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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOAN SANTIAGO, on behalf of herself
and all other similarly situated individuals,

Plaintiff,

vs.

NORTHBAY HEALTHCARE GROUP;
and DOES 1 through 50, inclusive,

Defendant(s).

Case No.

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Pay Minimum Wages in Violation of the California Labor Code;
- 3) Failure to Pay Overtime Wages in Violation of the California Labor Code;
- 4) Meal and Rest Period Violations under the California Labor Code;
- 5) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 6) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code; and
- 7) Unfair Business Practices.

JURY TRIAL DEMANDED

Plaintiff JOAN SANTIAGO, on behalf of herself and all other similarly situated and typical persons, alleges the following:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

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JURISDICTION AND VENUE

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2 1. This Court has original jurisdiction over the federal claims alleged herein pursuant
3 to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 216(b) which states: “An action to recover
4 the liability prescribed in either of the preceding sentences may be maintained against any employer
5 (including a public agency) in any Federal or State court of competent jurisdiction by any one or
6 more employees for and in behalf of himself or themselves and others employees similarly
7 situated.” Plaintiff has or will shortly file with this court a consent to join this action.

8 2. This Court has supplemental jurisdiction over the state law claims alleged herein
9 pursuant to 28 U.S.C. § 1367 because the state law claims alleged herein all arise out of the same
10 transaction and occurrence, i.e. the failure to properly pay all wages due—and there is no conflict
11 between the procedures applicable to the FLSA and State law claims. *Integrity Staffing Solutions,*
12 *Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013) (“In sum, we agree with the other
13 circuits to consider the issue that the fact that Rule 23 class actions use an opt-out mechanism while
14 FLSA collective actions use an Opt-in mechanism does not create a conflict warranting dismissal
15 of the state law claims.”)

16 3. Venue is proper in this Court because one or more of the Defendants named herein
17 maintains a principal place of business or otherwise is found in this judicial district and many of
18 the acts complained of herein occurred in Solano County, California, which is located within this
19 district.

PARTIES

20
21 4. Plaintiff JOAN SANTIAGO is natural person who has been employed by
22 Defendant as a non-exempt hourly paid employee in Fairfield, California, during the relevant
23 time period.

24 5. Defendant NORTHBAY HEALTHCARE GROUP (“Defendant” or “NorthBay”) is a domestic non-profit corporation with a principal place of business at 1200 B Gale Wilson
25 Blvd, Fairfield, California 94533-3552.
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1 Plaintiff and all other similarly situated employees enter data into the system, thereby leaving a
2 “time stamp” to indicate when employees were using the system.

3 11. Defendant required Plaintiff and all others similarly situated to make entries into
4 Cerner while at the employer’s place of employment. It is an integral, indispensable and legally
5 necessary to the performance of Plaintiff’s job of providing patient care that they make these
6 entries of patient care notes into Cerner, which was also an essential part of the medical billing
7 process as well.

8 12. Defendant and Defendant’s agents were aware that Plaintiff and all other similarly
9 situated employees were working without compensation because employees were physically
10 present at Defendant’s facility and Cerner recorded the time when Plaintiff and similarly situated
11 employees made entries. Defendant’s agents would routinely observe Plaintiff and all others
12 similarly situated making these patient chart Cerner entries “off-the-clock” such as during lunch
13 breaks and before and after each shift. Upon information and belief, Defendants were repeatedly
14 informed, and it was generally common knowledge, the patient care employees would routinely
15 enter patient care data (also known as “charting”) during times that the hourly paid patient care
16 employees were not being compensated for.

17 13. Defendant also required all hourly paid employees to clock in and out using an
18 electronic timekeeping system for pay purposes—*i.e.*, Kronos. When comparing the difference
19 between the time entries from Cerner to the time entries in Kronos, Plaintiff and all other
20 similarly situated employees worked a significant amount of time “off-the-clock”.

