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12 **THE SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 **RG 168 10383**

15 Evette Osuegbu, individually and on behalf of)
16 all others similarly situated, and as a proxy of)
17 the State of California on behalf of aggrieved)
18 employees,)

19 Plaintiffs,)

20 vs.)

21 AMN HEALTHCARE, INC., and KAISER)
22 PERMANENTE INTERNATIONAL, and)
23 DOES 1-50,)

24 Defendants.)

25 **CLASS ACTION COMPLAINT;**

26 **LAW ENFORCEMENT ACTION**

27 **(1) COMMON LAW;**

28 **(2) CALIFORNIA LABOR CODE;**

(3) CALIFORNIA INDUSTRIAL WELFARE COMMISSION WAGE ORDERS; and

(4) CALIFORNIA BUSINESS AND PROFESSIONS CODE §§17200, et seq.

JURY TRIAL DEMANDED

29 Plaintiff Evette Osuegbu, by and through her undersigned attorneys, hereby brings this Class
30 Action Complaint and Law Enforcement Action against Defendants AMN Healthcare, Inc. and
31 Kaiser Permanente International (collectively, "Defendants") and alleges as follows:
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BY FAX

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I. NATURE OF THE CASE

1. This is a class action and law enforcement action arising out of Defendants’ failure to pay their traveling nurses all the wages they are owed, and failure to compensate them for overtime, including double time. Defendants have engaged in a common scheme of routinely requiring and/or suffering and permitting the traveling nurses to work in excess of 12 hours per day without compensating them at the statutorily-mandated double-time rate, and have failed to compensate the traveling nurses at all for discrete periods of work.

2. Defendants employ hundreds of traveling nurses in California. Traveling nurses travel throughout the country—including in California—working at various hospitals and health systems with which Defendant AMN contracts. They typically work at a location for approximately 3 months before AMN assigns them to a new location. Defendant Kaiser is one of the health care providers that jointly employs traveling nurses with Defendant AMN.

3. For example, traveling nurses working for Defendants AMN and Kaiser—such as Plaintiff Osuegbu—are typically scheduled to work four 12-hour shifts per week. However, Defendants have routinely required and/or suffered and permitted Ms. Osuegbu and the other traveling nurses to work well in excess of 12 hours per day without paying them at all for hours in excess of 12 per day, much less at their statutorily mandated double-time rate of compensation.

4. As a matter of policy and practice, Defendants have routinely required traveling nurses to attend staff meetings (“huddles”) and individual meetings with supervisors at the beginning of their 12-hour shifts. During these mandatory meetings, Defendants’ managers and supervisors discuss safety, provide tutorials for using medical devices and other products, and give motivational speeches. While these meetings are scheduled to last only 15 minutes, they routinely last 30 minutes to an hour. As a result, traveling nurses are routinely behind schedule from the start of their shifts.

5. In addition, the traveling nurses—including Ms. Osuegbu—are and at all relevant times have been responsible for “handing off” their patients to the next shift of nurses who will be treating their patients. These hand-offs must occur at the end of the traveling nurses’ shifts because

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2 their purpose is to prepare the nurse who will be treating the patient during the next shift for his or
3 her assignment. Typically, “hand-offs” have required visiting with the nurse assigned to work the
4 next shift and each of the approximately 5 patients to whom the traveling nurses have been assigned,
5 checking the patients’ vital signs, updating records, filling out status reports, and then briefing the
6 nurse assigned to work the next shift on the patients’ health history, diagnosis, and plan of care,
7 among other information. “Handing-off” 5 patients to the nurse working the next shift is expected to
8 take at least 1 hour, but can take as long as 2 or more hours.

9 6. Defendants require traveling nurses to “hand-off” their patients to the next nurse who
10 will be treating the same patients *after* that nurse completes his or her daily “huddle” and individual
11 meeting with supervisor(s).

12 7. Even though the “huddles” and other meetings routinely last 30 minutes to an hour
13 (rather than the allotted 15 minutes), and the “hand-offs” typically take at least an hour to be
14 completed, Defendants build an overlap of only 30 minutes into the nurses’ shifts. As a result,
15 traveling nurses routinely must wait 15-45 minutes for the next shift’s meetings to conclude before
16 beginning the “hand-off” process. In addition, because the traveling nurses cannot begin the 1 or
17 more hour handoff process until the next shift’s huddle and other meetings conclude, the traveling
18 nurses routinely do not start the “hand-off” process until after their 12 hour shifts are scheduled to
19 conclude.

20 8. For example, a traveling nurse’s shift may be scheduled to conclude at 7:45 p.m.,
21 while the next shift is scheduled to begin at 7:15 p.m. Because the next shift’s “huddles” and other
22 meetings would often not conclude until approximately 8:15 p.m, the traveling nurses on the
23 previous shift would not be able to begin the hour-long process of handing off their patients to the
24 next shift until 8:15 p.m. By the time the hand-off process would be completed by approximately
25 9:15 p.m., the traveling nurses on the prior shift would have worked approximately an hour-and-a-
26 half beyond their pre-scheduled shift completion time, or 13.5 hours, despite being scheduled to
27 work a 12 hour shift.

