additionally, Employers' policies and practices regarding work conditions and expectations for its non-exempt employees caused the Aggrieved Employee and other aggrieved employees to miss one or more rest breaks, and/or receive late or short rest breaks. There was typically a high patient flow and staff shortage, which prevented the Aggrieved Employee from taking uninterrupted rest breaks. Thus, Employers did not relieve the Aggrieved Employee and other aggrieved employees from their duties, even when their supervisors would see them working through their rest breaks. This unlawful practice occurred systematically and was always done with the full knowledge and consent of the Employers.

Upon information and belief, the above-mentioned unlawful employment practices by Employers were applied the same to all non-exempt, hourly-paid employees. The Aggrieved Employee and other aggrieved employees were not paid for this time throughout Trinity's locations in California.

Further, at times, when budget was reached, and Employers would stop providing office supplies, the Aggrieved Employee and other aggrieved employees would have to buy their own supplies, such as pencils, binders and post-it notes, which were necessary for them to perform their work duties. The Aggrieved Employee and other aggrieved employees were not reimbursed for those necessary business expenses.

Employer failed to pay the Aggrieved Employee and other aggrieved employees for all hours worked, and meal and rest break premiums owed to them. Therefore, the Aggrieved Employees' wage statements incorrectly state their gross and net wages. As a result, the Aggrieved Employee and other aggrieved employees were provided with statements that failed to comply with California Labor Code section 226.

Because the Aggrieved Employee and other aggrieved employees were not paid for all hours worked, and premium meal and rest break wages owed to them, they were not paid all wages due to them at the termination of their employment.

FAILURE TO PROVIDE MEAL BREAKS AND REST BREAKS—Violation of California Labor Code Sections 226.7 and 512

California Labor Code section 512 provides no employer shall employ any person for a work period of more than five (5) hours without a duty-free meal period of not less than 30 minutes or for a work period of more than ten (10) hours without a second duty-free meal period of not less than 30 minutes. Under IWC Wage Orders, California Code of Regulations, and California Labor Code section 226.7, if an employer fails to provide an employee a duty-free meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the meal period is not provided.

During the applicable time period, due to the press of business, and Employers' policies and procedures, Trinity intentionally and improperly denied and failed to provide timely, uninterrupted and duty-free meal periods to the Aggrieved Employee and other aggrieved employees. Trinity did this systematically and failed to pay its employees, one hour of pay at the regular rate of compensation for each instance that they failed to provide statutorily mandated and timely, uninterrupted, and off-duty meal periods.

Similarly, applicable IWC Wage Orders and California Code of Regulations require employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. The Wage Orders, Labor Code section 226.7 and Regulations also state if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period was not provided. These remedies are codified under California Labor Code section 226.7.

During the applicable time period, due to the pressure of the business, and Employers' policies and procedures, the Aggrieved Employee and other aggrieved employees were not able to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. Thus, Employers

did not relieve the Aggrieved Employee and other aggrieved employees from their duties. The Aggrieved Employee and other aggrieved employees were not paid rest break premiums for each workday that the rest break was not provided, in violation of Labor Code section 226.7(c).

Further, as a result of Employers' failure to provide meal and rest periods, the Aggrieved Employee and all other aggrieved employees whose employment with Trinity terminated within the applicable time period, were not paid all meal and rest premium wages due to them at termination of their employment, in violation of Labor Code sections 201-203.

The Aggrieved Employee and other aggrieved employees are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 218.5, 218.6, and 1194, and penalties pursuant to California Labor Code sections 203, 226.7, and 558.

FAILURE TO PAY MINIMUM/REGULAR WAGES

California Labor Code § 1194(a) provides, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."

Labor Code § 1197 provides, "the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

IWC Wage Order 5-2001(2)(G) defines hours worked as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

Pursuant to the IWC Wage Order, Defendants are required to pay the Aggrieved Employee and other aggrieved employees, for all hours worked, meaning the time which an employee is subject to the control of the employer.

At all relevant times during the class period, Trinity failed to pay the Aggrieved Employee and other aggrieved employees wages for all hours worked.

Trinity failed to pay the Aggrieved Employee and other aggrieved employees for all hours worked including the time spent working before and after their shifts, while attending meetings and/or participating in telephone calls with patients, and while on meal and rest breaks.

Pursuant to Labor Code § 1194.2, liquidated damages are available to employees who file an action under Labor Code § 1194, which the Aggrieved Employee and other aggrieved employees seek.

In committing the violations of state law as herein alleged, Employers have knowingly and willfully refused to perform their obligations to compensate the Aggrieved Employee and other aggrieved employees for all wages earned and all hours worked at least minimum wage. As a direct result, the Aggrieved Employee and other aggrieved employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages and lost interest on such monies and expenses and attorney's fees in seeking to compel Employers to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

The Aggrieved Employee seeks to recover in a civil action the unpaid balance of the full amount of unpaid wages resulting from Employers' minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, and liquidated damages to the fullest extent permissible pursuant to Labor Code §§ 1194 and 1194.2.

