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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VALERIE ALBERTS, RUDOLPH BREILEIN, ROBIN MOTOLA, CYNDI LANE, SHELBY EIDSON, AVIANCE CONTRERAS, Plaintiffs, v. AURORA BEHAVIORAL HEALTH CARE, AURORA LAS ENCINAS LLC, AURORA CHARTER OAK - LOS ANGELES LLC; AURORA VISTA DEL MAR LLC, AURORA-SAN DIEGO, LLC and DOES 1 through 100, inclusive, Defendants.	Case No: BC 419340 [Assigned for all purposes to the Hon. David Minning] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** Date: July 27, 2012 Time: 9:00 a.m. Dept. 61 [Declarations in support thereof filed concurrently under separate covers.] [C.C.P. § 382, C.R.C. 3.764]

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 27, 2012, at 9:00 a..m. in Department 61 of the above entitled Court located at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiffs Valerie Alberts, Rudolph Breilein, Robin Motola, Cyndi Lane, Shelby Eidson and Aviance Contreras will move this Court for an order certifying the instant action to proceed as a class action pursuant to California Code of Civil Procedure § 382.

The Motion is based on the following grounds:

(1) The proposed class is ascertainable;

(2) The proposed class is sufficiently numerous to warrant prosecution as a class action;

(3) The proposed class members have an adequate community of interest to warrant prosecution as a class action;

(4) The claims of the class representative plaintiffs are typical of the claims of the other class members;

(5) Both the representative plaintiffs and their counsel are "adequate" for purposes of class certification; and

(6) There are factual and legal issues that are common to the class as a whole and/or the specified sub-classes, sufficient in importance so that their adjudication on a class basis is a superior means of proceeding in this instance both for the litigants and the Court.

The Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities and the Declarations of Michael D. Seplow, Genie Harrison, Brian Kriegler, Denise Rounds, Valerie Alberts, Rudolph Breilein, Kim Cabrera, Helen Chesson, Mark Cline, Aviance Contreras, Jacqueline de la Cruz, Shelby Eidson, Luis Empalmado, Elizabeth Galvan, Theresa Garcia, Nadine Ilarraza. Hilary Johnson, Belle Lagerstrom, Cyndi Lane, Jeane Ledbetter, Janine Moody, Robin Motola, Jean Palionis, Joe Pittman, Viviana Radulescu, Lisa Ramirez, Pamela Ruiz, Robert Sanchez, and Rosalind Spann, as well as the exhibits attached thereto, the Court's file in this matter, and such further evidence and argument as may be heard by the court.

Dated: May 25, 2012

SCHONBRUN DESIMONE SEPLOW
HARRIS HOFFMAN & HARRISON LLP

By: _____

Michael D. Seplow
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I. INTRODUCTION

This case arises out of Defendants' rampant class wide violations of California's labor laws at two Southern California psychiatric hospitals: Aurora Las Encinas ("Las Encinas") in Pasadena and Aurora Charter Oak ("Charter Oak") in Covina. The proposed class and subclasses consist of nurses and other patient care employees who were and are subjected to common policies and practices which resulted in the systemic denial of rest and meal breaks, overtime and reimbursement for work related expenses. Defendants' facilities house and treat people with mental and emotional problems. The nurses and other patient care employees who staff these hospitals are required to place patient care and safety above all other concerns.

According to the staffing regulations and hospital policies, nurses and other patient care workers could not be relieved of their patient care duties unless another staff member was present to relieve them. However, it was Defendants' policy and practice throughout the class period not to schedule any relief on the units for employees to take their 10 minute rest breaks. Because staff could not leave their patients without proper coverage, they were routinely denied rest breaks in which they were relieved of all duties. This resulted in a class wide denial of rest breaks to nursing staff in violation of the California Labor Code.