21 14. Despite knowing that Plaintiff and other similarly situated individuals were
22 performing work off-the-clock and without compensation, Defendant failed to prevent the
23 performance of such work. Defendant suffered and permitted Plaintiffs to continue doing
24 uncompensated work that they were engaged to perform.

25 15. In addition to suffering and permitting Plaintiff and all other similarly situated
26 employees to perform work without compensation, the Cerner data shows, or will show, that
27 Defendant also violated California meal and rest break law by not providing a meal period and
28 rest periods within the requisite number of hours after the start of a shift; failing to provide a

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1 second meal period and/or rest period within the time proscribed by law, and by not permitting a
2 full 30-minute uninterrupted meal period.

3 **Defendant Required Patient Care Employees To Be On-Duty Meal and Rest Breaks**

4 16. Separate and apart from suffering and/or permitting Plaintiff and all other similarly
5 situated employees to perform work off the clock, Defendant also failed to provide a duty free
6 meal and/or rest breaks to Plaintiff and all other similarly situated employees because Defendant
7 required Plaintiff and other similarly situated employees to carry and use NorthBay-provided
8 cellular phones during breaks.

9 17. Defendant provided Plaintiff and all other similarly situated employees a cellular
10 phone for on-duty use. These NorthBay-provided cell phones were required to stay on Defendant's
11 premises.

12 18. These NorthBay-provided cell phones were required to stay on Plaintiff and other
13 similarly situated employees' person while they were on-duty.

14 19. Plaintiff and all other similarly situated employees were required to carry the
15 NorthBay-provided cell phones with them when they attempted to take a meal and/or rest break.

16 20. Plaintiff and all other similarly situated employees would routinely and regularly
17 receive calls on their NorthBay-provided cell phones during their attempted meal and/or rest
18 break.

19 21. Because of Defendant's cell phone policy, Plaintiff and all other similarly situated
20 employees were always on duty and required to listen, and respond, to calls on the NorthBay-
21 provided cell phones. Accordingly, Plaintiff and all other similarly situated employees did not
22 receive full uninterrupted meal and/or rest breaks according to California law.

23 22. Pursuant to Emergency Rule 9 from the California State Judicial Council, the
24 statute of limitations for all the claims asserted in this action has been tolled as of April 6, 2020,
25 because of the COVID-19 pandemic.

26 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

27 23. Plaintiff realleges and incorporates by this reference all the paragraphs above in
28 this Complaint as though fully set forth herein.

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1 24. Plaintiff brings this action on behalf of herself and all other similarly situated and
2 typical employees as both a collective action under the Fair Labor Standards Act (“FLSA”) and
3 a class action under Rule 23 of the Federal Rules of Civil Procedure.

4 **The FLSA Class**

5 25. Plaintiff brings this action on behalf of herself and the following **FLSA Class**
6 **(hereinafter referred to as “FLSA Class Members”)**:

7 All nonexempt hourly paid employees employed by
8 Defendant within the United States who worked off the
9 clock as demonstrated by the comparison between the EMR
10 system and electronic timekeeping system at any time during
the relevant time period alleged herein.

11 26. With regard to the conditional certification mechanism under the FLSA, Plaintiff
12 is similarly situated to those she seeks to represent for the following reasons, among others:

13 A. Defendant employed Plaintiff as hourly-paid employees who did not
14 receive her full wages for all the hours that she worked, and, where applicable, her
15 overtime premium pay at one and one-half times the regular rate of pay for all hours
16 worked over forty (40) hours in a workweek.

17 B. Plaintiff’s situation is similar to those she seeks to represent because
18 Defendant failed to pay Plaintiff and all other FLSA Class Members for all time they were
19 required to work, but with the knowledge, acquiescence and/or approval (tacit as well as
20 expressed) of Defendant’s managers and agents.

21 C. Common questions exist as to whether Plaintiff and all other FLSA Class
22 Members worked off the clock and without compensation.