UNPAID OVERTIME—Violation of California Labor Code Section 510, 1194 and 1198

Under section 510(a) and 1198 of the California Labor Code, and an applicable Wage Order, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek and 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours per workday. Regular rate of pay includes all remuneration for employment paid to or on behalf of the employee including commissions and non-discretionary bonuses.

During the relevant time period, Trinity willfully, and on a systematic and company-wide basis, maintained and implemented a non-compliant practice and/or policy for the payment of overtime, and failed to pay all overtime wages owed to the Aggrieved Employee and other aggrieved employees.

The Aggrieved Employee and other aggrieved employees are entitled to recover those unpaid wages, as well as civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1194, and/or 2699(a), (f)-(g).

FAILURE TO REIMBURSE BUSINESS EXPENSES—Violation of Labor Code Section 2802

California Labor Code § 2802 provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

During the applicable statutory period, the Aggrieved Employee and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Trinity. Expenses include but are not limited to office supplies. Trinity did not reimburse these expenditures or losses to The Aggrieved Employee and other aggrieved employees. Trinity has failed to fully reimburse Employees for necessary business-related expenses and losses.

The Aggrieved Employee and other aggrieved employees are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code § 2802.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS—Violation of California Labor Code Sections 226 and 1174

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, “gross wages earned,” (§226(a)(1)), “net wages earned” (§226(a)(5)), “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...” (§226(a)(9)) and “the inclusive dates of the period for which the employee is paid.” (§226(a)(6).) Labor Code Section 226(e) provides if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any subsequent pay period, not to exceed \$4,000 per employee. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, Trinity knowingly and intentionally provided the Aggrieved Employee and other aggrieved employees with uniform, incomplete wage statements. Because the Employers failed to pay the Aggrieved Employee and other aggrieved employees all regular wages and overtime wages, the correct amount of gross wages earned, net wages earned, and the correct number of hours at the correct hourly rates were not listed.

Furthermore, Employers failed to pay the Aggrieved Employee meal and rest premium wages owed to her and other aggrieved employees. Therefore, the Aggrieved Employee and other aggrieved employees’ wage statements incorrectly state their gross and net wages, and the correct hourly rates of pay. As a result, the Aggrieved Employee and other aggrieved employees were provided with statements that failed to comply with California Labor Code section 226. Employers’ payroll system is believed to operate in the same way as to all aggrieved employees.

FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice of his or her intention to quit in which case the employee is entitled to her or her wages at the time of quitting.

During the Class period, Trinity willfully failed to pay the Aggrieved Employee and other aggrieved employees who are no longer employed by Trinity all their earned wages, specifically, meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Trinity’s employ in violation of California Labor Code §§ 201, 202, and 203.

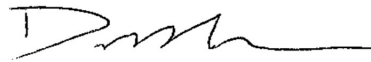
Therefore, the Aggrieved Employee and other aggrieved employees are entitled to waiting time penalties for each day that has passed that they have not received all wages owed to them, up to 30 days. The Aggrieved Employee and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

The Aggrieved Employee, as an individual and on behalf of all other current or former Trinity employees, seek all penalties or remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3(a/c)(2)(A). Please advise within sixty (60) calendar days of the filing/postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the filing/postmark date of this Notice that the LWDA intends to investigate these allegations, the Aggrieved Employee, as an individual and on behalf of all other current or former Trinity employees may immediately thereafter commence a civil action against Trinity pursuant to Labor Code §2699.

The Aggrieved Employee and other aggrieved employees are represented in this matter by David R. Markham, Maggie Realin and Lisa Brevard of The Markham Law Firm and Walter L. Haines of the United Employees Law Group.

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham
Maggie Realin
Lisa Brevard

cc: (via Certified Mail)

CT Corporation System
Agent for Service of Process for
Saint Agnes Medical Center and
Trinity Health Corporation
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

cc: (via Certified Mail)

Saint Agnes Medical Center
Corporate Office
Attn: Legal Department
1303 East Herndon Avenue
Fresno, CA 93720

cc: (via Certified Mail)

Trinity Health Corporation
Corporate Office
Attn: Legal Department
20555 Victor Parkway
Livonia, MI 48152

cc: (via Electronic Mail)

Walter L. Haines
walter@whaines.com

Attachment A

David R. Markham (SBN 071814)
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Attorneys for Plaintiff on behalf of herself and all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

MARILOU MOYA, an individual, on behalf of
herself and all others similarly situated

Plaintiff,

v.

SAINT AGNES MEDICAL CENTER, a
California Corporation, TRINITY HEALTH
CORPORATION an Indiana Corporation dba
TRINITY HEALTH, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

- 1) FAILURE TO PROVIDE MEAL PERIODS;**
- 2) FAILURE TO PROVIDE REST PERIODS;**
- 3) FAILURE TO PAY MINIMUM/REGULAR WAGES;**
- 4) FAILURE TO PAY OVERTIME WAGES;**
- 5) FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES;**
- 6) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 7) FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
- 8) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), BUS. & PROF. CODE § 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff MARILOU MOYA (“Plaintiff”), by and through her attorneys of record, brings this
2 Class Action Complaint against Defendants SAINT AGNES MEDICAL CENTER, a California
3 Corporation and TRINITY HEALTH CORPORATION, an Indiana Corporation dba TRINITY
4 HEALTH (“TRINITY” or “Defendants”). Plaintiff hereby alleges, on information and belief, except for
5 information based on personal knowledge, which allegations are likely to have evidentiary support after
6 further investigation and discovery, as follows:

7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of Defendants’ failure to
9 pay wages for all time worked and failure to provide timely and uninterrupted meal and rest periods.