Defendants also maintained a standard policy and practice with respect to 30 minute meal breaks which violates the California Labor Code. Instead of providing employees with an uninterrupted 30 minute meal break relieved of all duty within the first five hours of work, Defendants consistently did not provide meal break relief for their employees. Moreover, despite the fact that Defendants were well aware that their employees were not being relieved of all duties during their breaks, Defendants placed the onus on their employees who had to work during their meal breaks to obtain approval for the missed meals from their supervisors. Defendants actively discouraged employees from seeking compensation for missed meal breaks and supervisors routinely refused to authorize missed meal breaks. As a result, employees were encouraged to clock out and keep working during their breaks and after their shifts. Further, consistent with these policies, employees were pressured to work "off the clock" at the ends of their shifts in order to complete their required patient care assignments. Additionally, as a result

of Defendants' practices, nursing staff employees had to provide their own equipment, and to pay for their own mandatory CPR training, in violation of the law.

Common proof supports Plaintiffs' claims. In addition to the declarations and testimony of numerous employees concerning Defendants' common policies and practices, there is compelling expert and statistical evidence which demonstrates that Defendants uniformly violated California laws related to overtime and breaks on a class wide basis.

This case satisfies all of the requirements for class certification as set forth by the California Supreme Court's recent decision in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 139 Cal.Rptr.3d 315. Common issues of law and fact clearly predominate. Employees were subject to common policies and practices regarding meal and rest breaks, resulting in the class wide denial of such breaks. The primary cause of the Labor Code violations in this case is the chronic understaffing at both facilities and policies which deprived employees of break relief, which resulted in employees being denied rest and meal breaks, and being forced to work off the clock. This common theory of liability, and the common evidence to support Plaintiffs' claims, render this case particularly suitable for class certification under *Brinker*. Accordingly, Plaintiffs' motion for class certification should be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs and members of the putative class are current and former non-exempt employees of Las Encinas and Charter Oak from August 6, 2005, to the present, who provided patient care, and held the following job titles: Registered Nurse ("RN") (including Charge Nurse), Licensed Vocational Nurse ("LVN"), Licensed Psychiatric Technician ("LPT"), and Mental Health Worker ("MHW") (also known as Behavioral Health Specialist ("BHS") or Psychiatric Assistant ("PA") at Charter Oak). There are approximately 550 class members for Las Encinas and 550 for Charter Oak. There are a total of 1053 individual class members in that some employees worked at both facilities during the class period. Declaration of Michael D.

Seplow ("Seplow") ¶ 4. Plaintiffs' originally filed this action on August 6, 2009.[1/]

A. Chronic Staffing Problems at Las Encinas and Charter Oak Hospitals

Las Encinas Hospital and Charter Oak Hospital are psychiatric hospitals owned and operated by Defendant Aurora Behavioral Health Care. Seplow Decl., Ex. 1. Throughout the relevant class period, the hospitals were chronically understaffed, presenting a serious risk to the welfare of both employees and patients of the hospitals.[2/] Notably, there have been several high profile incidents at the hospitals such as patient deaths, suicides, attempted suicides, including an incident at Charter Oak where a patient stabbed herself in the eyes and was blinded, the reported rape of a patient by a fellow patient, as well as numerous assaults by patients on staff or other patients.[3/] These incidents are directly attributed to inadequate staffing at the hospitals and have resulted in increased pressure on the nursing staff to place patient safety above all other concerns, including being able to take rest and meal breaks.[4/]

Defendants' desire to place profits above care for patients or employees provides the backdrop for this case in which the duties of hospital employees to provide patient care clashed

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1. The operative Fourth Amended Complaint contains the following causes of action: 1. Failure to Pay Overtime Compensation (Cal. Labor Code § 1194); 2. Failure to Provide Meal and Rest Periods (Cal. Labor Code § 226.7); 3. Waiting Time Penalties (Cal. Labor. Code § 203); 4. Failure to Provide Accurate Itemized Statements (Cal. Labor Code § 226); 5. Improper Deductions and Withholdings (Cal. Labor Code §§ 221-224); 6. Payment for Required and Necessary Expenditures (Cal. Labor Code § 2802); 7. Unfair Business Practices (Cal. Business and Professions Code §§ 17200 *et seq.*); 8. Private Attorney General Act ("PAGA") (Cal. Labor Code §§ 2698 *et seq.*). Plaintiffs are not seeking class certification as to the Fifth Cause of Action for Improper Deductions. Morever, class certification is not necessary or proper for Plaintiffs' PAGA claims (8th Cause of Action). *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 981.