23 D. Upon information and belief, Defendant employs, and have employed,
24 approximately 5,000 FLSA Class Members within the applicable statute of limitations.

25 E. Plaintiff has signed or will sign a Consent to Sue form to be filed in the
26 court shortly.

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The California Classes

27. Plaintiff brings this action on behalf of herself and all members of the California Off the Clock Class (as defined below), the California On Duty Break Class (as defined below), and all Subclasses contained therein.

28. The **California Off the Clock Class** (hereinafter referred to as “California Off the Clock Class Members”) is defined as follows:

All nonexempt hourly paid employees employed by Defendant in California who worked off the clock as demonstrated by the comparison between the EMR system and electronic timekeeping system at any time during the relevant time period alleged herein.

A. The **California Off the Clock Class** may be further subdivided into the following subclasses of similarly-situated and typical individuals based upon the divergent statute of limitations period for various claims asserted herein (collectively “the Off the Clock Subclasses” or “Off the Clock Subclass Members”):

Meal Break Off the Clock Subclass: All California Off the Clock Class Members who worked off the clock during a meal break as demonstrated by the comparison between the EMR system and electronic timekeeping system at any time during the relevant time period alleged herein.

Itemized Wage Statement Off the Clock Subclass: All California Off the Clock Class Members who were employed at any time during the relevant time period alleged herein.

Waiting Time Penalties Off the Clock Subclass: All California Off the Clock Class Members who are former employees and who were employed at any time during the relevant time period alleged herein.

29. The **California On Duty Break Class** (hereinafter referred to as “California On Duty Break Class Members”) is defined as follows:

All nonexempt hourly paid employees who were employed by Defendant in California and who carried a cell phone

1 provided by Defendant on their person at any time during the
2 relevant time period alleged herein.

3 A. The **California On Duty Class** may be further subdivided into the
4 following subclasses of similarly-situated and typical individuals based upon the
5 divergent statute of limitations period for various claims asserted herein (collectively “the
6 On Duty Break Subclasses” or “On Duty Subclass Members”):

7 **Itemized Wage Statement On Duty Subclass:** All
8 California On Duty Class Members who were employed at
9 any time during the relevant time period alleged herein.

10 **Waiting Time Penalties On Duty Subclass:** All California
11 On Duty Class Members who are former employees and who
12 were employed at any time during the relevant time period
13 alleged herein.

14 30. Class treatment is appropriate in this case for the following reasons:

15 A. The Classes Are Sufficiently Numerous: Upon information and belief,
16 Defendant employs, and have employed, approximately 5,000 members of the California
17 Off the Clock Class and the California On Duty Class within the applicable statute of
18 limitations. Because Defendant is legally obligated to keep accurate payroll records,
19 Plaintiff alleges that Defendant’s records will establish the members of the Classes as well
20 as its numerosity.

21 B. Common Questions of Law and Fact Exist: Common questions of law and
22 fact exist and predominate as to Plaintiff and members of the Classes, including, without
23 limitation:

- 24 1) Whether Defendant failed to compensate Plaintiff and members of the
25 Classes for all the hours that they worked;
- 26 2) Whether Defendant’s cell phone policy rendered all breaks “on duty”;
- 27 3) Whether Defendant’s policy of not including the hours worked off the
28 clock in a pay period on the pay stub violates the itemized wage statement
provisions of the California Labor Code and the Orders of the California
Industrial Wage Commission; and

1 4) Whether Defendants willfully failed to pay members of the Classes all
2 wages due and owing at the time of termination.

3 C. Plaintiff's Claims are Typical to Those of Fellow Members of the Classes:

4 Plaintiff's claims are typical to those of the Classes she seeks to represent. Plaintiff and
5 members of the California Off the Clock Class performed work off the clock without
6 compensation; Defendant forced, suffered and/or permitted Plaintiff and members of the
7 California Off the Clock Class to work through their meal and/or rest breaks; Defendant's
8 cell phone policy did not give Plaintiff and members of the and the California On Duty
9 Class duty free breaks; Defendant did not give Plaintiff and members of the Classes
10 accurate wage statements to reflect all their hours worked, rate of pay, and overtime
11 compensation; and Defendant has not timely remitted all wages due and owing to Plaintiff
12 and members of the Classes who are former employees upon their termination.

