

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
9880 Research Drive, Suite 800
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff ROSANIEVES MORAN,
individually and on behalf of all others similarly situated
***Additional Counsel Listed Below

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROSANIEVES MORAN, SHALIECIA
WILLIAMS, and MARY CANTERBURY
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SHARP HEALTHCARE, a California
Corporation; and DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/14/2022 at 03:58:00 PM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

Case No. 37-2019-00050203-CU-OE-CTL
Consolidated with Case No. 37-2021
00041988-CU-OE-CTL

HON. RICHARD S. WHITNEY

**THIRD AMENDED
CONSOLIDATED COMPLAINT**

**PLAINTIFF MORAN'S INDIVIDUAL
CLAIMS FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 5-2001
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226

CLASS CLAIMS FOR:

6. Failure to Pay Minimum Wages In Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1
7. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510
8. Failure to Provide Required Meal Periods Violations of Cal. Lab. Code §§ 226.7 & 512 and The Applicable IWC

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- Wage Order;
9. Failure to Provide Required Rest Periods Violations of Cal. Lab. Code §§ 226.7 & 512 and The Applicable IWC Wage Order
 10. Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226
 11. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
 12. Violation of Business & Professions Code § 17200, et seq.
 13. Civil Penalties Pursuant to Private Attorney General Act of 2004 (“PAGA)
 14. Retaliation in Violation of Labor Code § 1102.5 et seq.

DEMAND FOR JURY TRIAL

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State

4 Bar#205975) Aparajit Bhowmik

(State Bar #248066)

5 Nicholas J. De Blouw (State Bar

#280922) 2255 Calle Clara

6 La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-

1232 Website:

7 www.bamlawca.com

8 Attorneys for Plaintiffs SHALIECIA WILLIAMS and MARY CANTERBURY

1 Plaintiffs ROSANIEVES MORAN, SHALIECIA WILLIAMS, and MARY
2 CANTERBURY (“Plaintiffs”), individually and on behalf of all others similarly situated
3 (hereinafter collectively referred to as the “Class” or “Class Member”), hereby files this Complaint
4 against Defendants, SHARP HEALTHCARE, a California Corporation, and DOES 1-50,
5 inclusive (collectively “Defendants”) and alleges on information and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

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

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders 5-2001, CCP, California Civil Code
24 (“CC”) and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or
27 omissions alleged herein took place in this County.

II. PARTIES

6. Plaintiff, ROSANIEVES MORAN, was at all times relevant to this action, a resident of Chula Vista, California. Plaintiff was employed by Defendants in approximately August 2008 as a Medical Assistant at Defendants' Chula Vista, California and San Diego, California healthcare facilities until her separation from Defendants' employ in approximately March 2019.

7. Plaintiff SHALIECIA WILLIAMS has been employed by Defendant in California since 2014 and has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. Plaintiff MARY CANTERBURY has been employed by Defendant in California since 2007 and has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. Defendants SHARP HEALTHCARE, own and operate as a healthcare facility throughout Southern California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last four years.

10. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

11. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy

1 in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other
2 defendants.

3 **III. CLASS ACTION SCOPE**

4 12. Plaintiffs bring this action individually and on behalf of all others similarly
5 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class
6 are defined as follows:

7 All persons who are employed or have been employed by Defendants as Non-Exempt
8 Employees or equivalent positions, however titled but excluding any non-exempt
9 employees working as registered nurses covered by a collective bargaining agreement, in
10 the state of California within four (4) years from the filing of the Complaint in this action
until its resolution (collectively referred to as the “Class” or “Plaintiff’s Class” “California
Class Members” or “Class Members”).

11 13. Plaintiff also seeks to represent the subclass(es) composed of and defined as
12 follows:

13
14 **Sub-Class 1:** All Class Members who are or were employed by Defendants within three
15 (3) years from the filing of the Complaint (hereinafter collectively referred to as the
“California Labor Subclass”).

16 **Sub-Class 2:** All Class Members who are or were employed by Defendants from February
17 22, 2020 until the resolution of the Action (hereinafter collectively referred to as the
“Williams California Labor Subclass”).

18 14. Plaintiffs reserve the right under California Rule of Court 3.765(b) and other
19 applicable laws to amend or modify the class definition with respect to issues or in any other
20 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

21 15. The term “Class” includes Plaintiffs and all members of the Class and each of
22 the Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set
23 forth in this complaint.

24 16. There is a well-defined community of interest in the litigation and the proposed
25 Class is easily ascertainable through the records Defendants are required to keep.

26 17. Numerosity. The members of the Class are so numerous that individual joinder
27 of all of them as plaintiffs is impracticable. While the exact number of the Class members is
28 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there

1 are at least 100 (one hundred) Class members.

2 18. Commonality. Common questions of law and fact exist as to all Class members
3 and predominate over any questions that affect only individual members of the Class. These
4 common questions include, but are not limited to:

5 i. Whether Defendants failed to accurately compensate Plaintiffs and Class
6 Members minimum and overtime wages pursuant to Labor Code sections 1194 and 510;

7 ii. Whether Defendants failed to provide meal periods and rest periods
8 pursuant to Labor Code section 226.7 and 512;

9 iii. Whether Defendants failed to provide accurate itemized wage statements
10 pursuant to Labor Code section 226;

11 iv. Whether Defendants failed to reimburse Plaintiff and Class Members for
12 necessary business expenses incurred as a result of the discharge of their duties pursuant to Labor
13 Code section 2802;

14 v. Whether Defendants violated Business and Professions Code and Labor
15 Code sections 2802 and applicable IWC Wage Orders 5-2001 which violation constitutes a
16 violation of fundamental public policy; and

17 vi. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
18 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

19 19. Typicality. Plaintiff's claims herein alleged are typical of those claims which
20 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
21 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
22 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
23 of and caused by Defendants' common course of conduct in violation of California laws,
24 regulations, and statutes as alleged herein.

25 20. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
26 interests of each member of the Class and/or Subclass with whom he has a well defined
27 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
28 obligation to make known to the Court any relationships, conflicts, or differences with any

1 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
2 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
3 settlement and experienced in handling such matters. Other former and current employees of
4 Defendants may also serve as representatives of the Class and Subclass if needed.

5 21. Superiority. A class action is superior to other available means for the fair and
6 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
7 court. Class action treatment will allow a large number of similarly situated persons to prosecute
8 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
9 duplication of effort and expense that numerous individual actions would require. The damages
10 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
11 and the expense and burden of individual litigation would make it extremely difficult or
12 impossible for the individual Class Members to seek and obtain individual relief. A class action
13 will serve an important public interest by permitting such individuals to effectively pursue
14 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
15 or contradictory judgments raised by individual litigation.

16 22. Public Policy Considerations: Employers in the state of California violate
17 employment and labor laws everyday. Current employees are often afraid to assert their rights out
18 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
19 they believe their former employers may damage their future endeavors through negative
20 references and/or other means. The nature of this action allows for the protection of current and
21 former employees' rights without fear or retaliation or damage.

22 23 **IV. FACTUAL INDIVIDUAL ALLEGATIONS AS TO PLAINTIFF MORAN**

24 23. During the relevant time frame, Defendants compensated Plaintiffs based upon an
25 hourly rate.

26 24. Plaintiffs frequently worked well over eight (8) hours in a day and forty (40) hours
27 in a work week.

28 25. Plaintiffs typically worked five days a week with shifts that began at approximately

1 7:30 a.m. and typically concluded at 4:30 p.m.

2 26. Plaintiffs were not compensated for all time worked as Defendants would round
3 her times to only reflect her scheduled start and end times. For instance, Defendants' management
4 would permit Plaintiff to clock in 15-20 minutes prior to her scheduled start times i.e. 7:15 a.m. or
5 7:10 a.m. However, Defendants would not count the 15-20 minutes of time and would round
6 Plaintiff's time to only reflect her scheduled start times. Further, Defendants would also round
7 Plaintiff's times when clocking out at the end of the day and would not include the times Plaintiff
8 would spend working past her scheduled shifts. This policy resulted in Plaintiff being subjected to
9 Defendants' unlawful rounding policy. Defendants' implemented unlawful rounding policy
10 consistently resulted in a failure to pay employees for the time worked while under the control of
11 Defendants. Defendants' rounding policy over time resulted on a large and disproportionate
12 underpayment of wages including overtime wages to Plaintiff..

13 27. Plaintiffs were caused to endure unprovided, untimely, interrupted meal periods of
14 at least thirty (30) minutes for many of the work days such employees worked more than six hours
15 (6) hours, were not provided uninterrupted second meal periods of at least thirty (30) minutes for
16 any work days such employees worked more than ten (10) hours, and were not paid one (1) hour
17 of wages by Defendants in lieu thereof, all in violation of the California Labor Code.

18 28. Plaintiffs were regularly required to work in excess of six (6) hours per day
19 without Defendants providing them a timely, uninterrupted (30) minute meal period as mandated
20 under the California Labor Code and the implementing rules and regulations of the IWC
21 California Wage Orders. Plaintiffs were not provided lawful meal periods and were not provided
22 with one hour of wages in lieu thereof under Defendants' policies and practices, which included
23 work schedules placed upon Plaintiff from Defendants' management and supervisors to perform
24 work at the expense of her meal periods and Defendants' implementation of a shift schedule and
25 workload requirements that denied Plaintiffs all of their authorized meal periods, including second
26 meal periods on shifts when she worked over ten (10) hours in a day. Plaintiff was often required
27 to work through her lunch breaks or to cut her lunch breaks short due to being understaffed and in
28 order to help doctors with patients. Plaintiff did not waive any of her authorized and required meal

1 periods, nor did she receive one hour of regular pay for each day Defendants failed to provide a
2 lawful meal period.

3 29. On information and belief, Defendants also automatically deducted 30 minutes of
4 time from Plaintiffs to reflect that a lawful meal period was taken, when in fact such meal periods
5 were never provided, short, and/or interrupted also resulting in Defendants' failure to pay wages
6 including overtime.

7 30. Plaintiffs were consistently required to work in excess of four (4) hours (or major
8 fraction thereof) without receiving lawful ten (10) minute rest periods. On information and belief,
9 Defendants' management would combine her lunch breaks and rest breaks together and would
10 therefore not be permitted an authorized the appropriate number of rest breaks. Plaintiff was also
11 not provided with one hour wages in lieu thereof. Defendants' policies and practices included
12 Defendants' implementation of a work schedule and workload requirements that denied and failed
13 to provide Plaintiff all of her authorized rest periods, including first rest periods of at least ten
14 (10) minutes for every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and
15 second rest period of at least ten (10) minutes for every shift worked greater than six (6) hours,
16 and a third rest period of at least ten (10) minutes for every shift worked in excess of ten (10)
17 hours. Plaintiffs were often required to forego her rest breaks due to being understaffed and in
18 order to help doctors with patients. Plaintiff did not waive any of her authorized and required meal
19 periods, nor did she receive one hour of regular pay for each day Defendants failed to provide a
20 lawful rest period.