10 2. As more fully set forth below, Defendants failed to provide timely and uninterrupted
11 meal and rest periods to its California non-exempt Patient Access Representatives/Patient Registrants in
12 violation of California Labor Code §§ 512 and 226.7, and the applicable Industrial Wage Order; failed to
13 pay its employees one hour of pay at the regular rate of compensation for each instance that Defendants
14 failed to provide statutorily mandated rest periods and timely off-duty meal periods; failed to pay its
15 employees straight time wages for off-the-clock work performed; failed to pay them overtime for work
16 in excess of eight hours a day or 40 hours a week, failed to furnish timely and accurate wage statements;
17 failed to pay all wages due upon termination; and, is in violation of California’s Unfair Competition
18 Law (“UCL”).

19 3. Plaintiff seeks to represent and prosecute claims against Defendants in class action
20 proceedings on behalf of all those similarly situated who are or were residents of the State of California.

21 **JURISDICTION AND VENUE**

22 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure, section 395.
23 Defendants have several locations in Fresno, California. Defendants conduct business and commit Labor
24 Code violations in Fresno, California. The unlawful acts alleged have a direct effect on Plaintiff and
25 other employees within the State of California and Fresno County, and to employees in Defendants’
26 locations within the state of California. Defendants employ numerous employees in Fresno County and
27 surrounding counties.

28 5. Based on information and belief, Plaintiff alleges this entire action arises solely under

1 state law of the State of California. Plaintiff alleges, on information and belief, that no federal question
2 is raised warranting removal of the action the federal court.

3 **PARTIES**

4 6. Plaintiff MARILOU MOYA is a resident of Fresno, California. At all relevant times
5 herein, Plaintiff was employed by Defendants and DOES 1 through 10, inclusive, at Saint Agnes
6 Medical Center in Fresno, California as a Patient Access Representative/Patient Registrant. During her
7 employment, Plaintiff was not allowed to take timely meal breaks, due to Defendants' illegal meal break
8 policy and/or practice, which made Plaintiff work through her meal break, or her meal breaks were
9 shortened and/or interrupted due to workload and shortage of relief. Further, Defendants' policies and
10 practices regarding work conditions and expectations for their non-exempt employees caused Plaintiff
11 to miss one or more rest breaks, or receive late rest breaks. Plaintiff was not paid premiums for missed
12 or late meal and rest breaks. Furthermore, Plaintiff was nor reimbursed for business-related expenses,
13 nor paid for overtime wages owed. As a result, Plaintiff was not paid timely wages at the termination of
14 their employment. Additionally, Plaintiff's wage statements were not properly itemized to reflect all
15 hours worked and premium wages owed.

16 7. Defendants are headquartered in Fresno, California and have locations throughout
17 California. Defendants employed Plaintiff at their Saint Agnes Medical Center in Fresno, California,
18 and employ/employed other Patient Access Representatives/Patient Registrants, and other non-exempt,
19 hourly-paid employees with similar job duties and/or job titles s throughout California.

20 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
21 Defendants sued herein as DOES 1-10, inclusive, are currently unknown to Plaintiff who therefore sues
22 Defendants by such fictitious names under Cal. Code Civ. Proc. §474. Plaintiff alleges that each of the
23 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
24 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
25 and capacities of the Defendants designated hereafter as DOES when such identities become known.

26 9. Plaintiff alleges that each Defendant acted in all respects pertinent to this action as the
27 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
28 hereto, and the acts of each defendant are legally attributable to the other Defendants. Further,

Defendants in all respects acted as the employer and/or joint employer of Plaintiff and other aggrieved employees.

FACTS

10. Between January, 2016 and August, 2019 Plaintiff was employed by Defendants as a non-exempt, hourly-paid Patient Access Representative/Patient Registrant in Fresno, California.

11. In her role as a non-exempt, hourly-paid Patient Access Representative/Patient Registrant Plaintiff's duties included patient data entry; making telephone calls to the patients to register, schedule, or remind of appointments; entering patients demographics, verifying and authorizing patients' insurance; calculating deductibles and collecting co-pays, among other similar duties. Plaintiff was originally assigned to the Administration Department/Patient Service and the Breast Center Department, rotating between the two. However, due to Defendants' shortage of staff, Plaintiff would also perform the above-mentioned duties at several specialty departments such as endoscopy, orthopedics and eye surgery. Plaintiff was scheduled to work 8-hour shifts from Monday to Friday with a variable schedule, starting between 6:45 a.m. and 8:30 a.m. Plaintiff's hourly rate as of August 2019 was approximately \$18.64.