2. Cline Decl., ¶ 5; Ilarraza Decl., ¶ 7 ("The understaffing created serious safety issues on the units"); Alberts ¶ 7; Cabrera ¶¶ 23-24; Radulescu ¶ 10; Garcia ¶ 9; Lane ¶ 5; Ledbetter ¶ 9.

3. *See* "Deaths at rehab hospital in Pasadena draw scrutiny," Los Angeles Times, August 21, 2008; "Aurora Las Encinas hospital faces renewed scrutiny," Los Angeles Times, March 6, 2010; *Bliss v. Aurora Behavior Health System,* LASC Case No. KC062606 (November 28, 2011); *see also* Radulescu ¶ 10; Alberts ¶¶ 4, 6 (assaults, deaths); Cabrera ¶¶ 24-25 (assaults, self-mutilation); Eidson 9, 12 (deaths, rape); Ilarraza ¶ 7 (injuries to patients and staff).

4. Declaration of Denise Rounds ¶ 59; *see also* Galvan ¶ 7; Garcia ¶ 9; Motola ¶ 3; Lane ¶ 4; Alberts ¶ 4, 14; Cabrera ¶ 23; Cline ¶ 6; Eidson ¶ 6; Ramirez ¶ 14.

with Defendants' obligation to provide employees with meal and rest breaks, overtime pay, and necessary supplies and training.[5/] The evidence shows that in response to the understaffing and related patient care issues, Defendants adopted policies and practices which resulted in the class wide denial of meal and rest breaks to employees, and other violations of California's Labor Code. Indeed, as the result of a site inspection in September 2008 by the Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS"), Las Encinas Hospital was found deficient in failing to protect and promote patient rights. In particular, CMS determined that:

> The facility failed to ensure employees assigned to monitor patients on a 1:1 basis had no other responsibilities that would interfere with their assignment. The facility failed to ensure that employees monitored patients every 15 minutes in accordance with policies and procedures. **The facility failed to ensure that employees did not exceed the staff to patient ratio required by state law when they assumed co-workers assignments to provide break relief.** Seplow, Ex. 18, at 2 (emphasis added).

The CMS report further noted that break relief was not provided to staff in a manner consistent with their patient care duties. *Id.* at 8-10. Moreover, Plaintiffs' nursing expert concludes that Defendants engaged in under-staffing an an intentional business practice, thereby chronically preventing staff from being able to take the meal and rest breaks to which they are entitled under the law, as well as endangering the patients and staff. Rounds ¶¶ 31-59.

B. Defendants' Uniform Policies Regarding Staffing And Patient Care Needs

Las Encinas and Charter Oak are each registered with the State of California as an "acute psychiatric hospital." Rounds ¶ 10. Applicable regulations require that there be sufficient registered nurses on duty to provide for patient needs and staff supervision. 22 CCR § 71215(c). Moreover, 22 CCR § 71225(c) requires that a "sufficient number of appropriate personnel shall be provided for the safety of the patients." Additionally, as a condition of participation in Medicare, 42 CFR § 482.23(b) provides that: "The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to

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5. In conformity with Defendants' practice of placing profits over patient and employee safety, in 2008, Las Encinas provided nursing staff with a competency test, whose results are used for hospital accreditation, in which the answers were provided in the test, so that everyone would pass without having to study. Seplow, Ex. 20.

provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient."

According to Defendants' staffing policies, which are supposed to be consistent with state and federal laws and regulations, there must be at least one RN, and at least two staff members total, on each unit at all times.[6] Moreover, there must be at least one licensed staff member (RN, LVN or LPT) on the unit for every six (6) patients.[7] Defendants repeatedly stress that patient care is the number one priority, and that there must be adequate staff on the units at all times in order to ensure patient safety.[8] Indeed, employees cannot leave their units without sufficient coverage and those who leave their units without relief are subject to discipline.[9] Therefore, according to Defendants' own practices and policies, whenever patient care duties conflicted with the employees taking breaks, patient needs would always prevail.[10]

C. Defendants' Policies And Procedures Regarding Rest Breaks

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6. Deposition of Cheryl Cook ("Cook"), 89:12-90:7, 128:18-23 ("There must be a minimum of two staff on a unit," with at least one of them being a RN); Cruz ¶ 5; Ruiz ¶ 5; Spann ¶ 5; Radulescu ¶ 11; Galvan ¶ 4; Motola ¶ 4; Alberts ¶¶ 12-13; Cabrera ¶ 8; Cline ¶ 6. Eidson ¶ 9; Lagerstrom ¶ 13.