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2 9. In addition, Defendants assign the traveling nurses so many patients (5 or more per
3 shift) and such a heavy workload (consisting of duties including, but not limited to: taking patient
4 pulses, samples, temperatures, and blood pressures; writing records; filling out patient charts;
5 providing pre- and post-operation care; monitoring and administering medication and intravenous
6 infusions; “handing-off” patients to the next shift of nurses; performing physical exams and health
7 histories; providing wound care; provide healthcare counseling and education to patients; and direct
8 other healthcare personnel, among other duties) that they typically cannot complete all of their duties
9 within the pre-allotted 12 hour shift time.

10 10. Defendants require that the traveling nurses obtain a certification from the “lead
11 nurse” or other supervisor to approve any double time. As a result, the traveling nurses—who are
12 non-union, unlike the other nurses who work for Defendant Kaiser—must ask the lead nurses or
13 other supervisors to sign off on their timecards for time worked in excess of 12 hours in a workday.
14 However, hospital supervisors working for Defendant Kaiser and other hospitals to which traveling
15 nurses have been assigned routinely have refused to approve this double-time. When traveling
16 nurses have sought payment, Defendants have refused, on the basis that the supervisor did not
17 approve the double time. As a result Defendants’ consistent practice of not approving payment of
18 overtime and double time, reporting the total hours worked has become futile. Thus, Defendants
19 have required and/or suffered and permitted the traveling nurses to work without pay for time
20 reflected on their time cards as well as for time that is not recorded anywhere. Despite several
21 complaints by Ms. Osuegbu, Defendants have not taken any action to ensure that she and other
22 traveling nurses have been compensated for this time (though Defendants routinely approve requests
23 for approval of double-time submitted by unionized nurses).

24 11. Defendants have also required and/or suffered and permitted the traveling nurses to
25 travel long distances for mandatory training programs, without compensating them for their travel
26 time. This travel time has been substantial. For example, Ms. Osuegbu had to travel 8 hours in a
27 single day of training, including the long bus trip to the training site and the bus trip home.

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2 12. Accordingly, Plaintiff and those similarly situated have been denied the straight time
3 and double time wages they are owed under California law.

4 13. Plaintiff, Evette Osuegbu, worked as traveling nurse for Defendants from
5 approximately February 2015 to May 2015. She brings Causes of Action One through Six (the
6 “class claims”) as a class action on behalf of herself and other similarly situated individuals who
7 have worked as traveling nurses for Defendants in California, at any time beginning four years
8 before the filing of this Complaint, through the resolution of this action. Plaintiff’s class claims are
9 brought under the Common Law and California wage and hour laws stemming from Defendants’
10 failure to compensate their traveling nurses for all the regular overtime hours they work, and at their
11 statutorily mandated double-time rate for hours worked in excess of 12 in a day.

12 14. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class
13 claims pursuant to California Labor Code §§ 201, 202, 203, 221-223, 226, 510, 1174, 1194, and
14 1198; and California Code of Regulations, Title 8 §11050 §§ 7 & 11-12 (Wage Order No. 5), and
15 under Business & Professions Code §§ 17200-17208, for unfair competition due to Defendants’
16 unlawful, unfair and fraudulent business acts and practices. Plaintiff challenges Defendants’ policies
17 of: (1) denying Plaintiff and the Class their overtime and double time wages despite requiring and/or
18 suffering and permitting them to work in excess of 12 hours per day; (2) denying Plaintiff and the
19 Class their straight time wages for discreet periods in which they were not compensated for time
20 spent traveling to mandatory training programs; (3) failing to provide Plaintiff and the Class with
21 accurate, itemized wage statements; (4) failing to maintain accurate payroll records; and (5) failing
22 to timely pay Plaintiff and the Class full wages upon termination or resignation. Plaintiff, on behalf
23 of herself and all others similarly situated, seeks declaratory and injunctive relief, including
24 restitution under Bus. & Prof. Code §17203. Plaintiff, on behalf of herself and all others similarly
25 situated, also seeks compensation, damages, penalties, interest, and attorneys’ fees and costs to the
26 full extent permitted by applicable law.

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2 15. Plaintiff brings Cause of Action Seven as a proxy of the State of California on behalf
3 of other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). The
4 PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
5 Development Agency (LWDA) for violations of applicable provisions of the California Labor Code
6 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
7 behalf of herself and other current or former employees pursuant to procedures outlined in California
8 Labor Code § 2699.3. The PAGA also provides that an aggrieved employee can bring a civil action
9 on behalf of other aggrieved employees for violation of any other Labor Code provision that does
10 not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
11 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
12 per pay period for each subsequent violation. On September 21, 2015 Plaintiff provided written
13 notice by certified mail to the LWDA and Defendants of the specific provisions of the California
14 Labor Code alleged to have been violated, including the facts and theories to support the alleged
15 violations. Thirty-three days have passed and the LWDA has not indicated that it would pursue the
16 violations. Plaintiff therefore seeks these civil penalties and attorneys' fees and costs pursuant to
17 Labor Code § 2699(g)(1).