13 D. Plaintiff Is An Adequate Representative of the Classes: Plaintiff will fairly
14 and adequately represent the interests of members of the Classes because Plaintiff is a
15 member of both proposed Classes, she has common issues of law and fact with all
16 members of the Classes, and her claims are typical to other members of the Classes.

17 E. A Class Action is Superior/Common Claims Predominate: A class action
18 is superior to other available means for the fair and efficient adjudication of this
19 controversy, since individual joinder of all members of the Classes is impractical. Class
20 action treatment will permit a large number of similarly situated persons to prosecute their
21 common claims in a single forum simultaneously, efficiently, and without unnecessary
22 duplication of effort and expense. Furthermore, the expenses and burden of individualized
23 litigation would make it difficult or impossible for individual members of the Class to
24 redress the wrongs done to them, while an important public interest will be served by
25 addressing the matter as a class action. Individualized litigation would also present the
26 potential for inconsistent or contradictory judgments.

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FIRST CAUSE OF ACTION

Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207

(On Behalf of Plaintiff and the FLSA Class Against Defendant)

31. Plaintiff realleges and incorporates by reference all the paragraphs above in the Complaint as though fully set forth herein.

32. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided in the section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

33. By failing to compensate Plaintiff and FLSA Class Members for all the time they were suffered and/or permitted to work as described above, Defendant has failed to pay Plaintiff and FLSA Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

34. Wherefore, Plaintiff demands for herself and for all others similarly situated, that Defendant pay Plaintiff and FLSA Class Members one and one-half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

Failure to Pay Minimum Wages for All Hours Worked Under California Law

(On Behalf of Plaintiff and members of the California Off the Clock Class and the California On Duty Class Against Defendant)

35. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

36. California Labor Code (hereinafter referred to as “Labor Code”) § 1194 provides that “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled

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1 to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
2 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

3 37. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the
4 minimum wage and states that “the payment of a less wage than the minimum so fixed is
5 unlawful.” Section 4 of applicable Wage Order No. 9 requires Defendant to pay its employees
6 minimum wages for all hours worked.

7 38. Because Defendant failed to compensate Plaintiff and California Off the Clock
8 Class Members for their hours worked off the clock as set forth above, Defendant failed to pay
9 Plaintiff and California Off the Clock Class Members the required minimum wage rate for each
10 hour worked.

11 39. Because Defendant’s cell phone policy did not permit Plaintiff and California On
12 Duty Class Members to take duty free breaks as set forth above, Defendant owes Plaintiff and
13 California On Duty Class Members the required minimum wage rate for each and every on duty
14 meal break.

15 40. Labor Code § 1194.2(a) provides that, in an action to recover wages because of
16 the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an
17 employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully
18 unpaid and interest thereon.

19 41. Plaintiff and all members of the Classes should have received their regular rate of
20 pay, or the minimum wage, whichever is higher, in a sum according to proof for the hours
21 worked, but not compensated, during the Class Period. Defendant therefore owes Plaintiff and
22 all members of the Classes heir regular rate wages or minimum wages, whichever are higher, as
23 well as liquidated damages in an equal amount to the wages owed, and has failed and refused,
24 and continues to fail and refuse, to pay Plaintiff and members of the Classes the amounts owed.

25 42. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
26 herein, Plaintiff and members of the Classes have sustained damages and been deprived of
27 minimum wages and regular wages that are owed in amounts to be proven at trial, and are
28 entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys’ fees and

1 costs pursuant to Labor Code §§ 218.5, 1194, and 1194.2, for the three years prior to the filing
2 of this complaint to the date of judgment after trial.