7. Cook 90:4-7; Cline ¶ 5; Seplow Decl., Ex. 17 (setting forth minimum number of staff on Las Encinas units).

8. Seplow Decl., Ex. 12 ("Patient safety is the #1 priority"); Cook 319:19-320:4, 320:20-24, 417:22-418:16; Deposition of Evaldo Casas ("Casas"), 53:7-11; Motola Decl., ¶ 3; Alberts ¶ 4, 13-14; Cabrera ¶ 8; Moody ¶ 9; Radulescu ¶ 11; Lagerstrom ¶ 9; Ramirez ¶ 11; Galvan ¶ 8; Chesson ¶ 9; Cruz ¶ 8; Ruiz ¶ 9.

9. Seplow, Ex. 11 ("No charge RN is to leave his or her unit without first being relieved by another RN, or the House Supervisor. Due to the serious nature of this issue, this is a zero tolerance issue."); Cook 442:6-24, 444:1-7; Casas 54:1-14, 55:1-56:5; Radulescu ¶¶ 11, 12; Breilein ¶ 5; Motola ¶ 4; Alberts ¶¶ 12-13; Cline ¶ 6; Lagerstrom ¶ 13; Ilarraza ¶ 8; Ramirez ¶ 15; Sanchez ¶ 8; Johnson ¶ 8, 16; Pittman ¶ 9; Moody ¶ 9; Contreras ¶ 4.

10. Seplow, Ex. 12; Cook 319:19-320:4, 320:20-24; Cruz ¶ 8; Ruiz ¶ 12; Spann ¶ 10; Radulescu ¶ 16; Chesson ¶¶ 5, 10; Palionis ¶ 12; Breilein ¶ 9; Motola ¶ 3; Lane ¶ 4; Alberts ¶ 14; Cline ¶ 8; Lagerstrom ¶¶ 12-13; Moody ¶ 9 ("the Hospital required staff to prioritize patient safety over all else...").

Because Defendants' policies required that sufficient staff be on the units at all times, employees were typically prohibited from leaving their unit without designated relief.[11] Further, an RN cannot be relieved except by another RN, and a LVN cannot be relieved except by another LVN or RN.[12] However, pursuant to Defendants' policies and practices, no one was scheduled to relieve employees for their mandatory 10-minute rest breaks for each four hours of work.[13] Therefore according to Defendants' own procedures, putative class members were routinely and uniformly denied uninterrupted 10 minutes breaks because they were not allowed to leave their units and no rest break relief was provided.[14] Moreover, Defendants did not have a procedure whereby employees could be compensated for missed rest breaks and, consequently, employees were routinely not compensated for such missed breaks.[15]

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11. Cook 252:6-8, 254:10-255:12 (RN could be disciplined for leaving the unit without relief even if he or she left at designated break time); Galvan ¶¶ 7-8; Ramirez ¶ 15; Breilein ¶¶ 5, 9; Lane ¶ 8; Cabrera ¶ 8; Chesson ¶ 10; Sanchez ¶ 9; Eidson ¶ 7; Cline ¶ 6; Moody ¶ 9; Cruz ¶ 8; Lagerstrom ¶ 13; Alberts ¶ 13 ("[S]taff in a private psychiatric hospital *cannot* simply leave mentally ill and physically sick, or violent, people alone to go have a meal period.."); Cruz ¶ 9; Breilein ¶ 9 (the policy that "we could not leave our patients without being relieved" was "Las Encinas' most important policy"); Seplow, Ex. 11, 27; Motola ¶ 3.