18 **II. JURISDICTION AND VENUE**

19 16. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
20 California Constitution and California Code of Civil Procedure § 410.10.

21 17. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
22 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
23 under Business & Professions Code §§ 17203 and 17204.

24 18. The Court has jurisdiction over Defendants because they do sufficient business with
25 sufficient minimum contacts in California, and/or otherwise intentionally avail themselves of the
26 California market through the advertising, marketing and sale of goods and services, to render the
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2 exercise of jurisdiction over Defendants by the California court consistent with traditional notions of
3 fair play and substantial justice.

4 19. Venue is proper in this County pursuant to Code of Civil Procedure § 395.5.
5 Defendants employ Plaintiff and Class Members, have various places of business, and transact
6 business in this County; Defendants, Plaintiff and Class Members perform their contracts in this
7 County; Defendant Kaiser Permanente International is headquartered in this County; and events
8 complained of occurred in this County.

9 **III. PARTIES**

10 20. Plaintiff and all of the proposed Class Members as set forth below are current or
11 former traveling nurses who worked for Defendants in California at any time beginning four years
12 before the filing of this Complaint, through the resolution of this action.

13 21. Plaintiff, Evette Osuegbu, is a resident Granite City, Illinois in Madison County.
14 Plaintiff worked as a traveling nurse for Defendants in Alameda County, from approximately
15 February 2015 to May 2015.

16 22. Defendants employed Ms. Osuegbu as a traveling nurse and Ms. Osuegbu held this
17 same job position since she began working for Defendants in February of 2015. Defendants
18 terminated Ms. Osuegbu's employment in May 2015.

19 23. Defendant AMN Healthcare, Inc. is and at relevant times has been engaged in the
20 business of health care staffing in the State of California. Defendant AMN Healthcare, Inc. has
21 places of business at various locations in California, including in this County.

22 24. Defendant Kaiser Permanente International is and at all relevant times has been
23 engaged in the business of health care and hospital services in the State of California. Defendant
24 Kaiser Permanente International is headquartered in this County, and has places of business at
25 various locations in California, including in this County.

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2 **IV. FACTUAL ALLEGATIONS**

3 25. During the relevant time period of this action, Defendants have employed Plaintiff and
4 other similarly situated individuals to provide nursing services. Their job duties have included
5 assisting patients in recovery and prevention, administering tests, checking vital signs, blood
6 pressures, and temperatures, filling out reports regarding a patient’s health and recovery for review
7 by the treating physician and other nurses, providing medication, providing pre- and post-operation
8 care, administering intravenous infusions, providing wound care, physically moving and otherwise
9 assisting patients with everyday activities, performing other treatment duties, and performing
10 additional administrative duties at the direction of Defendants, such as attending staff meetings and
11 filling out patient charts and other paperwork.

12 26. Defendant AMN contracts with several hospitals throughout California—including
13 Defendant Kaiser—to provide nurse staffing services by employing and compensating traveling
14 nurses and assigning them to work at one of the several hospitals with which it contracts.

15 27. The traveling nurses employed by Defendants are *not* unionized, but the permanent,
16 non-traveling nurses employed by Defendant Kaiser and the other health care systems served by
17 Defendant AMN typically *are* unionized

18 28. Ms. Osuegbu worked at the Oakland, California, Kaiser branch.

19 29. Pursuant to standard employment contracts and California law, Defendants are
20 obligated to compensate traveling nurses at a straight time rate of pay for the first 8 hours worked in
21 a day, at an overtime premium rate of 1.5 times the straight time rate for hours worked in excess of 8
22 in a day, and at a “double-time” rate of 2 times the straight time rate for hours worked in excess of
23 12 in a day.

24 30. Defendants have regularly scheduled traveling nurses to work four or more days per
25 week, and to work 12-hour shifts. For example, Ms. Osuegbu and other traveling nurses working at
26 Defendant Kaiser’s hospitals in Oakland are often scheduled to work from 7:15 a.m. to 7:45 p.m.
27 (with a half hour lunch period).

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2 31. As a matter of policy and practice, Defendants have routinely required traveling nurses
3 to attend “huddles” and individual meetings with supervisors at the beginning of their 12-hour shifts.
4 During these mandatory meetings, Defendants’ managers and supervisors discuss safety, provide
5 tutorials for using medical devices and other products, and give motivational speeches. While these
6 meetings are scheduled to last only 15 minutes, they routinely last 30 minutes to an hour. As a
7 result, traveling nurses routinely begin their shifts already behind schedule.

8 32. In addition, the traveling nurses—including Ms. Osuegbu—are and at all relevant
9 times have been responsible for “handing off” their patients to the next shift of nurses who will be
10 treating their patients. These hand-offs must occur at the end of the traveling nurses’ shifts because
11 their purpose is to prepare the nurse on the next shift for his or her assignment.