12. During the relevant time period, Defendants failed to provide Plaintiff and other class members with timely and off-duty meal periods, in violation of California law. At the beginning of her employment, Plaintiff's meal breaks were scheduled. However, due to the pressure of business, the schedule was never followed.

13. Due to the high patient flow and staff shortage, it was difficult if not impossible for Plaintiff to take her meal break before the end of the fifth hour of work. Thus, Plaintiff's meal breaks were late.

14. Furthermore, every day at 1:00 p.m. Plaintiff was scheduled for a huddle meeting in the second floor of the building. So, Plaintiff would have to shorten her meal break by at least 5 minutes to have enough time to attend the meeting on time. Notwithstanding, Plaintiff was instructed to record a 30-minute meal break, even though she did not take it.

15. Also, when Plaintiff and class members had been holding calls for over 10 minutes or when Plaintiff and class members had 3 calls on hold, Plaintiff and class members were instructed by

1 their supervisor to delay their break until the calls were managed.

2 16. The press of business and duties imposed on Plaintiff and class members by the
3 Defendants prevented them from taking timely and uninterrupted meal breaks as prescribed by the
4 California law. Plaintiff and other class members were not paid meal period premiums for each day an
5 uninterrupted and timely 30-minute meal break was not provided. This unlawful practice occurred
6 systematically and was always done with the full knowledge and consent of the Defendants.

7 17. Further, Defendants required Plaintiff and class members to be logged into their
8 computer systems to begin fielding calls from patients by the start of their scheduled shifts, before they
9 were allowed to clock in. To be able to do it, Plaintiff and class members had to arrive at their
10 workstations at least 10 minutes before the start of their scheduled shifts. The boot-up process took even
11 on days when Defendants' system was not properly functioning. Plaintiff and class members were not
12 paid for this time.

13 18. Also, after clocking out at the end of their shift, Plaintiff and class members would spend
14 additional 5 to 10 minutes performing duties such as cleaning and setting up the fax and copy machines
15 for the next day. At times, Plaintiff and class members had to take care of patients after clocking-out,
16 which necessitated additional 10 to 15 minutes of work time, off the clock 10 to 15 minutes. When
17 Plaintiff and class members attempted to record their overtime, their managers and/or supervisors would
18 deny overtime due to an alleged failure of obtaining overtime pre-approval. Because pre-approval was
19 often impossible to obtain due to the unpredictability of additional work time, Plaintiffs and other class
20 members had no other choice but to clock out and continue working, off-the-clock. Plaintiff and class
21 members were not paid for this time.

22 19. Additionally, Defendants' policies and practices regarding work conditions and
23 expectations for its non-exempt employees caused Plaintiff and other class members to miss one or
24 more rest breaks, and/or receive late or short rest breaks. There was typically a high patient flow and
25 staff shortage, which prevented Plaintiff from taking uninterrupted rest breaks. Thus, Defendants did not
26 relieve Plaintiff or other class members from their duties, even when their supervisors would see them
27 working through their rest breaks. This unlawful practice occurred systematically and was always done
28 with the full knowledge and consent of the Defendants.

20. Upon information and belief, the above-mentioned unlawful employment practices by Defendants were applied the same to all non-exempt, hourly-paid Patient Access Representatives/Patient Registrants. Plaintiff and class members were not paid for this time throughout Trinity's locations in California.

21. Further, at times, when budget was reached, and Defendants would stop providing office supplies, Plaintiff and class members would have to buy their own supplies, such as pencils, binders and post-it notes, which were necessary for Plaintiff and class members to perform their work duties. Plaintiff and class members were not reimbursed for those necessary business expenses.

22. Defendants' conduct, as alleged here, caused Plaintiff and other class members damages including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the class for failing to pay meal and rest break premiums, failing to pay all straight-time and overtime wages owed for each pay period, failing to reimburse incurred business expenses, failing to provide timely and accurate wage statements, and failing to pay all wages due upon termination, which are violations of California's unfair competition law.

23. Plaintiff is member of, and seeks to be representatives for, the class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under Defendants' unlawful employment practices as alleged in this complaint.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

24. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated, and as members of the Class they seek to represent. The class period is from four years prior to the filing of the Complaint in this action until the trial of this action ("Class Period"). The Class is defined as:

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles employed by Defendants in California during the Class Period.

25. Further, Plaintiff brings this action on behalf of herself and all other similarly situated persons in Subclasses of the Plaintiff's Class, defined as:

a. Meal Period Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient

Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than five hours in a workday.

b. Rest Period Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than three and a half hours in a workday.

c. Regular/Minimum Wage Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift less than eight hours in a workday and/or worked less than 40 hours during the workweek.

d. Overtime Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who worked at least one shift longer than eight hours in a workday and/or worked more than 40 hours during the workweek.

e. Unreimbursed Business Expenses Subclass

All current and former non-exempt, hourly-paid Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period, who incurred business expenses necessary to perform their job duties for which they were not reimbursed.