12. Cook 164:3-11, 252:18-24; Breilein ¶ 5; Sanchez ¶ 9; Chesson ¶ 10; Cline ¶ 6; Lagerstrom ¶ 13; Seplow, Ex. 11.

13. Casas 113:14-25 (scheduled break relief was for meal breaks only, not rest breaks); Cook 165:8-12; Ramirez Decl., ¶ 27; Garcia ¶ 10; Breilein ¶ 20; Lagerstrom ¶ 21; Cline ¶¶ 6, 8; Galvan ¶ 12; Ilarraza Decl., ¶ 19; Ledbetter ¶ 18; Alberts ¶ 17; Motola Decl., ¶ 11; Radulescu ¶ 19; Lane ¶ 17; Cabrera ¶¶ 16-17; Chesson ¶ 9; Cruz ¶ 8; Eidson ¶ 20; Ruiz ¶ 11; Spann ¶ 9; Palionis ¶ 8; Empalmado ¶ 9.

14. Las Encinas' written policy contained in the employee handbook does not explicitly state that employees will be provided with a 10-minute break for each four hours of work, as required by California law. *See Brinker*, 139 Cal.Rptr.3d at 334. Rather, the handbook merely states that employees are to receive two 10 minute breaks *during the course of the shift* and that the supervisor is supposed to schedule them approximately half way between the start time and the meal break and halfway between the meal break and the end of the shift. Seplow, Ex. 8.

15. Cook 265:8-11 (Las Encinas hospital does not keep track of whether 10-minute rest breaks are taken); Casas 127:6-8 (he is not aware of any form that employees could use to report a missed 10-minute break); Ramirez Decl., ¶ 29; Ilarraza ¶ 21; Radulescu ¶ 19; Galvan ¶ 15; Breilein ¶ 21; Motola ¶ 11; Lane ¶ 18; Alberts ¶ 17; Cabrera ¶ 18; Eidson ¶ 21; Moody ¶ 25;

D. Defendants' Policies And Procedures Regarding 30 Minute Meal Breaks

Defendants also maintained uniform practices and procedures which resulted in employees routinely being denied their uninterrupted 30 minute meal breaks within the first five hours of their shifts. As a result of staffing requirements and patient care needs, staff could not take meal breaks unless they were provided with break relief. It was not until November 17, 2005 that Las Encinas Hospital even began attempting to schedule a person to provide meal break relief.[16] Nonetheless, according to Defendants' own scheduling records, even after November 2005, there were often shifts where no one was assigned to break relief.[17] Even when there was the break relief listed on the schedule, the break relief person often did not show up either because they were absent or were assigned to tasks *other* than break relief in order to meet the hospitals' patient care needs.[18] Moreover, even when there was staff assigned to provide break relief, the relief staff was wholly insufficient to allow for relief of all employees.[19]

On those occasions when meal break relief was provided, it was routinely not provided

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Ramirez ¶ 29; Sanchez ¶ 17.

16. Seplow ¶ 13; *see also* Casas 117:20-118:14; Eidson ¶ 14.

17. Seplow, Ex. 2 (according to a random sampling of the daily schedules at Las Encinas from August 2005 through August 2009, there was no one scheduled to provide break relief on a large percentage of shifts; for example, for the night shifts, 61% of the time, there was no break relief scheduled for RNs and 51% of the time there was no break relief scheduled for MHWs), Ex. 3; *see also* Casas 50:18-21 (as staffing coordinator, Mr. Casas was not always able to schedule break relief for particular shifts), 159:8-15; Ramirez ¶ 16; Lagerstrom ¶ 15; Moody ¶ 12 ("When there was no 'break reliever' scheduled, there was no mechanism for staff to receive relief for meal breaks because the nursing supervisors typically could not, and did not, provide relief for breaks"); Ramirez ¶ 16; Cabrera ¶ 9; Eidson ¶ 15; Sanchez ¶ 9; Radulescu ¶ 13; Chesson ¶ 10; Cruz ¶ 9; Eidson ¶¶ 14-15; Ledbetter ¶ 12.

18. Ramirez ¶ 17 ("When working as the acting scheduling coordinator, I often had to assign the break reliever to tasks that would prevent them from doing any break relief."); Cabrera ¶ 9; Cruz ¶ 9; Eidson ¶ 15; Lagerstrom ¶ 15; Moody ¶ 13; Ramirez ¶ 17; Chesson ¶ 10.