12 33. Typically, “hand-offs” require visiting with the nurse working the subsequent shift, as
13 well as each of the approximately 5 patients to whom the traveling nurses have been assigned,
14 checking the patients’ vital signs, updating records, writing up status reports for the review of the
15 nurse working the subsequent shift, or review by other hospital personnel, and briefing the nurse
16 working the subsequent shift on the status of the patient. “Handing-off” to the next shift requires a
17 lot of communication between the traveling nurse and the nurse working the subsequent shift
18 regarding the status of the patients and any particular treatment needs the patients may have.
19 “Handing-off” 5 patients to the next shift is expected to take at least 1 hour. In cases in which
20 patients require specialized treatment or where a traveling nurse’s patients number more than 5,
21 lengthier communications with nurses working the subsequent shifts become necessary. Defendants
22 may also add additional patients to a traveling nurse’s “hand-off” responsibilities mid-stream. In
23 such cases in which there are more than 5 patients or additional patients are added on an ad-hoc
24 basis, the “hand-off” process can take up to and over 2 and ½ hours.

25 34. Defendants communicate to traveling nurses the importance of taking special care to
26 accurately record patient information, and clearly and effectively communicate all necessary
27 information to the nurses working the subsequent shift, such as patients’ health history, diagnosis,
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2 and plan of care. This is because passing along inaccurate information or failing to alert subsequent
3 staffers of a patient’s particular needs can contribute to gaps in patient care and breaches in patient
4 safety, such as medication errors, wrong-site surgery, and even patient deaths.

5 35. Defendants require traveling nurses to “hand-off” their patients to the next nurse who
6 will be treating the same patients *after* that nurse attends the “huddle” and individual meeting with
7 supervisor(s). Yet, because the “huddles” and individual meetings routinely last 30 minutes to an
8 hour (rather than the allotted 15 minutes), traveling nurses routinely must wait 15-45 minutes for the
9 next shift’s meetings to conclude before beginning the “hand-off” process.

10 36. Even though the “huddles” and other meetings routinely last 30 minutes to an hour
11 (rather than the allotted 15 minutes), and the “hand-offs” typically take at least 1 hour to be
12 completed (and often as many as 2 or more hours), Defendants build an overlap of only 30 minutes
13 into the nurses’ shifts. As a result, traveling nurses routinely must wait 15-45 minutes for the next
14 shift’s meetings to conclude before beginning the “hand-off” process. In addition, because the
15 traveling nurses cannot begin the 1 or more hour handoff process until the next shift’s huddle and
16 other meetings conclude, the traveling nurses routinely do not start the “hand-off” process until after
17 their 12 hour shifts are scheduled to conclude.

18 37. For example, a traveling nurse’s shift may be scheduled to conclude at 7:45 p.m.,
19 while the next shift is scheduled to begin at 7:15 p.m. Because the subsequent shift’s “huddles” and
20 other meetings would often not conclude until approximately 8:15 p.m, the traveling nurses on the
21 previous shift would not be able to begin the hour-long process of handing off their patients to the
22 next shift until 8:15 p.m. By the time the hand-off process would be completed at approximately
23 9:15 p.m., the traveling nurses on the prior shift would have worked approximately an hour-and-a-
24 half beyond their pre-scheduled shift completion time, or 13.5 hours, despite being scheduled to
25 work a 12 hour shift.

26 38. In addition, Defendants assign the traveling nurses so many patients (5 or more per
27 shift) and such a heavy workload (composed of duties including, but not limited to: taking patient
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2 pulses, samples, temperatures, and blood pressures; writing records; filling out patient charts;
3 providing pre- and post-operation care; monitoring and administering medication and intravenous
4 infusions; “handing-off” patients to the next shift of nurses; performing physical exams and health
5 histories; providing wound care; provide healthcare counseling and education to patients; and direct
6 other healthcare personnel, among other duties) that they typically cannot complete all of their duties
7 within the pre-allotted 12 hour shift time.

8 39. Defendants require the traveling nurses to obtain a certification from their hospital
9 “lead nurses” or other supervisors to approve any double time. As a result, the traveling nurses must
10 ask the “lead nurses” or other supervisors to sign off on their timecards for time in excess of 12
11 hours in a workday. Without certification, traveling nurses are not paid at all for any work
12 performed in excess of 12 hours per day, much less at their statutorily mandated double time rate.

13 40. However, lead nurses and other supervisors at Kaiser and other hospitals to which
14 traveling nurses have been assigned routinely have refused to approve this double-time (though they
15 have routinely approved such requests when made by permanent, unionized nurses). When traveling
16 nurses have sought payment, Defendants have refused, on the basis that the hospital did not sign off
17 on the double time. Asking for approval of the double time has become a futile exercise.

18 41. As a result Defendants’ consistent practice of not approving payment of overtime and
19 double time, reporting the total hours worked has become futile. Thus, Defendants have required
20 and/or suffered and permitted the traveling nurses to work without pay for time reflected on their
21 time cards as well as for time that is not recorded anywhere.

22 42. Despite several complaints by Ms. Osuegbu, neither Defendant AMN nor Defendant
23 Kaiser have taken any action to ensure that she and other traveling nurses have their hours worked in
24 excess of 12 hours per day certified, or compensated at all, much less at the statutorily mandated
25 double time rate.