Itemized Wage Statement Subclass

All current and former non-exempt, Patient Access Representatives/Patient Registrants, including positions with similar duties and/or job titles, employed by Defendants in California during the Class Period who received at least one wage statement from Defendants within the statute of limitations period applicable to claims under Section 226 of the California Labor Code.

f. Waiting Time Penalties Subclass

1 All members of the Class and Subclasses (a) through (d) who separated employment with the
2 Defendants within the statute of limitations period applicable to claims under Section 203 of the
3 California Labor Code.

4 **g. UCL Subclass**

5 All current and former non-exempt, hourly-paid Patient Access Representatives/Patient
6 Registrants, including positions with similar duties and/or job titles, employed by Defendants in
7 California during the Class Period, regarding whom Defendants have engaged in unlawful, unfair
8 and/or fraudulent business acts or practices prohibited by Business & Professions Code § 17200
9 *et. seq.* as specifically described herein.

10 26. Plaintiff reserves the right to amend or otherwise alter the class definition, or to propose
11 or eliminate subclasses, in response to facts learned through discovery, legal arguments advanced by
12 Defendants or otherwise.

13 27. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous
14 that individual joinder is unfeasible and impracticable. Plaintiff estimates, on information and belief, that
15 there are hundreds of current and former non-exempt, hourly-paid Patient Access
16 Representatives/Patient Registrants, including individuals holding positions with similar duties and/or
17 job titles, Defendants employed, or formerly employed, at Defendants' locations in California during the
18 Class Period. The identity of individuals qualifying for class membership is readily ascertainable via
19 inspection of the personnel records and other documents maintained by Defendants in the normal course
20 of business. Class members may be notified of the pendency of this action by mail, electronic mail, the
21 Internet, or published notice.

22 28. **Commonality and Predominance:** Common questions of law and fact exist as to all
23 members of the Class. These questions predominate over any questions affecting only individual class
24 members such that a class action is superior to other forms of action. The claims of the named Plaintiff
25 are typical of those of every other member of the Plaintiff Class. All Class Members were treated in a
26 similar fashion and suffered similar harm as a consequence of Defendants' conduct, as alleged. Common
27 legal and factual questions include, but are not limited to:

28 a. Whether Defendants has a policy or practice of not paying meal or rest period premium

- 1 wages;
- 2 b. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a pattern or
- 3 practice of failing to provide timely, off-duty meal periods to Plaintiff and class members;
- 4 c. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
- 5 of the class from taking statutory off-duty meal periods on a timely basis;
- 6 d. Whether Defendants engaged in a pattern or practice of failing to properly compensate
- 7 Plaintiff and the members of the class for missed, untimely or on-duty meal periods as
- 8 required by California law;
- 9 e. Whether Defendants violated Labor Code §510, 1194, 1194. 2, 1197, 1198 and the applicable
- 10 California Industrial Welfare Commission Order by failing to pay Plaintiff and class
- 11 members minimum, regular and overtime wages.
- 12 f. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and class
- 13 members necessary business-related expenses and costs.
- 14 g. Whether Defendants violated the applicable California Industrial Welfare Commission Order
- 15 by failing to provide Plaintiff and the members of the class with timely off-duty meal
- 16 periods;
- 17 h. Whether Defendants engaged in unfair practices and violated California Business and
- 18 Professions Code § 17200 by failing to provide Plaintiff and the members of the class with
- 19 their statutory off-duty meal and rest periods on a timely basis;
- 20 i. Whether Defendants engaged in unfair practices and violated California Business and
- 21 Professions Code § 17200 by failing to pay Plaintiff and the members of the class for all time
- 22 worked, including overtime;
- 23 j. Whether Defendants maintained accurate time records of off-duty meal breaks taken by
- 24 Plaintiff and members of the class in accordance with the applicable IWC Wage Order;
- 25 k. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
- 26 statements to Plaintiff and members of the class that failed to include payments for missed,
- 27 untimely, and/or on-duty meal periods among wages earned throughout the Class period;
- 28 l. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage

statements to Plaintiff and members of the class that failed to include payment for all hours worked, including overtime;

m. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiff and members of the class that failed to accurately state the total hours worked, to the detriment of Plaintiff and the class;

n. Whether Defendants failed to compensate, and therefore violated Labor Code § 226.7 and the applicable Wage Order by failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;

o. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the class for failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;

p. Whether Defendants violated Labor Code § 1197 due to failure to compensate Plaintiff and members of the class for those acts Defendants required Plaintiff and members of the class to perform for the benefit of Defendants;

q. Whether Defendants violated Labor Code § 201-203 by failing to pay all wages due upon termination to all Class members who were terminated or voluntarily quit; and

r. The nature and extent of class-wide injury and the measure of damages or restitution for the injury.

29. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class she seeks to represent because Plaintiff, as non-exempt, hourly paid Patient Access Representative/Patient Registrant employed by Defendants, was exposed and subjected to the same unlawful business practices and conduct as other non-exempt, hourly paid Patient Access Representatives/Patient Registrants employed by Defendants during the class period. Named Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the members of the class and are based on the same legal theories. Plaintiff and the members of the class she seeks to represent sustained the same types of damages and losses.