21 31. Defendants did not fully compensate Plaintiffs for hourly wages during the liability
22 period, including by virtue of the fact that Defendants did not compensate Plaintiffs with one extra
23 hour of pay for Defendants' failure to provide such Non-Exempt Employees with each of their
24 authorized rest periods and meal periods during the rest and meal period liability period.

25 32. Upon information and belief, Defendants failed to provide accurate itemized wage
26 statements to Plaintiff as the wage statements provided failed to accurately account for all hours
27 worked. Further, Defendants failed to provide accurate wage statements as Defendants' wage
28 statements do not identify premium pay as required by Labor Code § 226.

1 33. Defendants also failed to timely pay all wages due and owing to Plaintiff in
2 accordance with Labor Code §§ 201-203.

3 **V. FACTUAL CLASS ALLEGATIONS**

4 34. Plaintiffs are informed and believe Class Members have at all times pertinent
5 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
6 rules and regulations of the IWC California Wage Orders.

7 35. On information and belief, all Class Members are California citizens.

8 36. Defendants continue to employ Non-Exempt Employees, however titled, in
9 California and implement a uniform set of policies and practices to all non-exempt employees, as
10 they were all engaged in the generic job of providing healthcare services to patients.

11 37. Plaintiffs are informed and believe, and thereon alleges, that Defendants are and
12 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
13 of the requirements of California's wage and employment laws.

14 38. Pursuant to the Industrial Welfare Commission Wage Orders, Defendant was
15 required to pay Plaintiffs and Class Members for all their time worked, meaning the time during
16 which an employee is subject to the control of an employer, including all the time the employee
17 is suffered or permitted to work. Defendants required Plaintiffs and Class Members to work
18 without paying them for all the time they were under Defendant's control Specifically,
19 Defendants required Plaintiffs to work while clocked out during what was supposed to be
20 Plaintiffs' off-duty meal break. Plaintiffs were from time to time interrupted by work assignments
21 while clocked out for what should have been Plaintiffs' off-duty meal break. Plaintiffs and Class
22 Members also worked off the clock with respect to time spent undergoing mandatory drug
23 testing or any other testing and/or examination required as a condition of employment.
24 Additionally, before clocking in, Plaintiffs and Class Members, were required to wait in-line for a
25 COVID-19 screening, one which included an on-line questionnaire about their current set of
26 symptoms before being each employee was scanned and screened for a fever. Plaintiffs were not
27 allowed to clock in until this process was completed. Also, Defendant, as a matter of established
28 company policy and procedure administered a uniform practice of rounding the actual time

1 worked and recorded by Plaintiffs and Class Members, always to the benefit of Defendant that
2 during the course of their employment, Plaintiffs and Class Members were paid less than they
3 would have been paid had they been paid for actual record time rather than “rounded” time.
4 DEFENDANT’s policy and practice not to pay Plaintiffs and other Class Members for all
5 time worked, is evidenced by Defendant business records. As a result, Defendant failed to pay
6 Plaintiffs and other Class Members the proper minimum and overtime wages. State law provides
7 that employees must be paid overtime and meal and rest break premium pay at one-and-one-half
8 times their “regular rate of pay.” Plaintiffs and other Class Members were compensated at an
9 hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

10 39. The second component of Plaintiffs and other Class Members’ compensation was
11 Defendants’ non-discretionary incentive program that paid Plaintiffs and other Class Members
12 incentive wages based on their performance for Defendants. The non-discretionary incentive
13 program provided all employees paid on an hourly basis with incentive compensation when the
14 employees met the various performance goals set by Defendant. However, when calculating the
15 regular rate of pay in order to pay overtime to Plaintiffs and other Class Members and premiums for
16 meal and rest break violations, Defendant failed to include the incentive compensation as part
17 of the employees’ “regular rate of pay” for purposes of calculating overtime pay and premium
18 pay for meal and rest break violations. As a matter of law, the incentive compensation received
19 by Plaintiffs and other Class Members must be included in the “regular rate of pay.” The
20 failure to do so has resulted in an underpayment of overtime compensation and meal and rest
21 break premium pay to Plaintiffs and other Class Members by Defendant

22 40. Defendant underpaid sick pay wages to Plaintiffs and other Class Members by
23 failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.
24 Specifically, Plaintiffs and other non-exempt employees regularly earn non-discretionary
25 remuneration, including but not limited to incentives, shift differential pay, and bonuses. Rather
26 than pay sick pay at the regular rate of pay, Defendant underpaid sick pay to Plaintiffs and other
27 Class Members at their base rates of pay.

28 41. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt

1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
3 employment.

4 42. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
5 regular rate of pay. Plaintiffs and Class Members routinely earned non-discretionary incentive
6 wages, including but not limited to, incentives, shift differential pay, and bonuses, which increased
7 their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for
8 Plaintiffs and members of the Class, as opposed to the correct, higher regular rate of pay, as required
9 under Cal. Lab. Code Section 246.

10 43. As a pattern and practice, Defendant regularly failed to pay Plaintiffs and other
11 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to
12 Cal. Lab. Code Section 203. Further, Plaintiffs are informed and believe and based thereon alleges
13 that such failure to pay sick pay at regular rate was willful, such that Plaintiffs and members of the
14 Class whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab.
15 Code Sections 201-203.

16 44. As a result of their rigorous work schedules, Plaintiffs and other Class Members
17 were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully
18 relieved of duty for their meal periods. Plaintiffs and other Class Members were required from
19 time to time to perform work as ordered by Defendant for more than five (5) hours during some
20 shifts without receiving meal break. Further, Defendant from time to time failed to provide
21 Plaintiffs and Class Members with a second off-duty meal period for some workdays in which
22 these employees were required by Defendant to work ten (10) hours of work. Plaintiffs and
23 other members of the Class therefore forfeited meal break without additional compensation and in
24 accordance with Defendant's corporate policy and practice.

25 45. During the applicable time period, Plaintiffs and other Class Members were also
26 required from time to time to work in excess of four (4) hours without being provided ten (10)
27 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
28 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and

1 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
2 (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for
3 some shifts worked of ten (10) hours or more from time to time. Plaintiffs and other Class Members
4 were also not provided with one hour wages in lieu thereof. Additionally, the applicable California
5 Wage Order requires employers to provide employees with off-duty rest periods, which the California
6 Supreme Court defined as time during which an employee is relieved from all work related
7 duties and free from employer control. In so doing, the Court held that the requirement under
8 California law that employers authorize and permit all employees to take rest period means that
9 employers must relieve employees of all duties and relinquish control over how employees
10 spend their time which includes control over the locations where employees may take their rest
11 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -five
12 minutes out, five minutes back. Here, Defendants' policy restricted Plaintiffs and other Class
13 Members from unconstrained walks and was unlawful based on DEFENDANT's rule which stated
14 Plaintiffs and other Class Members could not leave the work premises during their rest period. As a
15 result of Plaintiffs being required to be present on the premises, they were from time to time required
16 by Defendants to work during what should of been their off duty rest period. During the applicable
17 time period, Defendant failed to accurately record and pay Plaintiffs and other Class Members for the
18 actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission
19 Wage Orders, Defendant is required to pay Plaintiffs and other Class Members for all time worked,
20 meaning the time during which an employee was subject to the control of an employer, including
21 all the time the employee was permitted or suffered to permit this work. Defendant required these
22 employees to work off the clock without paying them for all the time they were under Defendant
23 control. Specifically, Plaintiffs worked through their various meal and rest breaks as they were often
24 interrupted by clients and their immediate needs. This work also was done off-the-clock. As such,
25 Defendant knew or should have known that Plaintiffs and the other members of the Class were
26 under compensated for all time worked. As a result, Plaintiffs and other Class Members forfeited
27 time worked by working without their time being accurately recorded and without compensation at
28 the applicable minimum wage and overtime wage rates. To the extent that the time worked off the

1 clock did not qualify for overtime premium payment Defendants failed to pay minimum wages for
2 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

3 46. On information and belief, during the relevant time frame, Defendants failed to
4 adequately reimburse Plaintiff Moran, and Class Members for business expenditures incurred for
5 the use of personal vehicles as Plaintiffs and Class Members would often start their shifts at one of
6 Defendants' healthcare facilities and be sent to another healthcare facility to end their shifts.
7 Plaintiff and Class Members were also required to purchase their scrubs. Such business
8 expenditures incurred were incurred in direct consequence of Plaintiff's and Class Members'
9 duties pursuant to Labor Code § 2802, and yet Defendants failed to reimburse Plaintiff and Class
10 Members for these expenses.

11 47. In the course of their employment Plaintiffs Williams and Canterbury and other Class
12 Members as a business expense, were required by Defendant to use their own personal cellular
13 phones and home offices as a result of and in furtherance of their job duties as employees for
14 Defendant but were not reimbursed or indemnified by Defendants for the cost associated with the
15 use of their personal cellular phones and their home offices for Defendant's benefit. As a result, in
16 the course of their employment with Defendants, Plaintiffs and other members of the Class
17 incurred unreimbursed business expenses which included, but were not limited to, costs related to
18 the use of their personal cellular phones and home offices all on behalf of and for the benefit of
19 Defendant.

20 48. From time to time, Defendant also failed to provide Plaintiffs Williams and
21 Canterbury and the other members of the Class with complete and accurate wage statements which
22 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
23 provides that every employer shall furnish each of his or her employees with an accurate itemized
24 wage statement in writing showing, among other things, gross wages earned and all applicable
25 hourly rates in effect during the payperiod and the corresponding amount of time worked at each
26 hourly rate. Plaintiffs and Class Members were paid on an hourly basis. As such, the wage
27 statements should reflect all applicable hourly rates during the pay period and the total hours
28 worked, and the applicable pay period in which the wages were earned pursuant to California

1 Labor Code Section 226(a)(2). The wage statements Defendant provided to Plaintiffs and other
2 Class Members failed to identify such information. More specifically, the wage statements failed
3 to identify the accurate total hours worked each pay period. When the hours shown on the wage
4 statements were added up, they did not equal the actual total hours worked during the pay period.
5 Aside, from the violations listed above in this paragraph, Defendant failed to issue to Plaintiffs an
6 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As
7 a result, Defendant from time to time provided Plaintiffs and the other members of the
8 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

9 49. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to
10 collect or receive from an employee any part of wages theretofore paid by said employer to said
11 employee.” Defendant fails to pay all compensation due to Plaintiffs and other Class Members,
12 makes unlawful deductions from compensation payable to Plaintiffs Williams and Canterbury and
13 Class Members, fails to disclose all aspects of the deductions from compensation payable to
14 Plaintiffs and Class Members, and thereby fails to pay these employees all wages due at each
15 applicable pay period and upon termination. Plaintiffs and members of the Class seek recovery of
16 all illegal deductions from wages according to proof, related penalties, interest, attorney fees and
17 costs.