3 43. Because Defendant's conduct described immediately above is an act of unfair
4 competition and a business practice in violation of California Business & Professions Code §
5 17200, Plaintiff and members of the Classes are entitled to recover the amounts previously
6 specified for four years prior to the filing of this complaint to the date of judgment after trial.

7 44. Defendant is also subject to civil penalties and restitution of wages payable to
8 Plaintiff and all members of the Classes pursuant to Labor Code § 1197.1 as follows:

9 (1) For any initial violation that is intentionally committed,
10 one hundred dollars (\$100) for each underpaid employee for each
11 pay period for which the employee is underpaid. This amount shall
12 be in addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation for the same specific
14 offense, two hundred fifty dollars (\$250) for each underpaid
15 employee for each pay period for which the employee is underpaid
16 regardless of whether the initial violation is intentionally committed.
17 This amount shall be in addition to an amount sufficient to recover
18 underpaid wages.

19 (3) Wages recovered pursuant to this section shall be paid to
20 the affected employee.

21 These penalties are in addition to any other penalty provided by law and are recoverable
22 by private individuals on behalf of the state of California under the Private Attorney General Act,
23 Labor Code § 2699, et. seq.

24 45. Defendant is also subject to civil penalties and restitution of wages payable to
25 Plaintiff and all members of the Classes pursuant to Labor Code § 558 for violating the applicable
26 Wage Order as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each
28 underpaid employee for each pay period for which the employee
was underpaid in addition to an amount sufficient to recover
underpaid wages.

(2) For each subsequent violation, one hundred dollars
(\$100) for each underpaid employee for each pay period for which

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1 the employee was underpaid in addition to an amount sufficient to
2 recover underpaid wages.

3 (3) Wages recovered pursuant to this section shall be paid to
4 the affected employee.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Pay Overtime Wages for All Hours Worked Under California Law**

7 (On Behalf of Plaintiff and members of the California Off the Clock Class and the California
8 On Duty Class Against Defendant)

9 46. Plaintiff realleges and incorporates by this reference all the paragraphs above in
10 this Complaint as though fully set forth herein.

11 47. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No. 9,
12 mandate that California employers pay overtime compensation at one and one-half times the
13 regular rate of pay to all non-exempt employees for all hours worked over eight (8) per day or
14 over forty (40) per week and “any work in excess of 12 hours in one day shall be compensated
15 at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in
16 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
17 less than twice the regular rate of pay of an employee.” Section 3(A)(1) of the applicable Wage
18 Order states in relevant part: “Employment beyond eight (8) hours in any workday or more than
19 six (6) days in any workweek is permissible provided the employee is compensated for such
20 overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay
21 for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday,
22 and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
23 workweek; and (b) Double the employee’s regular rate of pay for all hours worked in excess of
24 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
25 (7th) consecutive day of work in a workweek.”

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

3 49. Because Defendant failed to compensate Plaintiff and California Off the Clock
4 Class Members for their hours worked off the clock as set forth above, Defendant failed to pay
5 Plaintiff and California Off the Clock Class Members overtime compensation when due.

6 50. Because Defendant’s cell phone policy did not permit Plaintiff and California On
7 Duty Class Members to take duty free breaks as set forth above, Defendant owes Plaintiff and
8 California On Duty Class Members the required overtime compensation. if applicable, for each
9 and every on duty meal break.

10 51. Wherefore, Plaintiff demands for herself and for all members of the Classes that
11 Defendant pay Plaintiff and members of the Classes overtime pay at the applicable legal rate for
12 all overtime hours worked together with attorneys’ fees, costs, and interest as provided by law
13 for the three years prior to the filing of this complaint to the date of judgment after trial.

14 52. Because Defendant’s conduct described immediately above is an act of unfair
15 competition and a business practice in violation of California Business & Professions Code §
16 17200, Plaintiff and members of the Classes are entitled to recover the amounts previously
17 specified for four years prior to the filing of this complaint to the date of judgment after trial.