30. **Adequacy:** Plaintiff is adequate representative of the class she seeks to represent because

her interests do not conflict with the interests of the members of the class Plaintiff seeks to represent. There is a well-defined community of interest in the questions of law and fact affecting the class of persons that Plaintiff represents as a whole. Plaintiff retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Neither Plaintiff nor her attorneys have any interests contrary to or in conflict with the Class. The interests of the members of the class will be fairly and adequately protected by Plaintiff and her counsel.

31. Plaintiff does not anticipate any difficulty managing this litigation.

32. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiff's and the Class members' claims. Individual employees such as Plaintiff have a difficult time prosecuting an individual action against large corporate employers such as Defendants. The damages suffered by each individual class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

33. The Class should also be certified because:

- a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- c. Defendants acted or refused to act on grounds generally applicable to the Class,

and/or the general public, thereby making appropriate final and injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)
(Against all defendants)

34. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

35. California Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission”.

36. IWC Order No. 7-2001(11)(A) provides, in pertinent part: “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

37. § 512(a) of the California Labor Code provides, 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

38. As alleged herein, Defendants failed to authorize and permit timely and uninterrupted meal periods during the Class Period. Plaintiff and members of the class were routinely required to work without a timely and uninterrupted meal break at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

39. By its actions in requiring its employees to work through meal periods and/or its failure to relieve the employees of their duties for their off-duty meal periods, Defendants have violated

1 California Labor Code §§ 226.7, 512 and the applicable Wage Order , and are liable to Plaintiff and the
2 class.

3 40. As a result of the unlawful acts of Defendants, Plaintiff and the class have been deprived
4 of timely off-duty meal periods and are entitled to recovery under Labor Code §§ 226.7(c), 512 and the
5 applicable Wage Order, in the amount of one additional hour of pay at the employee's regular rate of
6 compensation for each workday in which Defendants failed to provide its employees with timely
7 statutory off-duty meal periods.

8 41. Plaintiff, and the other members of the class, are entitled to seek and recover reasonable
9 attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

10
11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PROVIDE REST PERIODS**
(Violation of Labor Code §§ 226.7 and the applicable Wage Order)
(Against all defendants)

13 42. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

14 43. California Labor Code § 226.7(b) provides, "An employer shall not require an employee
15 to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare
16 Commission".

17 44. IWC Order No. 5-2001(12)(A) provides, in pertinent part: "[e]very employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
19 middle of each work period. The authorized rest period time shall be based on the total hours worked
20 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a
21 rest period need not be authorized for employees whose total daily work time is less than three and one-
22 half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be
23 no deduction from wages".

24 45. IWC Order No. 5-2001(12)(B) further provides: "[i]f an employer fails to provide an
25 employee with a rest period in accordance with the applicable provisions of this order, the employer
26 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
27 workday that the rest period is not provided".
28

1 46. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class
2 Period. Plaintiff and members of the class were routinely required to work through rest periods at the
3 direction of Defendants and/or with Defendants' knowledge and acquiescence.

4 47. By its actions in requiring its employees during the class period to work through rest
5 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendants
6 violated the Wage Order and California Labor Code § 226.7 and are liable to Plaintiff and the class.

7 48. Defendants' unlawful conduct alleged herein occurred in the course of employment of
8 Plaintiff and all others similarly situated and such conduct has continued through the filing of this
9 complaint.

10 49. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the class
11 have been deprived of timely rest periods and/or were not paid for rest periods taken during the Class
12 period and are entitled to recovery under Labor Code § 226.7(c) in the amount of one additional hour of
13 pay at the employee's regular rate of compensation for each workday in which Defendants failed to
14 provide employees with timely and/or paid rest periods.

15 50. Plaintiff, and the other members of the class, are entitled to seek and recover reasonable
16 attorneys' fees and costs pursuant to Labor Code §§ 226.7.

17
18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO PAY MINIMUM/REGULAR WAGES**
20 **(Violation of Labor Code § 1194, 1194. 2, 1197, 1198, and the applicable Wage Order)**
21 **(Against all defendants)**

22 51. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

23 52. California Labor Code § 1194(a) provides, "...any employee receiving less than the legal
24 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a
25 civil action the unpaid balance of the full amount of this minimum wage or overtime compensation,
26 including interest thereon, reasonable attorneys' fees, and costs of suit."

27 53. Labor Code § 1197 provides, "the minimum wage for employees fixed by the
28 commission or by any applicable state or local law, is the minimum wage to be paid to employees, and
the payment of a lower wage than the minimum so fixed is unlawful."

1 54. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
2 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
3 for employees. The employment of any employee for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.”

5 55. IWC Wage Order 5-2001(2)(G) defines hours worked as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is suffered or
7 permitted to work, whether or not required to do so.”

8 56. IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than
9 the applicable minimum wage for all hours worked.

10 57. Pursuant to the IWC Wage Order, Defendants is required to pay Plaintiff, and the
11 members of the Class, for all hours worked, meaning the time which an employee is subject to the
12 control of the employer.