18 50. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
19 employment are due and payable twice during each calendar month, on days designated in advance
20 by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly requires
21 employers to pay employees all wages owed within seven (7) days of the close of the payroll
22 period. Defendant from time to time failed to pay Plaintiffs Williams and Canterbury and other
23 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of the
24 payroll period.

25 51. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, Defendant intentionally
27 and knowingly failed to compensate Plaintiffs Williams and Canterbury and the other members of
28 the Class for missed meal and rest periods. This policy and practice of Defendant is intended to

1 purposefully avoid the payment for all time worked as required by California law which allows
2 Defendant to illegally profit and gain an unfair advantage over competitors who complied with the
3 law. To the extent equitable tolling operates to toll claims by the Class against Defendant, the
4 applicable time period should be adjusted accordingly.

5 52. Upon information and belief, Defendants knew and or should have known that it is
6 improper to implement policies and commit unlawful acts such as:

- 7 (a) failing to pay minimum and overtime wages;
- 8 (b) failing to provide meal and rest periods;
- 9 (c) failing to provide accurate itemized wage statements
- 10 (d) failing to timely pay all wages due upon termination
- 11 (e) failing to reimburse business expenses; and
- 12 (f) conducting and engaging in unfair business practices.

13 53. In addition to the violations above, and on information and belief, Defendants knew
14 they had a duty to compensate Plaintiffs and Class Members for the allegations asserted herein and
15 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
16 recklessly, and/or intentionally failed to do so.

17 54. Plaintiffs and Class Members they seek to represent are covered by, and
18 Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare
19 Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding
20 applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

21 **VI. PLAINTIFF MORAN’S INDIVIDUAL CLAIMS**

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

24 **(By Plaintiff Moran Individually Against All Defendants)**

25 55. Plaintiff incorporates and re-alleges each and every allegation contained above as
26 though fully set forth herein.

27 56. At all times relevant, the IWC wage orders applicable to Plaintiff requires
28 employers to pay its employees for each hour worked at least minimum wage. “Hours worked”

1 means the time during which an employee is subject to the control of an employer, and includes
2 all the time the employee is suffered or permitted to work, whether or not required to do so, and in
3 the case of an employee who is required to reside on the employment premises, that time spent
4 carrying out assigned duties shall be counted as hours worked.

5 57. At all relevant times, Labor Code §1197 provides that the minimum wage for
6 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
7 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
8 and Labor Code, Plaintiff is to be paid minimum wage for each hour worked, and cannot be
9 averaged At all times relevant, the IWC wage orders applicable to Plaintiff's employment by
10 Defendants provided that employees working for more than eight (8) hours in a day or forty (40)
11 hours in a work week are entitled to overtime compensation at the rate of one and one-half times
12 the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours
13 in a work week. An employee who works more than twelve (12) hours in a day is entitled to
14 overtime compensation at a rate of twice the regular rate of pay.

15 58. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
16 acting individually as an officer, agent, or employee of another person, who pays or causes to be
17 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
18 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
19 damages payable to the employee, and any applicable penalties pursuant to Section 203.

20 59. Labor Code §510 codifies the right to overtime compensation at the rate of one and
21 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
22 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
23 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
24 seventh day of work in a particular work week.

25 60. At all times relevant, Plaintiff regularly performed non-exempt work and thus were
26 subject to the overtime requirements of the IWC Wage Orders, CCR § 11000, et. seq. and the
27 Labor Code.

28 61. At all times relevant, Plaintiff worked in excess of eight (8) hours in a day and/or

1 forty (40) hours in a week. At all times relevant, Defendants failed to pay all wages and overtime
2 owed to Plaintiff due to the Defendants' unlawful rounding policies. Defendants further failed to
3 pay all wages and overtime as a result of the automatic deduction of 30 minutes for meal periods
4 that were never provided, cut short, and/or interrupted.

5 62. Accordingly, Defendants owe Plaintiff overtime wages, and have failed to pay
6 Plaintiff the overtime wages owed.

7 63. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff is entitled to recover their
8 unpaid wages and overtime compensation, as well as interest, costs, and attorneys' fees

9
10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

12 **(By Plaintiff Moran Individually Against All Defendants)**

13 64. Plaintiff incorporates and re-alleges each and every allegation contained above as
14 though fully set forth herein.

15 65. Pursuant to Labor Code §512, no employer shall employ an employee for a work
16 period of more than five (5) hours without providing a meal break of not less than thirty (30)
17 minutes in which the employee is relieved of all of his or her duties. An employer may not
18 employ an employee for a work period of more than ten (10) hours per day without providing the
19 employee with a second meal period of not less than thirty (30) minutes, except that if the total
20 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
21 consent of the employer and the employee only if the first meal period was not waived.

22 66. Pursuant to the IWC wage orders applicable to Plaintiff's employment by
23 Defendants, in order for an "on duty" meal period to be permissible, the nature of the work of the
24 employee must prevent an employee from being relieved of all duties relating to his or her work
25 for the employer and the employees must consent in writing to the "on duty" meal period. On
26 information and belief, Plaintiff did not consent in writing to an "on duty" meal period. Further,
27 the nature of the work of Plaintiff was not such that they were prevented from being relieved of all
28 duties. Despite the requirements of the IWC wage orders applicable to Plaintiff's employment by

1 Defendants and Labor Code §512 and §226.7, Defendants did not provide Plaintiff with all their
2 statutorily authorized meal periods.

3 67. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
4 provide Plaintiff, timely and uninterrupted meal periods of not less than thirty (30) minutes
5 pursuant to the IWC wage orders applicable to Plaintiff's employment by Defendants. As a
6 proximate result of the aforementioned violations, Plaintiff and has been damaged in an amount
7 according to proof at time of trial.

8 68. By their failure to provide a compliant meal period for each shift worked over five
9 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
10 (10) hours per day by Plaintiff, and by failing to provide compensation in lieu of such non-
11 provided meal periods, as alleged above, Defendants violated the provisions of Labor Code
12 sections 226.7 and 512 and applicable IWC Wage Orders.

13 69. Plaintiff did not voluntarily or willfully waive meal periods and were regularly
14 required to work shifts without being provided all of their authorized meal periods. Defendants
15 created a working environment in which Plaintiff was not provided all of her meal periods due to
16 shift scheduling and/or work related demands placed upon them by Defendants as well as a lack of
17 sufficient staffing to meet the needs of the business place upon the Non-Exempt Employees. On
18 information and belief, Defendants' implemented a policy and practice which resulted in
19 systematic violations of the Labor Code. On information and belief, Defendants' violations have
20 been widespread throughout the liability period and will be evidenced by Defendants' time records
21 for Plaintiff.

22 70. As a result of the unlawful acts of Defendants described herein, Plaintiff has been
23 deprived of premium wages in amounts to be determined at trial. Pursuant to Labor Code §226.7,
24 Plaintiff is entitled to recover one (1) hour of premium pay for each day in which a meal period
25 was not provided, along with interest and penalties thereon, attorneys' fees, and costs.

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

28 **(By Plaintiff Moran Individually Against All Defendants)**

1 71. Plaintiff incorporates and re-alleges each and every allegation contained above as
2 though fully set forth herein.

3 72. Pursuant to the IWC wage orders applicable to Plaintiff's employment by
4 Defendants, "Every employer shall authorize and permit all employees to take rest periods, which
5 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
6 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
7 four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as
8 hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a)
9 prohibits an employer from requiring any employee to work during any rest period mandated by
10 an applicable order of the IWC.

11 73. Defendants were required to authorize and permit employees such as Plaintiff to
12 take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four
13 (4) hours worked, or major fraction thereof, with no deduction from wages. Despite said
14 requirements of the IWC wage orders applicable to Plaintiff's employment by Defendants,
15 Defendants failed and refused to authorize and permit Plaintiff and Class Members, to take ten
16 (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

17 74. On information and belief Defendants created a working environment in which
18 Plaintiff was not provided all of their rest periods due to shift scheduling and/or work related
19 demands placed upon them by Defendants as well as a lack of sufficient staffing to meet the needs
20 of the business place upon the Non-Exempt Employees. On information and belief, Defendants
21 implemented a policy and practice which resulted in systematic and class-wide violations of the
22 Labor Code. On information and belief, Defendants' violations have been widespread throughout
23 the liability period.

24 75. As a proximate result of the aforementioned violations, Plaintiff have been
25 damaged in an amount according to proof at time of trial. Pursuant to Labor Code §226.7,
26 Plaintiff is entitled to recover one (1) hour of premium pay for each day in which Defendants
27 failed to provide a rest period to Plaintiff, plus interest and penalties thereon, attorneys' fees, and
28 costs.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY TIMELY PAY WAGES**

3 **(By Moran Plaintiff Individually Against All Defendants)**

4 76. Plaintiff incorporates and re-alleges each and every allegation contained above as
5 though fully set forth herein.

6 77. Labor Code §§201-202 requires an employer who discharges an employee to pay
7 compensation due and owing to said employee immediately upon discharge and that if an
8 employee voluntarily leaves his or her employment, his or her wages shall become due and
9 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
10 two (72) hours previous notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages on their last day of work.

12 78. Labor Code §203 provides that if an employer willfully fails to pay compensation
13 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
14 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

15 79. During the relevant time period, Defendants willfully failed and refused, and
16 continue to willfully fail and refuse, to pay Plaintiff her wages, earned and unpaid, either at the
17 time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendants'
18 employ. These wages include regular and overtime.

19 80. As a result, Defendants are liable to Plaintiff for waiting time penalties pursuant to
20 Labor Code §203, in an amount according to proof at the time of trial.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

23 **(By Plaintiff Moran Individually Against All Defendants)**

24 81. Plaintiff incorporates and re-alleges each and every allegation contained above as
25 though fully set forth herein.

26 82. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
27 statements all deductions from payment of wages and to accurately report total hours worked by
28 Plaintiff including applicable hourly rates and reimbursement expenses among other things.

1 Defendants have knowingly and intentionally failed to comply with Labor Code section 226 and
2 204 on wage statements that have been provided to Plaintiff.

3 83. IWC Wage Orders require Defendants to maintain time records showing, among
4 others, when the employee begins and ends each work period, meal periods, split shift intervals
5 and total daily hours worked in an itemized wage statement, and must show all deductions and
6 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff. On
7 information and belief, Defendants have failed to record all or some of the items delineated in
8 Industrial Wage Orders and Labor Code §226.