18 53. Defendant is also subject to civil penalties and restitution of wages payable to
19 Plaintiff and all members of the Classes pursuant to Labor Code § 558 for violating the applicable
20 Wage Order as follows:

21 (1) For any initial violation, fifty dollars (\$50) for each
22 underpaid employee for each pay period for which the employee
23 was underpaid in addition to an amount sufficient to recover
underpaid wages.

24 (2) For each subsequent violation, one hundred dollars
25 (\$100) for each underpaid employee for each pay period for which
26 the employee was underpaid in addition to an amount sufficient to
recover underpaid wages.

27 (3) Wages recovered pursuant to this section shall be paid to
28 the affected employee.

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FOURTH CAUSE OF ACTION

Failure to Provide Meal and Rest Breaks Under California Law

(On Behalf of Plaintiff and all members of the California On Duty Class and Meal Break Off the Clock Subclass Against Defendant)

54. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

55. Section 11 of the applicable Wage Order states, in relevant part: “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

56. Labor Code § 226.7 states that: “a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.” California Labor Code § 229 provides for a private right of action to enforce the provisions of Labor Code 226.7.

57. Labor Code § 512 provides in relevant part: “An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . .”

58. As described above, Defendant maintained a policy whereby Plaintiff and all members of the California On Duty Class did not receive uninterrupted rest and/or meal breaks because they were required to carry an employer-provided cell phone to receive and respond to employment related calls.

59. As described above and demonstrated by the comparison of the EMR and electronic timekeeping records, Plaintiff and Meal Break Subclass Members routinely worked

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1 through meal periods as required by Defendant but were not compensated for the missed meal
2 period pursuant to 226.7.

3 60. Wherefore, Plaintiff demands payment for herself and all members of the
4 California On Duty Class and the Meal Break Subclass, the actual amount of pay for the hours
5 worked during the interrupted meal period, at the applicable rate of pay, and the penalty of one
6 hour pay per day for every missed mandatory meal period, together with attorneys' fees, costs,
7 penalties, and interest as provided by law for the three years prior to the filing of this complaint
8 to the date of judgment after trial.

9 61. Plaintiff further demands payment Plaintiff demands payment for herself and all
10 members of the California On Duty Class, the penalty of one hour pay per day for every missed
11 mandatory rest period, together with attorneys' fees, costs, penalties, and interest as provided by
12 law for the three years prior to the filing of this complaint to the date of judgment after trial.

13 62. Because Defendant's conduct described immediately above is an act of unfair
14 competition and a business practice in violation of California Business & Professions Code §
15 17200, Plaintiff and all members of the California On Duty Class and the Meal Break Subclass
16 are entitled to recover the amounts previously specified for four years prior to the filing of this
17 complaint to the date of judgment after trial.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Provide Accurate Wage Statements Under California Law**

20 (On Behalf of Plaintiff and members of the Wage Statement Off the Clock Subclass and Wage
21 Statement On Duty Subclass (collectively "Wage Statement Subclasses") Against Defendant)

22 63. Plaintiff realleges and incorporates by this reference all the paragraphs above in
23 this Complaint as though fully set forth herein.

24 64. Defendant knowingly and intentionally failed to provide timely, accurate,
25 itemized wage statements showing, inter alia, hours worked, to Plaintiff and members of the
26 Wage Statement Subclasses in accordance with Labor Code § 226(a) and applicable Wage Order
27 No. 9. Such failure caused injury to Plaintiff and members of the Wage Statement Subclasses
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1 by, among other things, impeding them from knowing the amount of wages to which they are
2 and were legally entitled.

3 65. Plaintiff's good faith estimate of the number of pay periods in which Defendant
4 failed to provide accurate itemized wage statements to Plaintiff and members of the Wage
5 Statement Subclasses is each and every pay period during the Class Period.