13 58. At all relevant times during the class period, Defendants failed to pay Plaintiff and other
14 members of the class wages for all hours worked.

15 59. Defendants failed to pay Plaintiff and other members of the class for all hours worked
16 including the time spent working before and after their shifts, while attending meetings and/or
17 participating in telephone calls with patients, and while on meal and rest breaks.

18 60. Pursuant to Labor Code § 1194.2, liquidated damages are available to employees who file
19 an action under Labor Code § 1194, which Plaintiff and members of the class seek.

20 61. In committing the violations of state law as herein alleged, Defendants have knowingly
21 and willfully refused to perform their obligations to compensate Plaintiff and members of the class for
22 all wages earned and all hours worked at least minimum wage. As a direct result, Plaintiff and other
23 members of the class have suffered, and continue to suffer, substantial losses related to the use and
24 enjoyment of such compensation, wages and lost interest on such monies and expenses and attorney’s
25 fees in seeking to compel Defendants to fully perform their obligation under state law, all to their
26 respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

27 62. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of unpaid
28 wages resulting from Defendants’ minimum wage violations including interest thereon, reasonable

1 attorney's fees and costs of suit, and liquidated damages to the fullest extent permissible pursuant to
2 Labor Code §§ 1194 and 1194.2.

3 **FOURTH CAUSE OF ACTION**
4 **FAILURE TO PAY OVERTIME WAGES**
5 **(Violation of Labor Code § 510, 1194, 1198, and the applicable Wage Order)**
6 **(Against all defendants)**

7 63. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

8 64. Labor Code § 510 and the applicable Wage Order provide that employees in California
9 shall not be employed more than eight hours in any workday or forty hours in a workweek unless they
10 receive additional compensation beyond their regular wages in amounts specified by law. Specifically,
11 Labor Code § 510(a) requires that: Any work in excess of eight hours in one workday and any work in
12 excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
13 any one workweek shall be compensated at the rate of no less than one and one-half times the regular
14 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate
15 of no less than twice the regular rate of pay for an employee.

16 65. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
17 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code
18 §1198 makes employment of an employee for longer hours than the IWC set or under conditions the
19 IWC prohibits unlawful.

20 66. During the class period, Plaintiff and other class members have worked more than eight
21 hours in a workday, and/or more than forty hours in a workweek.

22 67. During the class period, Defendants has failed to pay Plaintiff, and other class members
23 the overtime compensation premium for those unpaid hours they have worked in excess of the
24 maximum hours permissible by law as required by Labor Code § 510 and 1198, and the applicable
25 Wage Order.

26 68. By virtue of Defendants' unlawful failure to pay the lawful overtime rate of
27 compensation to the Plaintiff and other class members, Plaintiff and other class members have suffered,
28 and will continue to suffer, damages in amounts which are presently unknown to them, but which
exceed the jurisdictional limits of this Court and will be ascertained according to proof at trial.

69. Defendants acted and are acting intentionally and oppressively toward Plaintiff and other class members with a conscious disregard of their rights, or the consequences to them, with the intent of depriving them of property and legal rights and otherwise causing them injury. Defendants failed to pay Plaintiff and other class members for all hours worked including the time spent working through meal periods and performing off-the-clock work. To the extent this time worked exceeded eight (8) hours in a day and/or forty (40) hours in a week, Plaintiff and class members are entitled to overtime wages.

70. Plaintiff and other class members request recovery of overtime compensation according to proof, interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil Code §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES
(Violation of Labor Code § 2802)
(Against all defendants)

71. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

72. California Labor Code section 2802 provides that an employer must reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties..."

73. At all relevant times during the class period, Plaintiff and other members of the class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendant, including, but not limited to office supplies that Defendants refused to provide.

74. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related expenses and costs. Defendant's conduct violates California Labor Code Section 2802.

75. Plaintiffs and class members are entitled to recover from Defendant their business-related expenses incurred during the course and scope of their employment, plus interest, pursuant to California Labor Code section 2802.

SIXTH CAUSE OF ACTION
FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS

**(Violation of Labor Code §226)
(Against all defendants)**

76. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

77. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of her or her social security number, [...], (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”.

78. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period.

79. Plaintiff is informed, believes and thereon alleges that at all times relevant, Defendants knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to furnish Plaintiff and each Class member with timely and accurate itemized statements showing all applicable hourly rates in effect and corresponding number of hours worked, and gross and net wages earned by Plaintiff and each Class member, as required by Labor Code § 226(a).

80. Defendants’ failure to provide Plaintiff and members of the Class with accurate itemized wage statements during the Class period has caused Plaintiff and members of the Class to incur economic damages in that they were not aware that they were owed and not paid compensation for all hours worked. In addition, Defendants provided inaccurate information regarding hours worked, which masked its underpayment of wages to Plaintiff and the Class.

1 81. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
2 and members of the Class in violation of Labor Code § 226(a), Plaintiff and the members of the Class
3 are each entitled to recover actual damages or penalties pursuant to § 226(e) of the Labor Code.