9 84. Defendants have failed to accurately record all time worked.

10 85. Defendants have also failed to accurately record the meal and rest period premiums
11 owed and all wages owed per pay period.

12 86. Plaintiff has been injured as she was unable to determine whether she had been
13 paid correctly for all hours worked per pay period among other things.

14 87. Pursuant to Labor Code section 226, Plaintiff is entitled up to a maximum of
15 \$4,000 each for record keeping violations.

16 88. Pursuant to Labor Code section 266.3, any employer who violates subdivision (a)
17 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
18 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
19 for each violation in a subsequent citation, for which the employer fails to provide the employee a
20 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226

21 89.

22 VII. PLAINTIFFS' CLASS CLAIMS

23 SIXTH CAUSE OF ACTION

24 FOR FAILURE TO PAY MINIMUM WAGES

25 (By Plaintiffs Williams and Canterbury and the Williams California Labor Subclass

26 Against All Defendants)

27 90. Plaintiffs repeat and incorporate herein by reference each and every allegation set
28 forth above, as though fully set forth herein.

1 91. Plaintiffs Williams and Canterbury and the other members of the Williams
2 California Labor Subclass bring a claim for Defendants' willful and intentional violations of the
3 California Labor Code and the Industrial Welfare Commission requirements for Defendants'
4 failure to accurately calculate and pay minimum wages to Plaintiffs Williams and Canterbury and
5 Williams California Labor Subclass Members during the period of time from February 22, 2020
6 until a date to be determined by the Court.

7 92. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
8 policy, an employer must timely pay its employees for all hours worked.

9 93. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage than
11 the minimum so fixed is unlawful.

12 94. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
13 including minimum wage compensation and interest thereon, together with the costs of suit.

14 95. Defendants maintained a wage practice of paying Plaintiffs Williams and
15 Canterbury and the other members of the Williams California Labor Subclass without regard to the
16 correct amount of time they work. As set forth herein, Defendants' policy and practice was to
17 unlawfully and intentionally deny timely payment of wages due to Plaintiffs Williams and
18 Canterbury and the other members of the Williams California Labor Subclass.

19 96. Defendants' unlawful wage and hour practices manifested, without limitation,
20 applicable to the Williams California Labor Subclass as a whole, as a result of implementing a
21 policy and practice that denies accurate compensation to Plaintiffs Williams and Canterbury and
22 the other members of the Williams California Labor Subclass in regards to minimum wage pay.

23 97. In committing these violations of the California Labor Code, Defendants
24 inaccurately calculated the correct time worked and consequently underpaid the actual time
25 worked by Plaintiff Williams and Canterbury and other members of the Williams California Labor
26 Subclass. Defendants acted in an illegal attempt to avoid the payment of all earned wages, and
27 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 98. As a direct result of Defendants' unlawful wage practices as alleged herein,
2 Plaintiffs Williams and Canterbury and the other members of the Williams California Labor
3 Subclass did not receive the correct minimum wage compensation for their time worked for
4 Defendants.

5 99. During the period of February 22, 2020 until the present, Defendant required,
6 permitted or suffered Plaintiffs Williams and Canterbury and Williams California Labor Subclass
7 Members to work without paying them for all the time they were under DEFENDANT's control.
8 During the applicable time period, Plaintiffs Williams and Canterbury and the other members of
9 the Williams California Labor Subclass were paid less for time worked that they were entitled to,
10 constituting a failure to pay all earned wages.

11 100. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
12 to Plaintiffs Williams and Canterbury and the other members of the Williams California Labor
13 Subclass for the true time they worked, Plaintiffs Williams and Canterbury and the other members
14 of the Williams California Labor Subclass have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained according to
16 proof at trial.

17 101. Defendants knew or should have known that Plaintiffs Williams and Canterbury
18 and the other members of the Williams California Labor Subclass were under compensated for
19 their time worked. Defendants elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
21 procedure, and Defendants perpetrated this scheme by refusing to pay Plaintiffs Williams and
22 Canterbury and the other members of the Williams California Labor Subclass the correct minimum
23 wages for their time worked.

24 102. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the Williams California Labor Subclass for all
26 time worked and provide them with the requisite compensation, Defendants acted and continues to
27 act intentionally, oppressively, and maliciously toward Plaintiffs Williams and Canterbury and the
28 other members of the Williams California Labor Subclass with a conscious and utter disregard for

1 their legal rights, or the consequences to them, and with the despicable intent of depriving them of
2 their property and legal rights, and otherwise causing them injury in order to increase company
3 profits at the expense of these employees.

4
5 **SEVENTH CAUSE OF ACTION**

6 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

7 **(By Plaintiffs Williams and Canterbury and the Williams California Labor Subclass**

8 **Against All Defendants)**

9 103. Plaintiffs repeat and incorporate herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 104. Plaintiffs Williams and Canterbury and the other members of the CALIFORNIA
12 LABOR SUB-CLASS bring a claim for Defendants' willful and intentional violations of the
13 California Labor Code and the Industrial Welfare Commission requirements for Defendants'
14 failure to pay these employees for all overtime worked, including, work performed in excess of
15 eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
16 workweek during the period of time from October 1, 2018 until a date to be determined by the
17 Court.

18 105. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
19 policy, an employer must timely pay its employees for all hours worked.

20 106. Cal. Lab. Code § 510 further provides that employees in California shall not be
21 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
22 unless they receive additional compensation beyond their regular wages in amounts specified by
23 law.

24 107. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum wage and overtime compensation and interest thereon, together with the costs
26 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.

28 108. During the applicable time period, Plaintiffs Williams and Canterbury and

1 Williams California Labor Subclass Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
3 including overtime work.

4 109. Defendants' unlawful wage and hour practices manifested, without limitation,
5 applicable to the Williams California Labor Subclass as a whole, as a result of implementing a
6 policy and practice that failed to accurately record overtime worked by Plaintiffs Williams and
7 Canterbury and other Williams California Labor Subclass Members and denied accurate
8 compensation to Plaintiffs Williams and Canterbury and the other members of Williams California
9 Labor Subclass for overtime worked, including, the overtime work performed in excess of eight
10 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
11 workweek. In committing these violations of the California Labor Code, Defendants inaccurately
12 recorded overtime worked and consequently underpaid the overtime worked by Plaintiffs Williams
13 and Canterbury and other Williams California Labor Subclass Members. Defendants acted in an
14 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
15 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
16 and regulations.

17 110. As a direct result of Defendants' unlawful wage practices as alleged herein, the
18 PLAINTIFFS and the other members of the Williams California Labor Subclass did not receive
19 full compensation for overtime worked.

20 111. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to the
22 Plaintiffs Williams and Canterbury and the other members of the Williams California Labor
23 Subclass. Further, Plaintiffs Williams and Canterbury and the other members of the Williams
24 California Labor Subclass were not subject to a valid collective bargaining agreement that would
25 preclude the causes of action contained herein this Complaint. Rather, Plaintiffs Williams and
26 Canterbury bring this Action on behalf of themselves and the Williams California Labor Subclass
27 based on Defendants' violations of non-negotiable, non-waiveable rights provided by the State of
28 California.

1 112. During the applicable time period, Plaintiffs Williams and Canterbury and the
2 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
3 worked that they are entitled to, constituting a failure to pay all earned wages.

4 113. Defendants failed to accurately pay the Plaintiffs Williams and Canterbury and the
5 other members of the Williams California Labor Subclass overtime wages for the time they
6 worked which was in excess of the maximum hours permissible by law as required by Cal. Lab.
7 Code §§ 510, 1194 & 1198, even though Plaintiffs Williams and Canterbury and the other
8 members of the Williams California Labor Subclass were required to work, and did in fact work,
9 overtime as to which Defendants failed to accurately record and pay as evidenced by Defendants'
10 business records and witnessed by employees.

11 114. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
12 to Plaintiffs Williams and Canterbury and the other members of the Williams California Labor
13 Subclass for the true amount of time they worked, Plaintiffs Williams and Canterbury and the
14 other members of the Williams California Labor Subclass have suffered and will continue to suffer
15 an economic injury in amounts which are presently unknown to them and which will be
16 ascertained according to proof at trial.

17 115. Defendants knew or should have known that Plaintiffs Williams and Canterbury
18 and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for
19 all overtime worked. Defendants elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
21 procedure, and DEFENDANT perpetrated this scheme by refusing to pay Plaintiffs Williams and
22 Canterbury and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
23 worked.

24 116. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the Williams California Labor Subclass for all
26 overtime worked and provide them with the requisite overtime compensation, Defendants acted
27 and continues to act intentionally, oppressively, and maliciously toward Plaintiffs Williams and
28 Canterbury and the other members of the Williams California Labor Subclass with a conscious of

1 and utter disregard for their legal rights, or the consequences to them, and with the despicable
2 intent of depriving them of their property and legal rights, and otherwise causing them injury in
3 order to increase company profits at the expense of these employees.

4
5 **EIGHTH CAUSE OF ACTION**

6 **FOR FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(By Plaintiffs Moran, Williams and Canterbury and the California Labor Subclass Against**
8 **All Defendants)**

9 117. Plaintiffs repeat and incorporate herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 118. During the four year preceding the filing of the original complaint, until a date to
12 be determined by the Court, Defendants from time to time failed to provide all the legally required
13 off-duty meal breaks to Plaintiffs Moran, Williams and Canterbury and the other California Labor
14 Subclass Members as required by the applicable Wage Order and Labor Code. The nature of the
15 work performed by Plaintiffs Moran, Williams and Canterbury and California Labor Subclass
16 Members did not prevent these employees from being relieved of all of their duties for the legally
17 required off-duty meal periods. As a result of their rigorous work schedules, Plaintiffs and other
18 California Labor Subclass Members were from time to time not fully relieved of duty by
19 Defendants for their meal periods. Additionally, Defendants' failure to provide Plaintiffs Moran,
20 Williams and Canterbury and the California Labor Subclass Members with legally required meal
21 breaks prior to their fifth (5th) hour of work is evidenced by Defendants' business records from
22 time to time. Further, Defendants failed to provide Plaintiffs and California Labor Subclass
23 Members with a second off-duty meal period in some workdays in which these employees were
24 required by Defendants to work ten (10) hours of work from time to time. As a result, Plaintiffs
25 Moran, Williams and Canterbury and other members of the California Labor Subclass therefore
26 forfeited meal breaks without additional compensation and in accordance with Defendants'
27 corporate policy and practice.

28 119. Defendants further violate California Labor Code §§ 226.7 and the applicable IWC

1 Wage Order by failing to compensate Plaintiffs Moran, Williams and Canterbury and the
2 California Labor Subclass Members who were not provided a meal period, in accordance with the
3 applicable Wage Order, one additional hour of compensation at each employee's regular rate of
4 pay for each workday that a meal period was not provided.