6 66. Plaintiff and members of the Wage Statement Subclasses are entitled to and seek
7 injunctive relief requiring Defendant to comply with Labor Code §§ 226(a) and further seek the
8 amount provided under Labor Code § 226(e), including the greater of all actual damages or fifty
9 dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars
10 (\$100) per employee for each violation in a subsequent pay period.

11 67. Defendant is also subject to civil penalties for Labor Code §§ 226(a) violations
12 "in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial
13 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . .
14 ." as provided by Labor Code §§ 226.3.

15 68. Because Defendant's conduct described immediately above is an act of unfair
16 competition and a business practice in violation of California Business & Professions Code
17 Section 17200, Plaintiff further demands the Defendant be enjoined from continuing to provide
18 inaccurate pay statements that fail to include the amount of hours worked by each employee, the
19 hourly rate of pay, and the amount of all overtime hours worked at the corresponding hourly rate.

20 **SIXTH CAUSE OF ACTION**

21 **Failure to Timely Pay All Wages Due and Owing Under California Law**

22 (On Behalf of Plaintiff and members of the Waiting Time Penalties Off the Clock Subclass and
23 the Waiting Time Penalties On Duty Subclass (collectively "Waiting Time Penalty Subclass")

24 Against Defendant)

25 69. Plaintiff realleges and incorporates by this reference all the paragraphs above in
26 this Complaint as though fully set forth herein.

27 70. Labor Code §§ 201 and 202 require an employer to pay its employees all wages
28 due within the time specified by law. Labor Code § 203 provides that if an employer willfully

1 fails to timely pay such wages, the employer must continue to pay the subject employees' wages
2 until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30)
3 days of wages.

4 71. Plaintiff and all members of the Waiting Time Penalty Subclass are entitled to
5 unpaid compensation for unpaid minimum, regular, and overtime wages, as alleged above, but
6 to date have not received such compensation. Defendant's failure to pay such wages and
7 compensation, as alleged above, was knowing and "willful" within the meaning of Labor Code
8 § 203.

9 72. As a consequence of Defendant's willful conduct in not paying compensation for
10 all hours worked, Plaintiff and all members of the Waiting Time Penalty Subclass are entitled to
11 up to thirty days' wages under Labor Code § 203, together with interest thereon and attorneys'
12 fees and costs.

13 **SEVENTH CAUSE OF ACTION**

14 **Unfair Business Practices Under California Law**

15 (On Behalf of Plaintiff and the California Classes Against Defendant)

16 73. Plaintiff realleges and incorporates by this reference all the paragraphs above in
17 this Complaint as though fully set forth herein.

18 74. By the conduct described throughout this Complaint, Defendant has violated the
19 provisions of the California Labor Code as specified and have engaged in unlawful, deceptive,
20 and unfair business practices prohibited by California Business & Professions Code § 17200, *et*
21 *seq.* Defendant's use of such practices resulted in greatly decreased labor costs and constitutes
22 an unfair business practice, unfair competition, and provides an unfair advantage over
23 Defendant's competitors.

24 75. The unlawful and unfair business practices complained of herein are ongoing and
25 present a threat and likelihood of continuing against Defendant's current employees as well as
26 other members of the general public. Plaintiff and all members of the Classes are therefore
27 entitled to injunctive and other equitable relief against such unlawful practices in order to prevent
28 future damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and all members of

1 the Classes request a preliminary and permanent injunction prohibiting Defendant from the unfair
2 practices complained of herein.

3 76. Defendant generated income as a direct result of the above-mentioned unlawful
4 and unfair business practices. Plaintiff and all members of the Classes are therefore entitled to
5 restitution of any and all monies withheld, acquired, and/or converted by Defendant by means of
6 the unfair and unlawful practices complained of herein.