4
5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
7 **(Violation of Labor Code §§ 201-203)**
8 **(Against all defendants)**

9 82. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

10 83. California Labor Code §§ 201-203 provide that if an employer discharges an employee,
11 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
12 employee voluntarily leaves his or her employment, his or her wages shall become due and payable not
13 later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice
14 of his or her intention to quit in which case the employee is entitled to her or her wages at the time of
15 quitting.

16 84. During the Class period, Defendants willfully failed to pay Plaintiff and Class members
17 who are no longer employed by Defendants all their earned wages, specifically, meal and rest period
18 premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked,
19 either at the time of discharge or within seventy-two hours of their leaving Defendants' employ in
20 violation of California Labor Code §§ 201, 202, and 203.

21 85. Therefore, Plaintiff and members of the Class are entitled to waiting time penalties for
22 each day that has passed that they have not received all wages owed to them, up to 30 days.

23 **EIGHTH CAUSE OF ACTION**
24 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
25 **(Violation of California's Unfair Competition Law,**
26 **Bus. & Prof. Code § 17200 et seq.)**
27 **(Against all defendants)**

28 86. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

 87. § 17200 of the California Business and Professions Code (the "UCL") prohibits any
unlawful, unfair, or fraudulent business practices.

 88. Through its action alleged herein, Defendants has engaged in unfair competition within

1 the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or
2 fraudulent business practices under the UCL.

3 89. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
4 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
5 to pay Class members wages and compensation they earned through labor provided, and failing to
6 otherwise compensate Class members for non-compliant meal and rest periods as alleged herein.
7 Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false
8 and/or misleading information about the time the Class members worked and the amount of wages or
9 compensation due.

10 90. Plaintiff has standing to assert this claim because she has suffered injury in fact and has
11 lost money as a result of Defendants' conduct.

12 91. Plaintiff and the Class seek restitutionary disgorgement from Defendants of monies owed
13 for all hours worked and for unpaid meal and rest period premiums, and unreimbursed business
14 expenses.

15 92. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
16 specified here by suing on behalf of herself and other similarly situated Class members previously or
17 presently working for Defendants in California. Plaintiff's success in this action will enforce important
18 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the
19 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to
20 Code of Civil Procedure section 1021.5.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, pray for judgment
23 against Defendants as follows:

- 24 A. An order that this action may proceed and be maintained as a class action;
- 25 B. For one hour of wages due to Plaintiff and each Class member for each work period of more
26 than three and one-half (3 ½) hours when they did not receive an uninterrupted ten (10)
27 minute rest period for each four (4) hours or major fraction thereof worked;
- 28 C. For one hour of wages due to Plaintiff and each Class member for each work period of more

- 1 than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
- 2 D. For all minimum, straight-time and overtime wages owed to Plaintiff and each Class member
- 3 for all hours worked.
- 4 E. For reimbursement of necessary business-related expenses and costs incurred and due to
- 5 Plaintiff and each Class member.
- 6 F. For actual damages or statutory penalties under Labor Code § 226(e);
- 7 G. For waiting time penalties pursuant to Labor Code § 203
- 8 H. For liquidated damages pursuant to Labor Code § 1194.1
- 9 I. For restitutionary disgorgement pursuant to the UCL;
- 10 J. Prejudgment interest at the maximum legal rate;
- 11 K. Reasonable attorney's fees;
- 12 L. General, special and consequential damages, to the extent allowed by law;
- 13 M. Costs of suit;
- 14 N. For attorneys' fees pursuant to Code of Civil Procedure §1021.5; and
- 15 O. Such other equitable relief as the Court may deem just and proper.

16 Dated: February 25, 2020

THE MARKHAM LAW FIRM

17 By: _____

18 David R. Markham

19 Maggie Realin

20 Lisa Brevard

UNITED EMPLOYEES LAW GROUP

21 Walter L. Haines

22 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: February 25, 2020

THE MARKHAM LAW FIRM

By: _____
David R. Markham
Maggie Realin
Lisa Brevard

UNITED EMPLOYEES LAW GROUP
Walter L. Haines

Attorneys for Plaintiff

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Saint Agnes Medical Center
Attn: Legal Department
1303 East Herndon Ave.
Fresno, CA 93720



9590 9402 4285 8190 1711 85

2. Article Number (Transfer from service label)

7018 0680 0001 2632 9922

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Fresno, CA 93720
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PS Form 3800, April 2015 PSN 7530-02-000-9047

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1. Article Addressed to:

CT Corporation System
Agent for Service of Process
for Saint Agnes Medical Center
and Trinity Health Corporation
818 West Seventh St., Suite 930
Los Angeles, CA 90017



9590 9402 4285 8190 1712 08

2. Article Number (Transfer from service label)

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Postage

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Total Postage and Fees

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City, State, ZIP+4®

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1. Article Addressed to:

Trinity Health Corporation
20555 Victor Parkway
Livonia, MI, 48152



9590 9402 4285 8190 1711 92

2. Article Number (Transfer from service label)

7019 0140 0000 4808 7951

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John Glovatsky

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Postage

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Total Postage and Fees

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