5 120. As a proximate result of the aforementioned violations, Plaintiffs Moran, Williams
6 and Canterbury and California Labor Subclass Members have been damaged in an amount
7 according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and
8 costs of suit.

9 **NINTH CAUSE OF ACTION**

10 **FOR FAILURE TO PROVIDE REQUIRED REST PERIODS**

11 **(By Plaintiffs Williams and Canterbury and the Williams California Labor Subclass Against**
12 **All Defendants)**

13 121. Plaintiffs repeat and incorporate herein by reference each and every allegation set
14 forth above, as though fully set forth herein.

15 122. During the period of time from February 22, 2020 until a date to be determined by
16 the Court, Plaintiffs Williams and Canterbury and other Williams California Labor Subclass
17 Members were from time to time required to work in excess of four (4) hours without being
18 provided ten (10) minute rest periods. Further, these employees from time to time were denied
19 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
20 (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
22 minutes for some shifts worked of ten (10) hours or more from time to time. Plaintiffs Williams
23 and Canterbury and other Williams California Labor Subclass Members were also not provided
24 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS
25 and other Williams California Labor Subclass Members were periodically denied their proper rest
26 periods by Defendants and Defendants' managers.

27 123. Defendants further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate Plaintiffs Williams and Canterbury and Williams

1 California Labor Subclass Members who were not provided a rest period, in accordance with the
2 applicable Wage Order, one additional hour of compensation at each employee's regular rate of
3 pay for each workday that rest period was not provided.

4 124. As a proximate result of the aforementioned violations, Plaintiffs Williams and
5 Canterbury and Williams California Labor Subclass Members have been damaged in an amount
6 according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and
7 costs of suit.

8 **TENTH CAUSE OF ACTION**

9 **FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **(By Plaintiffs Williams and Canterbury and the Williams California Labor Subclass Against**
11 **All Defendants)**

12 125. Plaintiffs repeat and incorporate herein by reference each and every allegation set
13 forth above, as though fully set forth herein.

14 126. Cal. Labor Code § 226 provides that an employer must furnish employees with an
15 "accurate itemized" statement in writing showing: (1) gross wages earned, (2) total hours worked
16 by the employee, except for any employee whose compensation is solely based on a salary and
17 who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable
18 order of the Industrial Welfare Commission, (3) the number of piecerate units earned and any
19 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
20 all deductions made on written orders of the employee may be aggregated and shown as one item,
21 (5) net wages earned (6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and his or her social security number, except that by January 1, 2008, only
23 the last four digits of his or her social security number or an employee identification number other
24 than a social security number may be shown on the itemized statement, (8) the name and address
25 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the employee.

27 127. During the period of time from February 22, 2020 until a date to be determined by
28 the Court, from time to time, DEFENDANT also failed to provide Plaintiffs Williams and

1 Canterbury and the other members of Williams California Labor Subclass with complete and
2 accurate wage statements which failed to show, among other things, the correct gross and net
3 wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
4 employees with an accurate itemized wage statement in writing showing, among other things,
5 gross wages earned and all applicable hourly rates in effect during the pay period and the
6 corresponding amount of time worked at each hourly rate. Plaintiffs Williams and Canterbury and
7 Williams California Labor Subclass Members were paid on an hourly basis. As such, the wage
8 statements should reflect all applicable hourly rates during the pay period and the total hours
9 worked, and the applicable pay period in which the wages were earned pursuant to California
10 Labor Code Section 226(a)(2). The wage statements Defendants provided to Plaintiffs Williams
11 and Canterbury and other Williams California Labor Subclass Members failed to identify such
12 information. More specifically, the wage statements failed to identify the accurate total hours
13 worked each pay period. When the hours shown on the wage statements were added up, they did
14 not equal the actual total hours worked during the pay period. Aside, from the violations listed
15 above in this paragraph, Defendants failed to issue to Plaintiffs Williams and Canterbury an
16 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As
17 a result, Defendants from time to time provided Plaintiffs Williams and Canterbury and the other
18 members of the Williams California Labor Subclass with wage statements which violate Cal. Lab.
19 Code § 226.

20 128. Defendants knowingly and intentionally failed to comply with Cal. Lab. Code §
21 226, causing injury and damages to Plaintiffs Williams and Canterbury and the other members of
22 the Williams California Labor Subclass. These damages include, but are not limited to, costs
23 expended calculating the correct wages for all missed meal and rest breaks and the amount of
24 employment taxes which were not properly paid to state and federal tax authorities. These damages
25 are difficult to estimate. Therefore, Plaintiffs Williams and Canterbury and the other members of
26 the Williams California Labor Subclass may elect to recover liquidated damages of fifty dollars
27 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
28 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §226, in an

1 amount according to proof at the time of trial (but in no event more than four thousand dollars
2 (\$4,000.00) for Plaintiffs Williams and Canterbury and each respective member of the
3 CLASSWilliams California Labor Subclass herein.

4
5 **ELEVENTH CAUSE OF ACTION**

6 **FOR FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

7 **(By All Plaintiffs and the California Labor Subclass and Class Against All Defendants)**

8 129. Plaintiffs repeat and incorporate herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 130. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
11 for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As
12 a necessary part of employment, Plaintiff and on information and belief Class Members, were not
13 adequately reimbursed by Defendants for expenses related to all expenses incurred as results of
14 personal vehicle usage, the purchase of scrubs, personal cellphone usage, and use of home offices
15 as discussed above, which was incurred as a direct consequence of the discharge of duties by
16 Plaintiff and Class Members. Despite these realities of the job, Defendants failed to provide
17 reimbursements for these items necessary to carry out their job duties.

18 131. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
19 implied, made by any employee to waive the benefits of this article or any part thereof is null and
20 void, and this article shall not deprive any employee or his or her personal representative of any
21 right or remedy to which he is entitled under the laws of this State.

22 132. As a result of the unlawful acts of Defendants, Plaintiffs and the California Labor
23 SubclassC have been deprived of un-reimbursed expense amounts to be determined at trial, and
24 are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys’ fees,
25 and costs, pursuant to Labor Code §§ 226, and 2802.

26
27 **TWELFTH CAUSE OF ACTION**

28 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

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134. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

136. A violation of California Business and Professions Code §§17200, et seq., may be predicated on the violation of any state or federal law. Defendants' failure to reimburse Plaintiff and Class Members for business expenses incurred violates Labor Code § 2802 and applicable IWC Wage Orders and California Code of Regulations.

138. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff and Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of attorneys' fees, interest; and an award of costs. Plaintiffs and the Class Members do not seek restitution for any unfair business practices that are covered by any earlier settlement that covers part of the time period at issue in this lawsuit.

(By All Plaintiffs and Class Against All Defendants)

139. Plaintiffs incorporates and re-alleges each and every allegation contained above as

1 though fully set forth herein.

2 140. Pursuant to Labor Coe § 2699.3, (a) A civil action by an aggrieved employee
3 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
4 Section 2699.5 shall commence only after the following requirements have been met.

5 (1)The aggrieved employee or representative shall give written notice by certified mail to
6 the Labor and Workforce Development Agency and the employer of the specific
7 provisions of this code alleged to have been violated, including the facts and theories to
8 support the alleged violation.

9 (2)(A) The agency shall notify the employer and the aggrieved employee or representative
10 by certified mail that it does not intended to investigate the alleged violation within sixty
11 (60) calendar days of the postmark date of the notice received pursuant to paragraph (1).
12 Upon receipt of that notice or if no notice is provided within sixty-five (65) calendar days
13 of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee
14 may commence a civil action pursuant to Section 2699.

15 141. On September 23, 2019 Plaintiff Moran complied with the notice requirement
16 pursuant to Labor Code Section 2699.3 and sent via certified mail written notice to the Labor and
17 Workforce Development Agency and the alleged employers of the specific provisions alleged to
18 have been violated, including the facts and theories to support the alleged violation by attaching
19 and incorporating by reference the PAGA Representative Action Complaint to Plaintiff's LWDA
20 letter, Attached hereto as **Exhibit A**. Sixty-five (65) days passed since Plaintiff Moran provided
21 written notice required by Labor Code § 2699.3. Therefore, Plaintiff Moran may commence a civil
22 action pursuant to Labor Code § 2699.3(a)(2)(A).

23 142. On June 17, 2021, Plaintiffs Williams and Canterbury complied with the notice
24 requirement pursuant to Labor Code Section 2699.3 and sent via certified mail written notice to
25 the Labor and Workforce Development Agency and the alleged employers of the specific
26 provisions alleged to have been violated, including the facts and theories to support the alleged
27 violation by attaching and incorporating by reference the PAGA Representative Action Complaint
28 to the LWDA letter, attached hereto as **Exhibit B**. Sixty-five (65) days passed since Plaintiffs

1 Williams and Canterbury provided written notice required by Labor Code § 2699.3. Therefore,
2 Plaintiffs Williams and Canterbury may commence a civil action pursuant to Labor Code §
3 2699.3(a)(2)(A).

4 143. Defendants engaged in unlawful activity prohibited by inter alia, Labor Code
5 Sections 2698 *et. seq.*, 2802, Cal. Code Regs., Title 8, §11000, *et. seq.* and IWC Wage Orders
6 which violation constitutes a violation of fundamental public policy.

7 144. As a result of their unlawful acts, Plaintiffs and the proposed class are entitled to
8 civil penalties pursuant to Labor Code Private Attorney General Act of 2004, Labor Code §2698
9 *et. seq.* to the extent that those penalties are not covered by any earlier settlement that covers part
10 of the time period at issue in this lawsuit.

11 12 **FOURTEENTH CAUSE OF ACTION**

13 **RETALIATION**

14 **(By Plaintiff Williams Against All Defendants)**

15 145. Plaintiffs repeat and incorporate herein by reference each and every allegation set
16 forth above, as though fully set forth herein.

17 146. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
18 Defendants. This statute prohibits Defendants from retaliating against any employee, including
19 Plaintiff Williams, for raising complaints of illegality and/or belief that the employee may disclose
20 illegality.

21 147. Subsequent to Plaintiff Williams' participation in this protected activity of
22 complaining to Defendants of Defendants' unlawful employment practices, Defendants subjected
23 Plaintiff Williams to adverse employment conditions by retaliating against her. Specifically, after
24 Plaintiff Williams complained to her supervisor(s) of Defendants unlawful employment practices
25 in July of 2020, Defendants retaliated against Plaintiff Williams that very same month when the
26 supervisor for Plaintiff Williams singled her out via email. In that email, Plaintiff Williams was
27 told to be ignored within her own department and miscast for being rude to another employee
28 despite the fact that Plaintiff Williams had no known contact with this employee. Additionally, in

1 January of 2021, Defendants attempted to transfer Plaintiff Williams to another department
2 entirely. As a result, there is a causal link between the protected activity and DEFENDANT's
3 decision to retaliate against Plaintiff Williams, which is against public policy. As a direct
4 consequence of Plaintiff Williams' complaints to Defendants, Defendants retaliated against
5 Plaintiff Williams by the way in which she has been adversely treated by Defendants since July of
6 2020 until the present day.