26 43. Defendants also require and/or suffer and permit the traveling nurses to travel long
27 distances to attend training programs, without compensating them for their travel time. This travel
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2 time has been substantial. For example, Ms. Osuegbu had to travel 8 hours in a single day of
3 training, including the long bus trip to the training site and the bus trip home.

4 44. Accordingly, the traveling nurses—including Ms. Osuegbu—have been denied the
5 wages and benefits to which they are entitled under California law.

6 **V. CLASS ACTION ALLEGATIONS**

7 45. Plaintiff brings Causes of Action One through Six as a class action on behalf of herself
8 and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff brings the
9 PAGA Cause of Action as a law enforcement action, not as a class action. The Class that Plaintiff
10 seeks to represent is composed of and defined as follows:

11 “All individuals who worked as a traveling nurse or like hourly position for either Defendant
12 AMN and/or Defendant Kaiser in California at any time beginning four years before the
13 filing of this Complaint.” (the “Class”)

14 46. Community of Interest. This action has been brought and may properly be maintained
15 as a class action under Code of Civil Procedure § 382 because the proposed Class is easily
16 ascertainable and there is a well-defined community interest in the litigation:

- 17 (a) Numerosity. Defendants have employed hundreds of traveling nurses in California
18 from 2012 through the present. Class members are therefore far too numerous to be
19 individually joined in this lawsuit.
- 20 (b) Common Questions of Law and/or Fact. Common questions of law and/or fact exist
21 as to the members of the Class and, in addition, common questions of law and/or fact
22 predominate over questions affecting only individual members of the Class. The
23 common questions include the following:
- 24 i. Whether Defendants required and/or suffered and permitted Plaintiff and the
25 other traveling nurses to work in excess of 12 hours per day;
 - 26 ii. If so, whether Defendants have refused to certify and approve payment of
27 double-time wages worked in excess of 12 hours per day;

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- iii. Whether Defendants have failed to compensate Plaintiff and the other traveling nurses at the statutorily mandated double-time rate for hours worked in excess of 12 in a day;
 - iv. Whether Defendants failed to keep accurate records of hours worked and wages earned by traveling nurses;
 - v. Whether Defendants' failure to compensate Plaintiff and the other traveling nurses at a double-time rate for hours worked in excess of 12 per day has been willful, intentional or reckless;
 - vi. Whether the paychecks provided to the traveling nurses in connection with their compensation contain all the elements mandated for accurate itemized wage statements under Cal. Labor Code § 226(a);
 - vii. Whether traveling nurses who had their employment relationship with Defendants terminated are entitled to penalty wages for Defendants' failure to timely pay all outstanding amounts of compensation owed upon termination of the employment relationship;
 - viii. Whether Defendants' policies and practices have resulted in violation of one or more of the Labor Code Provisions cited herein;
 - ix. Whether Defendants' policies and practices are unlawful, unfair and/or fraudulent business practices in violation of California Business & Professions Code §§17200, *et seq.*; and
 - x. The injunctive and/or monetary relief to which Plaintiff and the Class may be entitled as a result of the violations alleged herein.

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(c) Typicality. Plaintiff's claims are typical of the claims of the Class. Defendants' common course of conduct in failing to approve and compensate traveling nurses at the statutorily mandated double time rate for hours in excess of 12 per day that they require and/or suffer and permit them to perform, and failing to compensate them at all

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2 for time spent performing discrete tasks they are required and/or suffered and
3 permitted to perform, has caused Plaintiff and the proposed Class to sustain the same
4 or similar injuries and damages. Plaintiff's claims are thereby representative of and
5 co-extensive with the claims of the proposed Class.

- 6 (d) Adequacy of Representation. Plaintiff is an adequate representative of the Class
7 because she is a member of the Class and her interests do not conflict with the
8 interests of the members of the class she seeks to represent. Plaintiff has retained
9 counsel competent and experienced in complex class action litigation, and Plaintiff
10 intends to prosecute this action vigorously. Plaintiff and her counsel will fairly and
11 adequately protect the interests of members of the Class.
- 12 (e) Superiority of Class Action. The class action is superior to other available means for
13 the fair and efficient adjudication of this dispute. The injury suffered by each member
14 of the Class, while meaningful on an individual basis, is not of such magnitude as to
15 make the prosecution of individual actions against Defendants economically feasible.
16 Furthermore, individualized litigation increases the delay and expense to all parties
17 and the court system presented by the legal and factual issues of the case. In contrast,
18 the class action device presents far fewer management difficulties and provides the
19 benefits of single adjudication, economy of scale, and comprehensive supervision by a
20 single court, and avoids the problem of inconsistent judgments.

21 VI. CAUSES OF ACTION

22 FIRST CAUSE OF ACTION

23 **Failure to Pay Overtime Compensation**

23 **California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq.*, and IWC Wage Order No. 5.**

24 47. Plaintiff hereby realleges and incorporates by reference the paragraphs above as
25 though fully set forth herein.

26 48. California Labor Code §§ 510 and 1198, and IWC Wage Order No. 5, §3, provides
27 that employees in California shall not be employed more than eight (8) hours in any workday or
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2 forty (40) hours in any workweek unless they receive additional compensation beyond their regular
3 wages in amounts specified by law.