7 77. As a result, Plaintiff and all members of the Classes seek restitution of their unpaid
8 wages, unpaid overtime, meal and rest break pay, itemized wage statement penalties, and waiting
9 time penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to
10 proof. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary
11 relief sought from Defendant.

12 **JURY DEMAND**

13 Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

14 **PRAYER FOR RELIEF**

15 Wherefore Plaintiff, individually and on behalf of all other similarly situated and
16 aggrieved employees, pray for relief as follows relating to their collective, class, and
17 representative action allegations:

- 18 1. For an order conditionally certifying the action under the FLSA and providing
19 notice to all FLSA Class Members so they may participate in the lawsuit;
- 20 2. For an order certifying this action as a class action on behalf of the proposed
21 California Classes and Subclasses;
- 22 3. For an order appointing Plaintiff as the Representative of the Classes and
23 Subclasses and for an order appointing her counsel as Class Counsel;
- 24 4. For damages according to proof for regular rate or minimum rate pay, whichever
25 is higher, for all hours worked under both federal and state law;
- 26 5. For damages according to proof for overtime compensation for all overtime hours
27 worked under both federal and state law;
- 28 6. For liquidated damages;

- 1 7. For one hour of pay at the regular rate or minimum rate pay, whichever is higher,
- 2 for every missed and/or inadequate meal and/or rest period under California law;
- 3 8. For waiting time penalties;
- 4 9. For civil penalties;
- 5 10. For interest as provided by law at the maximum legal rate;
- 6 11. For reasonable attorneys' fees authorized by statute;
- 7 12. For costs of suit incurred herein;
- 8 13. For pre-judgment and post-judgment interest, as provided by law, and
- 9 14. For such other and further relief as the Court may deem just and proper.

10
11 DATED: July 9, 2020

THIERMAN BUCK LLP

12
13 s/ Mark R. Thierman

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

14
15
16 *Attorneys for Plaintiff*

17
18
19 **EXHIBITS**

20
21 Exhibit A: Joan Santiago Consent to Sue

EXHIBIT A

Joan Santiago Consent to Sue

EXHIBIT A

1 Mark R. Thierman, Ca. Bar No. 72913
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 8 Tel. (775) 284-1500
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9 *Attorneys for Plaintiffs*

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

13 JOAN SANTIAGO, on behalf of herself
 14 and all other similarly situated individuals,

15 Plaintiff,

16 vs.

17 NORTHBAY HEALTHCARE GROUP;
 18 and DOES 1 through 50, inclusive,

19 Defendant(s).
 20

Case No.

CONSENT TO JOIN

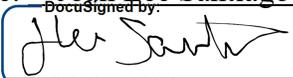
21 **CONSENT TO JOIN**

22 The Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), states, “No employee shall
 23 be a party plaintiff to any such action [under the FLSA] unless he gives his consent in writing to
 24 become such a party and such consent is filed in the court in which such action is brought” and
 25 unless the Court provides otherwise, the statute of limitations is tolled on the FLSA claims only
 26 when the Consent to Sue is filed with the Court.
 27
 28

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1 Therefore, pursuant to the Fair Labor Standards Act, ("FLSA") 29 U.S.C. § 216(b), I Joan
2 Lee Santiago hereby give my consent in writing to become a party plaintiff against my employer,
3 former employer, and/or any and all of its affiliated entities, currently identified as Northbay
4 Medical. I authorize the filing of a copy of this Consent form in Court, with my personal
5 information redacted. I further consent to join this and/or any subsequent or amended suit against
6 the same or related defendants for wage and hour violations.

7
8 Print Name: Joan Lee Santiago

9 Signature:  525219E2B756451...

10 Date signed: 6/12/2020

11 Employer/Former Employer: Northbay medical center

12
13
14 The following contact information below will be redacted before filing with the Court:

15 Name: [REDACTED]

16 Address: [REDACTED]

17 City, State & Zip: [REDACTED]

18 Telephone number: [REDACTED]

19 Email: [REDACTED]
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