7 148. Plaintiff Williams raised complaints of illegality while she worked for Defendants
8 and was believed to be willing to raise complaints, and Defendants retaliated against her by taking
9 adverse employment actions against her.

10 149. As a proximate result of Defendants' willful, knowing, and intentional violation(s)
11 of Labor Code section 1102.5, Plaintiff Williams has suffered and continues to suffer humiliation,
12 emotional distress, and mental and physical pain and anguish, all to his damage in a sum according
13 to proof.

14 150. As a result of Defendants' adverse employment actions against Plaintiff Williams,
15 she has suffered general and special damages in sums according to proof. Defendants' misconduct
16 was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling
17 Plaintiff Williams to punitive damage against Defendants.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;
23 2. That Plaintiffs be appointed as the representatives of the Class;
24 3. That Plaintiffs be appointed as the representatives of the California Labor Subclass;
25 and
26 4. That Plaintiffs Williams and Canterbury be appointed as the representatives of the
27 Williams California Labor Subclass
28 5. That counsel for Plaintiffs is appointed as counsel for the Class, California Labor

Subclass, and Williams California Labor Subclass.

1. On behalf of the Class Members:

- A) That the Court certify the Twelfth Cause of Action asserted by the Class Members as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining Defendants from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring Defendants to pay all wages and all sums unlawfully withheld from compensation due to Plaintiffs and the other members of the Class; and,
- D) Restitutionary disgorgement of Defendants' ill-gotten gains into a fluid fund for restitution of the sums incidental to Defendants' violations due to Plaintiffs and to the other members of the Class.

2. On behalf of the California Labor Subclass and Williams California Labor Subclass:

- A) That the Court certify the Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Causes of Action asserted by the California Labor Subclass and Williams California Labor Subclass as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFFS and the other members of the California Labor Subclass and the Williams California Labor Subclass, during the applicable respective time periods plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the California Labor Subclass and Williams California Labor Subclass for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order on behalf of the California Labor Subclass; and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order on behalf of the Williams California Labor Subclass;
- E) The amount of the expenses Plaintiffs and each member of the California Labor Subclass and Williams California Labor Subclass incurred in the course of their job duties, plus interest, and costs of suit; and,
- F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On behalf of Plaintiff Williams for the Fourteenth cause of action:

- A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

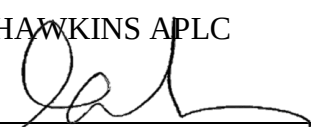
- 1 B) Special and General damages according to proof;
2 C) Statutory damages, penalties and attorney's fees;
3 D) For punitive damages in an amount necessary to make an example of and to punish
4 Defendants and deter Defendants from engaging in future similar conduct;
5 E) For loss of earnings (both past and future); and,
6 F) For interest at the legal rate in an amount according to proof.
7 4. On behalf of the State of California with respect to all Aggrieved Employees under PAGA:
8 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
9 General Act of 2004; and,
10 B) An Award of attorneys' fees and costs of suit, as allowable under the law, including,
11 but not limited to, pursuant to Labor Code section 2699.
12 4. On all claims:
13 A) An award of interest, including prejudgment interest at the legal rate;
14 B) Such other and further relief as the Court deems just and equitable; and,
15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
16 including, but not limited to, pursuant to Labor Code §221, §226, §1194, 7 and/or
17 §2802.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs and members of the Class and Subclass request a jury trial in this matter.

20 Dated: June 2, 2022

JAMES HAWKINS APLC

21 By: 

22 JAMES R. HAWKINS, ESQ.
23 GREGORY MAURO, ESQ.
24 MICHAEL CALVO, ESQ.
25 Attorneys for Plaintiff ROSANIEVES
26 MORAN, individually and on behalf of all
27 others similarly situated.

28 Dated: June 2, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Norman B. Blumenthal (with permission)
Norman B. Blumenthal, ESQ.
Attorneys for Plaintiffs SHALECIA WILLIAMS
and MARY CANTERBURY

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 23, 2019

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

SHARP REES-STEALY MEDICAL GROUP, INC.
Agent for Service of Process: ALAN JAY BIER
300 FIR ST
SAN DIEGO, CA 92101
Receipt No. 7018 1130 0001 8270 4463

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

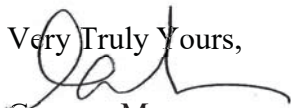
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff ROSANIEVES MORAN, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and SHARP REES-STEALY MEDICAL GROUP, INC. through its Agent for Service of Process (ALAN JAY BIER).

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the San Diego County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,


Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

MORAN_000001

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

October 7, 2019

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

SHARP HEALTHCARE
Agent for Service of Process: RICK L. GROSSMAN
8695 Spectrum Center Blvd.
San Diego, CA 92123
Receipt No.: 7018 1130 0001 8270 4500

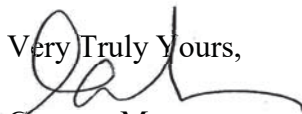
**Re: AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS
2698, *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff ROSANIEVES MORAN, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency SHARP HEALTHCARE.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the San Diego County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

MORAN_000019

EXHIBIT B

1 JAMES HAWKINS APLC
2 James R. Hawkins, Esq. (#192925)
3 Gregory Mauro, Esq. (#222239)
4 Michael Calvo, Esq. (#314986)
5 9880 Research Drive, Suite 200
6 Irvine, CA 92618
7 Tel.: (949) 387-7200
8 Fax: (949) 387-6676
9 Email: James@jameshawkinsaplc.com
10 Email: Greg@jameshawkinsaplc.com
11 Email: Michael@jameshawkinsaplc.com

12 Attorneys for Plaintiff ROSANIEVES MORAN,
13 individually and on behalf of all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROSANIEVES MORAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SHARP REES-STEALY MEDICAL GROUP,
INC., a California Corporation; and DOES 1-
50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/23/2019 at 04:22:01 PM

Clerk of the Superior Court
By Megan Dietenhofer, Deputy Clerk

CASE NO.: 37-2019-00050203-CU-OE-CTL

Assigned For All Purposes To:

Judge:

Dept.:

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE §382 FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 5-2001
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
7. Violation of Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff ROSANIEVES MORAN, (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby
3 files this Complaint against Defendants, SHARP REES-STEALY MEDICAL GROUP, INC., a
4 California Corporation, and DOES 1-50, inclusive (collectively “Defendants”) and alleges on
5 information and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

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

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders 5-2001, CCP, California Civil Code
24 (“CC”) and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or
27 omissions alleged herein took place in this County.

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7. Defendants SHARP REES-STEALY MEDICAL GROUP, INC., own and operate as a healthcare facility throughout Southern California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last four years.

8. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

9. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

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10. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

1 All persons who are employed or have been employed by Defendants as Non-Exempt
2 Employees or equivalent positions, however titled, in the state of California within four
3 (4) years from the filing of the Complaint in this action until its resolution. (collectively
referred to as the "Class" or "Plaintiff's Class" or "Class Members").

4 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as
5 follows:

6 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
7 excess of six hours or ten hours in a work day but were not provided with a timely,
8 uninterrupted, duty-free thirty-minute meal period (hereinafter collectively referred to as
the "Meal Period Subclass").

9 **Sub-Class 2:** All Class Members who are or were employed by Defendants who worked in
10 excess of three and a half (3.5) or ten (10) hours in a work day but were not authorized and
11 permitted a rest period (hereinafter collectively referred to as the "Rest Period Subclass").

12 **Sub-Class 3:** All Class Members who are or were employed by Defendants at any time
13 between September 2018 and the present and who received wage statements from
14 Defendant (hereinafter collectively referred to as the "Wage Statement Subclass").

15 **Sub-Class 4:** All Class Members who have been employed by Defendants at any time
16 between September 2016 and the present and have separated their employment (hereinafter
collectively referred to as the "Waiting Time Penalty Subclass")

17 **Sub-Class 5:** All Class Members who are or were employed by Defendants and subject to
18 Defendants' Unfair Business Practices (hereinafter collectively referred to as the "Unfair
Business Practice Subclass").

19 **Sub-Class 6:** All Class Members who are or were employed by Defendants and were not
20 reimbursed for business expenses incurred as a direct consequence of the discharge of their
21 duties (hereinafter collectively referred to as the "Reimbursement Subclass").

22 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
23 applicable laws to amend or modify the class definition with respect to issues or in any other
24 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

25 13. The term "Class" includes Plaintiff and all members of the Class and each of the
26 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
27 this complaint.

28 14. There is a well-defined community of interest in the litigation and the proposed

1 Class is easily ascertainable through the records Defendants are required to keep.

2 15. Numerosity. The members of the Class are so numerous that individual joinder
3 of all of them as plaintiffs is impracticable. While the exact number of the Class members is
4 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
5 are at least 100 (one hundred) Class members.

6 16. Commonality. Common questions of law and fact exist as to all Class members
7 and predominate over any questions that affect only individual members of the Class. These
8 common questions include, but are not limited to:

9 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff
10 and Class Members for all hours worked;

11 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
12 Members;

13 iii. Whether Defendants failed to timely pay wages upon separation to Plaintiff
14 and Class Members;

15 iv. Whether Defendants violated Labor Code sections 226.7, 512, and
16 applicable IWC Wage Orders 5-2001, by failing to authorize and permit daily rest periods to
17 Plaintiff and Class Members for every four hours or major fraction thereof worked and failing to
18 compensate said employees one hours wages in lieu of rest periods;

19 v. Whether Defendants violated Labor Code sections 226.7, 512 and
20 applicable IWC Wage Orders 5-2001, by failing to provide a meal period to Plaintiff and Class
21 Members on days they worked work periods in excess of six and 10 hours and failing to
22 compensate said employees one hour wages in lieu of meal periods;

23 vi. Whether Defendants failed to maintain accurate time record including
24 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
25 the applicable IWC Wage Orders 5-2001;

26 vii. Whether Defendants provided accurate itemized wage statements pursuant
27 to Labor Code section 226.
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1 viii. Whether Defendants failed to reimburse Plaintiff and Class Members for
2 necessary business expenses incurred as a result of the discharge of their duties pursuant to Labor
3 Code section 2802;

4 ix. Whether Defendants violated Business and Professions Code and Labor
5 Code sections 201-202, 510, 226, 226.7, 266.3, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1,
6 2802 and applicable IWC Wage Orders 5-2001 which violation constitutes a violation of
7 fundamental public policy; and

8 x. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
9 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

10 xi. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
11 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
12 to Labor Code sections 558, 1194 and 1197.