4 49. Defendants have failed to pay Plaintiff, and other members of the Class, overtime
5 compensation for the hours they worked in excess of the maximum hours permissible by law under
6 California Labor Code §§ 510 and 1198, and IWC Wage Order No. 5, §3. Defendants require
7 and/or suffer and permit Plaintiff and other members of the Class to work hours in excess of 8 in a
8 day and 12 in a day.

9 50. Defendants' failure to pay additional, premium rate compensation to Plaintiff and
10 members of the Class for their overtime and double time hours worked has caused Plaintiff and
11 Class Members, and continues to cause many Class Members to suffer damages in amounts which
12 are presently unknown to them but which exceed the jurisdictional threshold of this Court and which
13 will be ascertained according to proof at trial.

14 51. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members
15 of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay
16 period.

17 52. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
18 Plaintiff and Class Members have been deprived of overtime and double time compensation in an
19 amount to be determined at trial. Plaintiffs and other members of the class request recovery of
20 overtime and double time compensation according to proof, interest, attorney's fees and costs of suit
21 pursuant to California Labor Code §§1194(a), 554, 1194.3 and 1197.1, as well as the assessment of
22 any statutory penalties against Defendants, in a sum as provided by the California Labor Code
23 and/or other statutes.

24 **SECOND CAUSE OF ACTION**
Failure to Pay for All Hours Worked in Violation of
California Labor Code §§ 201, 202, 204, and 221-223

25 53. Plaintiff realleges and incorporates the above paragraphs as though fully set forth
26 below.

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2 54. California Labor Code §200 defines wages as “all amounts for labor performed by
3 employees of every description, whether the amount is fixed or ascertained by the standard of time,
4 task, piece, commission basis or other method of calculation.”

5 55. California Labor Code §§ 201 and 202 require an employer to pay all wages earned
6 but unpaid immediately upon the involuntary discharge of an employee or within seventy-two (72)
7 hours of an employee’s voluntary termination of employment.

8 56. California Labor Code §204 provides that employers must compensate employees for
9 all hours worked “twice during each calendar month, on days designated in advance by the employer
10 as the regular paydays.”

11 57. California Labor Code §§221-223 prohibit employers from withholding and deducting
12 wages, or otherwise artificially lowering the wage scale of an employee.

13 58. Defendants have maintained and continues to maintain a policy of denying the
14 traveling nurses compensation for time spent traveling to and from training sites. Accordingly,
15 Defendants have artificially reduced Plaintiff’s and its other traveling nurses’ pay rates by denying
16 them compensation for travel time to and from training worksites.

17 59. As a proximate result of these violations, Defendants have damaged Plaintiff and the
18 Class in amounts to be determined according to proof at trial.

19 60. Pursuant to Labor Code §218.6 and/or Civil Code §3287(a), Plaintiff and other
20 members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid
21 every pay period.

22 61. Plaintiff, on behalf of herself and all others similarly situated, seeks all unpaid
23 compensation, damages, penalties, interest and attorneys’ fees and costs, recoverable under
24 applicable law set forth below.
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THIRD CAUSE OF ACTION
Failure to Keep Accurate Payroll Records
California Labor Code §§ 1174 & 1174.5

62. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though fully set forth herein.

63. California Labor Code §1174 requires Defendants to maintain payroll records showing, among other things, the actual hours worked daily by its employees, wages paid to its employees, the number of piece-rate units earned by its employees, and any applicable piece rate paid to its employees.

64. California Labor Code §1174.5 provides that employers who willfully fail to maintain accurate payroll records shall be subject to civil penalties.

65. Defendants knowingly, intentionally, and willfully have failed to maintain payroll records showing the actual hours worked by, and accurate hourly rate paid to Plaintiff and Class members as required by California Labor Code §1174 and in violation of §1174.5. As a direct result of Defendants' failure to maintain payroll records, Plaintiff and Class members have suffered actual economic harm as they have been precluded from accurately monitoring the number of hours they work, and thus seeking all wages owed in the form of overtime and double time compensation. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff and the Class members are entitled to recover damages and civil penalties in an amount to be determined at trial, plus interest, attorneys' fees, and costs of suit.

66. Pursuant to Labor Code §218.6 and/or Civil Code §3287(a), Plaintiff and other members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

67. Plaintiff, on behalf of herself and all others similarly situated, seeks all unpaid compensation, damages, penalties, interest and attorneys' fees and costs, recoverable under applicable law set forth below.

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FOURTH CAUSE OF ACTION
Failure to Furnish Accurate Wage Statements
California Labor Code § 226

68. Plaintiff hereby realleges and incorporates by reference the paragraphs above as though fully set forth herein.

69. California Labor Code §226(a) provides that every employer must furnish each employee with an accurate itemized wage statement, in writing, showing nine pieces of information, including: 1) gross wages earned; 2) total hours worked by the employee; 3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis; 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; 5) net wages earned; 6) the inclusive dates of the period for which the employee is paid; 7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; 8) the name and address of the legal entity that is the employer; and 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

70. California Labor Code §226(e) provides that an employee suffering an injury as a result of a knowing and intentional failure to provide a statement accurately itemizing the information set forth in Labor Code §226(a), then the employee is entitled to recover the greater of all actual damages or fifty-dollars (\$50.00) for the initial violation and one-hundred dollars (\$100.00) for each subsequent violation, up to a maximum of four-thousand dollars (\$4,000.00).