13 17. Typicality. Plaintiff's claims herein alleged are typical of those claims which
14 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
15 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
16 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
17 of and caused by Defendants' common course of conduct in violation of California laws,
18 regulations, and statutes as alleged herein.

19 18. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
20 interests of each member of the Class and/or Subclass with whom he has a well defined
21 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
22 obligation to make known to the Court any relationships, conflicts, or differences with any
23 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
24 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
25 settlement and experienced in handling such matters. Other former and current employees of
26 Defendants may also serve as representatives of the Class and Subclass if needed.

27 19. Superiority. A class action is superior to other available means for the fair and
28 efficient adjudication of the claims of the Class and would be beneficial for the parties and the

1 court. Class action treatment will allow a large number of similarly situated persons to prosecute
2 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
3 duplication of effort and expense that numerous individual actions would require. The damages
4 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
5 and the expense and burden of individual litigation would make it extremely difficult or
6 impossible for the individual Class Members to seek and obtain individual relief. A class action
7 will serve an important public interest by permitting such individuals to effectively pursue
8 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
9 or contradictory judgments raised by individual litigation.

10 20. Public Policy Considerations: Employers in the state of California violate
11 employment and labor laws everyday. Current employees are often afraid to assert their rights out
12 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers may damage their future endeavors through negative
14 references and/or other means. The nature of this action allows for the protection of current and
15 former employees' rights without fear or retaliation or damage.

16 **IV. FACTUAL ALLEGATIONS**

17 21. Plaintiff is informed and believes Class Members have at all times pertinent hereto
18 been Non-Exempt within the meaning of the California Labor Code and the implementing rules
19 and regulations of the IWC California Wage Orders.

20 22. On information and belief, all Class Members are California citizens.

21 23. Defendants continue to employ Non-Exempt Employees, however titled, in
22 California and implement a uniform set of policies and practices to all non-exempt employees, as
23 they were all engaged in the generic job of providing healthcare services to patients.

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

27 25. During the relevant time frame, Defendants compensated Plaintiff and Class
28 Members based upon an hourly rate.

1 26. On information and belief, during the relevant time frame, Plaintiff and Class
2 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
3 week.

4 27. On information and belief, during the relevant time frame, Plaintiff and Class
5 Members typically worked five days a week with shifts that began at approximately 7:30 a.m. and
6 typically concluded at 4:30 p.m.

7 28. Plaintiff is informed and believes that Plaintiff and Class Members were not
8 compensated for all time worked as Defendants would round their times to only reflect their
9 scheduled start and end times. For instance, Defendants' management would permit Plaintiff and
10 Class Members to clock in 15-20 minutes prior to their scheduled start times i.e. 7:15 a.m. or 7:10
11 a.m. However, Defendants would not count the 15-20 minutes of time and would round Plaintiff's
12 and Class Members' time to only reflect their scheduled start times. Further, Defendants would
13 also round Plaintiff and Class Members times when clocking out at the end of the day and would
14 not include the times Plaintiff and Class Members would spend working past their scheduled
15 shifts. This policy resulted in Plaintiff and the Class Members being subjected to Defendants'
16 unlawful rounding policy. Defendants' implemented unlawful rounding policy consistently
17 resulted in a failure to pay employees for the time worked while under the control of Defendants.
18 Defendants' rounding policy over time resulted on a large and disproportionate underpayment of
19 wages including overtime wages to Plaintiff and Class Members.

20 29. Plaintiff is informed and believes that Plaintiff and Class Members were caused to
21 endure unprovided, untimely, interrupted meal periods of at least thirty (30) minutes for many of
22 the work days such employees worked more than six hours (6) hours, were not provided
23 uninterrupted second meal periods of at least thirty (30) minutes for any work days such
24 employees worked more than ten (10) hours, and were not paid one (1) hour of wages by
25 Defendants in lieu thereof, all in violation of the California Labor Code.

26 30. Plaintiff is informed and believes that Plaintiff and Class Members were regularly
27 required to work in excess of six (6) hours per day without Defendants providing them a timely,
28 uninterrupted (30) minute meal period as mandated under the California Labor Code and the

1 implementing rules and regulations of the IWC California Wage Orders. Plaintiff and Class
2 Members were not provided lawful meal periods and were not provided with one hour of wages in
3 lieu thereof under Defendants' policies and practices, which included work schedules placed upon
4 the Class Members from Defendants' management and supervisors to perform work at the expense
5 of their meal periods and Defendants' implementation of a shift schedule and workload
6 requirements that denied Class Members all of their authorized meal periods, including second
7 meal periods on shifts when they worked over ten (10) hours in a day. On information and belief,
8 Plaintiff and Class Members were often required to work through their lunch breaks or to cut their
9 lunch breaks short due to being understaffed and in order to help doctors with patients. Plaintiff
10 and the Class did not waive any of their authorized and required meal periods, nor did they receive
11 one hour of regular pay for each day Defendants failed to provide a lawful meal period.

12 31. On information and belief, Defendants also automatically deducted 30 minutes of
13 time from Plaintiff and Class Members to reflect that a lawful meal period was taken, when in fact
14 such meal periods were never provided, short, and/or interrupted also resulting in Defendants'
15 failure to pay wages including overtime.

16 32. Plaintiff is informed and believes that during the liability period, Plaintiff and Class
17 Members were consistently required to work in excess of four (4) hours (or major fraction thereof)
18 without receiving lawful ten (10) minute rest periods. On information and belief, Defendants'
19 management would combine their lunch breaks and rest breaks together and would therefore not
20 be permitted an authorized the appropriate number of rest breaks. The Class Members were also
21 not provided with one hour wages in lieu thereof. Defendants' policies and practices included
22 Defendants' implementation of a work schedule and workload requirements that denied and failed
23 to provide the Class all of their authorized rest periods, including first rest periods of at least ten
24 (10) minutes for every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and
25 second rest period of at least ten (10) minutes for every shift worked greater than six (6) hours,
26 and a third rest period of at least ten (10) minutes for every shift worked in excess of ten (10)
27 hours. On information and belief, Plaintiff and Class Members were often required to forego their
28 rest breaks due to being understaffed and in order to help doctors with patients. Plaintiff and the

1 Class did not waive any of their authorized and required meal periods, nor did they receive one
2 hour of regular pay for each day Defendants failed to provide a lawful rest period.

3 33. Defendants did not fully compensate Plaintiff and the Class for hourly wages
4 during the liability period, including by virtue of the fact that Defendants did not compensate
5 Plaintiff and Class Members with one extra hour of pay for Defendants' failure to provide such
6 Non-Exempt Employees with each of their authorized rest periods and meal periods during the rest
7 and meal period liability period.

8 34. Upon information and belief, Defendants failed to provide accurate itemized wage
9 statements to Plaintiff and Class Members as the wage statements provided failed to accurately
10 account for all hours worked. Further, Defendants failed to provide accurate wage statements as
11 Defendants' wage statements do not identify premium pay as required by Labor Code § 226.

12 35. On information and belief, during the relevant time frame, Defendants failed to
13 adequately reimburse Plaintiff and Class Members for business expenditures incurred for the use
14 of personal vehicles as Plaintiff and Class Members would often start their shifts at one of
15 Defendants' healthcare facilities and be sent to another healthcare facility to end their shifts.
16 Plaintiff and Class Members were also required to purchase their scrubs. Such business
17 expenditures incurred were incurred in direct consequence of Plaintiff's and Class Members'
18 duties pursuant to Labor Code § 2802, and yet Defendants failed to reimburse Plaintiff and Class
19 Members for these expenses.

20 36. Upon information and belief, Defendants failed to keep accurate records pursuant
21 to Labor Code § 1174.5.

22 37. Upon information and belief, Defendants knew and or should have known that it is
23 improper to implement policies and commit unlawful acts such as:

24 (a) requiring employees to work four (4) hours or a major fraction thereof without
25 being provided a minimum ten (10) minute rest period and without compensating the employees
26 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
27 rest period was not provided;

28 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day

1 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
2 and without compensating employees with one (1) hour of pay at the regular rate of compensation
3 for each workday that such a meal period was not provided;

4 (c) failing to provide accurate itemized wage statements;

5 (d) failing to timely pay Plaintiff and Class Members;

6 (e) failing to reimburse business expenses; and

7 (f) conducting and engaging in unfair business practices.

8 38. In addition to the violations above, and on information and belief, Defendants knew
9 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein and
10 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
11 recklessly, and/or intentionally failed to do so.

12 39. Plaintiff and Class Members she seeks to represent are covered by, and Defendants
13 are required to comply with, applicable California Labor Codes, Industrial Welfare Commission
14 Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding applicable
15 provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

18 **(Against All Defendants)**

19 40. Plaintiff incorporates and re-alleges each and every allegation contained above as
20 though fully set forth herein.

21 41. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
22 require employers to pay its employees for each hour worked at least minimum wage. "Hours
23 worked" means the time during which an employee is subject to the control of an employer, and
24 includes all the time the employee is suffered or permitted to work, whether or not required to do
25 so, and in the case of an employee who is required to reside on the employment premises, that
26 time spent carrying out assigned duties shall be counted as hours worked.

27 42. At all relevant times, Labor Code §1197 provides that the minimum wage for
28 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a

1 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
2 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
3 worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff
4 and Class Members' employment by Defendants provided that employees working for more than
5 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
6 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
7 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
8 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

9 43. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
10 acting individually as an officer, agent, or employee of another person, who pays or causes to be
11 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
12 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
13 damages payable to the employee, and any applicable penalties pursuant to Section 203.

14 44. Labor Code §510 codifies the right to overtime compensation at the rate of one and
15 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
16 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
17 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
18 seventh day of work in a particular work week.

19 45. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
20 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
21 et. seq. and the Labor Code.

22 46. At all times relevant, Plaintiff and Class Members consistently worked in excess of
23 eight (8) hours in a day and/or forty (40) hours in a week. At all times relevant, Defendants failed
24 to pay all wages and overtime owed to Plaintiff and Class Members due to the Defendants'
25 unlawful rounding policies. Defendants further failed to pay all wages and overtime as a result of
26 the automatic deduction of 30 minutes for meal periods that were never provided, cut short, and/or
27 interrupted.

28 47. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and

1 have failed to pay Plaintiff and Class Members the overtime wages owed.

2 48. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
3 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
4 attorneys' fees

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

7 **(Against All Defendants)**

8 49. Plaintiff incorporates and re-alleges each and every allegation contained above as
9 though fully set forth herein.