71. Defendants intentionally and willfully failed to furnish Plaintiff and Class members with timely, accurate, itemized statements showing total hours worked, gross wages earned, net wages earned, and the applicable hourly rates as required by California Labor Code §226(a).

72. Plaintiff and the Class members have been injured by Defendants' violation of California Labor Code §226(a) because they have been denied their legal right to receive and their protected interest in receiving, accurate, itemized wage statements, and could not promptly and easily ascertain from the wage statement alone their total hours worked, gross wages earned, net wages earned, and the applicable hourly rates, among other required information.

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2 73. Plaintiff and Class Members have also been injured as a result of having to bring this
3 action to obtain correct wage information following Defendants' refusal to comply with many
4 requirements of the California Labor Code. As a result, Defendants are liable to Plaintiff and Class
5 members, for the amounts, penalties, attorneys' fees, and costs of suit provided by California Labor
6 Code §226(e).

7 74. Pursuant to Labor Code §218.6 and/or Civil Code §3287(a), Plaintiff and other
8 members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid
9 every pay period.

10 75. Plaintiff, on behalf of herself and the proposed Class, requests an assessment of
11 penalties as stated herein and other relief as described below.

12 76. Plaintiff, on behalf of herself and all others similarly situated, seeks all unpaid
13 compensation, damages, penalties, interest and attorneys' fees and costs, recoverable under
14 applicable law set forth below.

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16 **FIFTH CAUSE OF ACTION**
Waiting Time Penalties
California Labor Code §§ 201-203

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18 77. Plaintiff hereby realleges and incorporates by reference the paragraphs above as
19 though fully set forth herein.

20 78. California Labor Code §201 requires an employer who discharges an employee to pay
21 all compensation due and owing to said employee immediately upon discharge. California Labor
22 Code §202 requires an employer to promptly pay compensation due and owing to said employee
23 within seventy-two (72) hours of that employee's termination of employment by resignation.
24 California Labor Code §203 provides that if an employer willfully fails to pay compensation
25 promptly upon discharge or resignation, as required under California Labor Code §§201-202, then
26 the employer is liable for waiting time penalties in the form of continued compensation for up to
27 thirty (30) work days.

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2 79. Plaintiff and members of the Class have left their employment with Defendants during
3 the statutory period. Defendants willfully failed and refused, and continue to willfully fail and
4 refuse, to timely pay all wages owed to Plaintiff and to all other proposed Class members whose
5 employment with Defendants has ended or been terminated at any point during the statutory period.
6 As a result, Defendants are liable to Plaintiff and other formerly employed members of the proposed
7 Class for waiting time penalties, together with interest thereon, attorneys' fees, and costs of suit,
8 under California Labor Code §203.

9 80. Plaintiff, on behalf of herself and the proposed Class, request waiting time penalties
10 pursuant to California Labor Code §203, plus attorneys' fees and costs, as described below.

11 **SIXTH CAUSE OF ACTION**
12 **Unfair Competition and Unlawful Business Practices**
13 **California Business and Professions Code §§ 17200, *et seq.***

14 81. Plaintiff hereby realleges and incorporates by reference the paragraphs above as
15 though fully set forth herein.

16 82. California Business and Professions Code §17200 defines unfair competition to
17 include, "unlawful, unfair or fraudulent business practices."

18 83. Plaintiff and all proposed Class Members are "persons" within the meaning of
19 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
20 property as a result of Defendants' unfair competition.

21 84. Defendants have been committing, and continues to commit, acts of unfair
22 competition by engaging in the unlawful, unfair and fraudulent business practices and acts described
23 in this Complaint, including, but not limited to:

- 24 (a) violations of California Code Regulations, Title 8 § 11050, ¶ 7;
- 25 (b) violations of California Labor Code §§ 201-203
- 26 (c) violations of California Labor Code §§ 221-223;
- 27 (d) violations of California Labor Code § 226;
- 28 (e) violations of California Labor Code § 510

- (f) violations of California Labor Code §§ 1174;
- (g) violations of California Labor Code § 1194; and
- (h) violations of California Labor Code § 1198.

85. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

86. Business and Professions Code §17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

87. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

88. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid.

89. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to herself and members of the proposed Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

90. Plaintiff seeks restitution to herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Cal. Code Civ. Proc. §1021.5.

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2 **SEVENTH CAUSE OF ACTION**
3 **Statutory Penalties Pursuant to PAGA (Labor Code §§2698, *et seq.*)**
4 **(On behalf of All Aggrieved Employees)**

5 91. Plaintiff hereby realleges and incorporates by reference the paragraphs above as
6 though fully set forth herein.

7 92. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
8 California Labor Code §§ 2698-99) applied to Defendants' employment of Plaintiff and the
9 proposed Class Members.