10 50. Pursuant to Labor Code §512, no employer shall employ an employee for a work
11 period of more than five (5) hours without providing a meal break of not less than thirty (30)
12 minutes in which the employee is relieved of all of his or her duties. An employer may not
13 employ an employee for a work period of more than ten (10) hours per day without providing the
14 employee with a second meal period of not less than thirty (30) minutes, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
16 consent of the employer and the employee only if the first meal period was not waived.

17 51. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
18 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
19 the work of the employee must prevent an employee from being relieved of all duties relating to
20 his or her work for the employer and the employees must consent in writing to the "on duty" meal
21 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
22 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
23 such that they were prevented from being relieved of all duties. Despite the requirements of the
24 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
25 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
26 their statutorily authorized meal periods.

27 52. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
28 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty

1 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
2 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
3 the other Class Members have been damaged in an amount according to proof at time of trial.

4 53. By their failure to provide a compliant meal period for each shift worked over five
5 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
6 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
7 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

9 54. Plaintiff and the Class Members did not voluntarily or willfully waive meal periods
10 and were regularly required to work shifts without being provided all of their authorized meal
11 periods. Defendants created a working environment in which Plaintiff and Class Members were
12 not provided all of their meal periods due to shift scheduling and/or work related demands placed
13 upon them by Defendants as well as a lack of sufficient staffing to meet the needs of the business
14 place upon the Non-Exempt Employees. On information and belief, Defendants' implemented a
15 policy and practice which resulted in systematic and class-wide violations of the Labor Code. On
16 information and belief, Defendants' violations have been widespread throughout the liability
17 period and will be evidenced by Defendants' time records for the Class Members.

18 55. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
19 Class Members they seek to represent have been deprived of premium wages in amounts to be
20 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
21 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
22 with interest and penalties thereon, attorneys' fees, and costs.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

25 **(Against All Defendants)**

26 56. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 57. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'

1 employment by Defendants, “Every employer shall authorize and permit all employees to take rest
2 periods, which insofar as practicable shall be in the middle of each work period.... [The]
3 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
4 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period
5 time shall be counted as hours worked, for which there shall be no deduction from wages.” Labor
6 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
7 mandated by an applicable order of the IWC.

8 58. Defendants were required to authorize and permit employees such as Plaintiff and
9 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
10 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.
11 Despite said requirements of the IWC wage orders applicable to Plaintiff’s and Class Members’
12 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
13 Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major
14 fraction thereof.

15 59. On information and belief Defendants created a working environment in which
16 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
17 and/or work related demands placed upon them by Defendants as well as a lack of sufficient
18 staffing to meet the needs of the business place upon the Non-Exempt Employees. On information
19 and belief, Defendants implemented a policy and practice which resulted in systematic and class-
20 wide violations of the Labor Code. On information and belief, Defendants’ violations have been
21 widespread throughout the liability period.

22 60. Plaintiff and Class Members did not voluntarily or willfully waive rest periods and
23 were regularly required to work extended shifts without being provided with all of their legally
24 mandated rest periods.

25 61. As a proximate result of the aforementioned violations, Plaintiff and Class
26 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
27 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
28 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus

1 interest and penalties thereon, attorneys' fees, and costs.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PAY TIMELY PAY WAGES**

4 **(Against All Defendants)**

5 62. Plaintiff incorporates and re-alleges each and every allegation contained above as
6 though fully set forth herein.

7 63. Labor Code §§201-202 requires an employer who discharges an employee to pay
8 compensation due and owing to said employee immediately upon discharge and that if an
9 employee voluntarily leaves his or her employment, his or her wages shall become due and
10 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
11 two (72) hours previous notice of his or her intention to quit, in which case the employee is
12 entitled to his or her wages on their last day of work.

13 64. Labor Code §203 provides that if an employer willfully fails to pay compensation
14 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
15 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

16 65. During the relevant time period, Defendants willfully failed and refused, and
17 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
18 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
19 leaving Defendants' employ. These wages include regular and overtime.

20 66. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt
21 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
22 according to proof at the time of trial.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

25 **(Against All Defendants)**

26 67. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 68. Section 226(a) of the California Labor Code requires Defendants to itemize in wage

1 statements all deductions from payment of wages and to accurately report total hours worked by
2 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
3 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
4 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

5 69. IWC Wage Orders require Defendants to maintain time records showing, among
6 others, when the employee begins and ends each work period, meal periods, split shift intervals
7 and total daily hours worked in an itemized wage statement, and must show all deductions and
8 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
9 the Class. On information and belief, Defendants have failed to record all or some of the items
10 delineated in Industrial Wage Orders and Labor Code §226.

11 70. Defendants have failed to accurately record all time worked.

12 71. Defendants have also failed to accurately record the meal and rest period premiums
13 owed and all wages owed per pay period.

14 72. Plaintiff and the Class have been injured as they were unable to determine whether
15 they had been paid correctly for all hours worked per pay period among other things.

16 73. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a
17 maximum of \$4,000 each for record keeping violations.

18 74. Pursuant to Labor Code section 266.3, any employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
21 for each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

23 **SIXTH CAUSE OF ACTION FOR FAILURE TO INDEMNIFY NECESSARY**

24 **BUSINESS EXPENSES**

25 **By Plaintiff and Class Against All Defendants**

26 75. Plaintiff repeats and incorporates herein by reference each and every allegation set
27 forth above, as though fully set forth herein.

28 76. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members

1 for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As
2 a necessary part of employment, Plaintiff and on information and belief Class Members, were not
3 adequately reimbursed by Defendants for expenses related to all expenses incurred as results of
4 personal vehicle usage and the purchase of scrubs as discussed above, which was incurred as a
5 direct consequence of the discharge of duties by Plaintiff and Class Members. Despite these
6 realities of the job, Defendants failed to provide reimbursements for the use of personal cell
7 phones and the use of personal vehicles necessary to carry out their job duties.

8 77. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
9 implied, made by any employee to waive the benefits of this article or any part thereof is null and
10 void, and this article shall not deprive any employee or his or her personal representative of any
11 right or remedy to which he is entitled under the laws of this State.

12 78. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
13 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
14 the recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
15 pursuant to Labor Code §§ 226, and 2802.

16 **SEVENTH CAUSE OF ACTION**

17 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

18 **(Against All Defendants)**

19 79. Plaintiff incorporates and re-alleges each and every allegation contained above as
20 though fully set forth herein.

21 80. Defendants’ conduct, as alleged in this complaint, has been, and continues to be,
22 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants’ competitors, and the
23 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of the California Code of Civil Procedure §1021.5.

25 81. Defendants’ policies, activities, and actions as alleged herein, are violations of
26 California law and constitute unlawful business acts and practices in violation of California
27 Business and Professions Code §§17200, et seq.

28 82. A violation of California Business and Professions Code §§17200, et seq., may be

1 predicated on the violation of any state or federal law. Defendants' policy of failing to provide
2 accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods
3 and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not
4 provided or provided outside of the required time frames, violates Labor Code § 226, §512, and
5 §226.7 and applicable IWC Wage Orders and California Code of Regulations.

6 83. Plaintiff and Class Members have been personally aggrieved by Defendants'
7 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
8 property.

9 84. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
10 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
11 during a period that commences four (4) years prior to the filing of this complaint; an award of
12 attorneys' fees, interest; and an award of costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

15 Class Certification

- 16 1. That this action be certified as a class action;
- 17 2. That Plaintiff be appointed as the representative of the Class;
- 18 3. That Plaintiff be appointed as the representative of the Subclass; and
- 19 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass..

20 On the First Cause of Action

- 21 1. For compensatory damages equal to the unpaid balance of minimum wage
22 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
 - 23 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
 - 24 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
25 interest thereon pursuant to Labor Code §§ 1194.2, 558;
 - 26 4. For such other and further relief as the Court deems proper.
- 27
28

1 On the Second Cause of Action

- 2 1. For one (1) hour of premium pay for each day in which a required meal period was
3 not provided or not provided in a timely manner; and
4 2. For such other and further relief as the Court deems proper.

5 On the Third Cause of Action

- 6 1. For one (1) hour of premium pay for each day in which a required rest period was
7 not authorized or permitted; and
8 2. For such other and further relief as the Court deems proper.

9 On the Fourth Cause of Action

- 10 1. For statutory penalties pursuant to Labor Code §203;
11 2. For interest for wages untimely paid; and
12 3. For such other and further relief as the Court deems proper.

13 On the Fifth Cause of Action

- 14 1. For statutory penalties pursuant to Labor Code §226;
15 2. For interest for wages untimely paid;
16 3. For penalties pursuant to Labor Code §266.3; and
17 4. For such other and further relief as the Court deems proper.

18 On the Sixth Cause of Action

- 19 1. For statutory penalties pursuant to Labor Code §2802;
20 2. For interest for wages untimely paid; and
21 3. For such other and further relief as the Court deems proper.

22 On the Seventh Cause of Action

- 23 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and
24 Class Members for their past failure to provide accurate itemized wage statements, pay wages,
25 premium wages for meal and/or rest periods, that were not provided as described herein to
26 Plaintiff and Class Members over the last four (4) years in an amount according to proof;
27 2. For pre-judgment interest on any unpaid wages due from the day that such amounts
28 were due;

1 3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
2 recover;

3 4. For costs of suit incurred herein; and

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

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff and members of the Class and Subclass request a jury trial in this matter.

7
8
9 Dated: September 23, 2019

JAMES HAWKINS APLC

10 By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

Attorneys for Plaintiff ROSANIEVES
MORAN, individually and on behalf of all
others similarly situated.

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On June 2, 2022, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Please See Attached Page

Executed on June 2, 2022, at Irvine, California.


Alma Chavarin

1 Jody A. Landry, Esq.
LITTLER MENDELSON, P.C.
2 501 W. Broadway, Suite 900
San Diego, CA 92101-3577
3 Tel: 619-232-0441
4 Fax: 619-232-4302
jlandry@littler.com
5 MHorton@littler.com - Maxine Horton

6 *Attorneys for Defendant*
7 *SHARP HEALTHCARE*

8 Norman B. Blumenthal, Esq.
Kyle R. Nordrehaug, Esq.
9 Aparajit Bhowmik, Esq.
BLUMENTHAL NORDREHAUG
10 BHOWMIK DE BLOUW LLP
11 2255 Calle Clara
La Jolla, CA 92037
12 Telephone: (858) 551-1223
13 Fax: (858) 551-1232
norm@bamlawca.com
14 kyle@bamlawca.com
aj@bamlawca.com
15 karla@bamlawca.com – Karla Horne
16 piya@bamlawca.com – Piya Mukherjee
charlotte@bamlawca.com – Charlotte James

17 *Attorneys for Plaintiffs*
18 *SHALIECIA WILLIAMS and MARY CANTERBURY*