10 93. At all times set forth herein, California Labor Code § 2699(a) has provided that any
11 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
12 collected by the Labor and Workforce Development Agency (LWDA) for violations of the
13 California Labor Code may, as an alternative, be recovered through a civil action brought by an
14 aggrieved employee on behalf of herself and other current or former employees pursuant to
15 procedures outlined in California Labor Code § 2699.3.

16 94. At all times set forth herein, the PAGA has also provided that for the violation of any
17 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties
18 of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
19 aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

20 95. A civil action under PAGA may be brought by an "aggrieved employee," any person
21 that was employed by the alleged violator and against whom one or more of the alleged violations
22 was committed.

23 96. Defendants have been committing, and continue to commit, violations of the
24 California Labor Code, including, but not limited to:

- 25 (a) violations of California Labor Code §§ 201-203
26 (b) violations of California Labor Code §§ 221-223;
27 (c) violations of California Labor Code § 226;
28 (d) violations of California Labor Code § 510
(e) violations of California Labor Code §§ 1174;

- (f) violations of California Labor Code § 1194; and
- (g) violations of California Labor Code § 1198.

97. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and she is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

98. Pursuant to California Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- (a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations within thirty (30) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

99. On September 21, 2015, Plaintiff provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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2 100. Pursuant to California Labor Code §2699.3(a)(2)(C), Plaintiff may as a matter of right
3 amend this Complaint to add a cause of action arising under § 2699.3 at any time within 60 days of
4 receiving notice from the LWDA, or if notice is not provided by the LWDA within 33 days of
5 Plaintiff's sending of written notice by certified mail to the LWDA and to Defendants. Pursuant to
6 §2699(a), Plaintiff seeks civil penalties set forth in §§ 201, 202, 203, 221-223, 226(c), and 1174.5.

7 101. 33 days have passed and the LWDA has not indicated that it would pursue the
8 violations.

9 102. Plaintiff therefore seeks these civil penalties and attorneys' fees and costs pursuant to
10 Labor Code § 2699(g)(1).

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of herself and the proposed Class she seeks to
13 represent in this action, requests the following relief:

- 14 a) That the Court determine that this action may be maintained as a class action under
15 Code of Civil Procedure § 382;
- 16 b) For an order appointing Plaintiff as representative of the Class;
- 17 c) For an order appointing Plaintiff's attorneys as Class Counsel;
- 18 d) That the Court find that Defendants have been in violation of applicable provisions of
19 the California Labor Code and IWC Wage Order No. 5 by failing to pay each member
20 of the proposed Class for all hours worked, and failing to pay them their statutorily
21 mandated double time wages despite requiring and/or suffering and permitting them to
22 work in excess of 12 hours per day;
- 23 e) That the Court find that Defendants has been unjustly enriched;
- 24 f) That the Court find that Defendants have violated the recordkeeping provisions of
25 California Labor Code §§ 1174 and 1174.5 as to Plaintiff and the Class;
- 26 g) That the Court find that Defendants have been in violation of California Labor Code §
27 226 by failing to timely furnish Plaintiff and members of the Class with itemized

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2 statements accurately showing gross wages earned, net wages earned, total hours
3 worked, and applicable hourly rates;

- 4 h) That the Court find that Defendants have been in violation of California Labor Code
5 §§201 and 202 and therefore owe waiting time penalties under California Labor Code
6 §203 for willful failure to pay all compensation owed at the time of termination of
7 employment to Plaintiff and other formerly employed members of the Class;
- 8 i) That the Court find that Defendants have committed unfair and unlawful business
9 practices, in violation of California Business and Professions Code §17200, *et seq.*, by
10 their violations of the Common Law, Labor Code and Wage Orders as described
11 above;
- 12 j) That the Court order an accounting of the payroll records to determine what restitution
13 is owed and to whom, pursuant to California Business and Professions Code §17203;
- 14 k) That the Court award to Plaintiff and the proposed Class members compensation and
15 restitution for all wages owed;
- 16 l) That the Court award to Plaintiff and the proposed Class Members statutory penalties
17 as provided herein, including but not limited to Labor Code §§ 203 and 226;
- 18 m) That the Court award to Plaintiff and the proposed Class Members civil penalties as
19 provided herein pursuant to Labor Code §2699(a) (PAGA).
- 20 n) For pre- and post-judgment interest;
- 21 o) That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant
22 to Labor Code §§ 203, 225.5, 226, and 2699(g)(1), Code of Civil Procedure § 1021.5,
23 and/or other applicable law; and
- 24 p) For such other and further relief as this Court deems just and proper.

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Dated: April 6, 2016

Respectfully submitted,

SCHNEIDER WALLACE
COTTRELL KONECKY WOTKYNS LLP

By:



JOSHUA KONECKY
Attorney for Plaintiff Evette Osuegbu
and the Proposed Class.

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DEMAND FOR JURY TRIAL


Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff and the Class are entitled to a jury.

Dated: April 6, 2016

Respectfully submitted,

SCHNEIDER WALLACE
COTTRELL KONECKY WOTKYNs LLP

By:



JOSHUA KONECKY
Attorney for Plaintiff Evette Osuegbu
and the Proposed Class.