19. Lane ¶¶ 12-14; Cabrera ¶ 10; Chesson ¶ 10; Cruz ¶ 9; Eidson ¶ 15; Lagerstrom ¶ 16; Moody ¶ 14; Ramirez ¶ 17.

within the first five hours of employees' shifts.[20] Indeed, Las Encinas' employee handbook does not state that breaks would be provided within the first five hours of employees' shifts.[21] Finally, even when staff were relieved for breaks, they were prohibited or discouraged from leaving the premises of the hospitals.[22] As a result of these policies, putative class members were frequently not provided with 30-minute meal breaks relieved of all duty. Management personnel were aware that employees were consistently not receiving breaks due to issues with understaffing and the limited availability of break relief, yet they took no real steps to address these problems.[23]

Further, according to Defendants' policies, if an employee was not able to take a meal break, it was up to the employee to obtain authorization from a supervisor to receive payment for the missed meal break.[24] However, employees were actively discouraged by management from requesting compensation for missed meal periods by, among other things, being told that they could be written up or subject to discipline if they requested too many missed meal periods.[25] Moreover, the evidence shows that employees who requested compensation for

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20. Breilein ¶ 11 (the vast majority of times he did receive relief for a meal break, it was not until after five hours into his shift); Cruz ¶ 9; Galvan ¶ 9; Lane ¶ 11; Lagerstrom ¶ 17 (is not aware of a Hospital policy requiring meal breaks within first five hours); Moody ¶ 16; Chesson ¶ 10; Palionis ¶ 10; Ramirez ¶ 19.

21. Seplow, Ex. 8; *see also* Casas 172:2-25 (Mr. Casas does not recall a policy requiring that meal breaks be provided in the first five hours of employees' shifts).

22. Nocon Depo., 13:8-16 (staff prohibited from leaving hospital grounds during meal breaks); Johnson ¶ 14; Radulescu ¶ 16.

23. Ramirez ¶ 22; Motola ¶ 10; Ruiz ¶ 16; Cline ¶ 9; Chesson ¶ 13; Cline ¶¶ 7-9; Cruz ¶ 11; Eidson ¶ 18; Johnson ¶ 16; Palionis ¶ 9, 12; Radulescu ¶ 17.

24. Casas 173:9-24, 176:2-179:4, 187:16-188:1; Cook 167:5-23, 245:8-16; Ruiz ¶ 15; Spann ¶ 14; Radulescu ¶ 18; Galvan ¶ 10; Motola ¶ 6; Ilarraza ¶ 16; Ramirez ¶¶ 23-24.

25. Moody ¶ 21 ("our supervisors . . .would pressure us not to ask for missed meal compensation, saying that employees would get written up if we asked too often"); Ramirez ¶ 23; Ruiz ¶ 15; Spann ¶ 14; Chesson ¶ 13; Empalmado ¶ 12; Breilein ¶ 16; Lane ¶ 9; Alberts ¶ 15; Cline ¶¶ 6, 8; Lagerstrom ¶ 19; Ilarraza ¶ 17; Moody ¶ 21; Ramirez ¶ 23; Pittman ¶ 15.

missed meal breaks routinely had such requests disapproved by management.[26] In order to cover up their violations of the California Labor Code, Defendants maintained a policy at their hospitals wherein employees were directed and required by Defendants to clock out for meal breaks, regardless of whether such breaks were taken.[27] In fact, several employees and nursing supervisors were personally instructed that nursing staff must clock out for breaks regardless of whether they are taken. *See* Ramirez ¶ 20 (told by Cheryl Cook that employees were required to clock out for meal breaks regardless of whether breaks were actually received); Motola ¶ 7 ("I was instructed by Director of Nursing Brenda Nocon that I and my staff should simply clock out for breaks and then go back to the unit and continue to work so that it would appear that we had not missed our break"). Indeed, where an employee did not clock out for a meal break, the staffing coordinator would simply adjust his or her time records to correct this.[28]

As a result of these policies, employees were routinely denied proper compensation for having had to work during their required rest and meal breaks. By placing the onus on the employee to justify and seek approval for a missed meal break, and engaging in practices that pressured employees not to seek compensation for missed meal breaks, Defendants engaged in a

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26. Ramirez ¶¶ 23-24, Sanchez ¶ 14; Johnson ¶ 17; Spann ¶¶ 19; Chesson ¶ 12; Breilein ¶¶ 13-14; Alberts ¶ 15; Cabrera ¶ 13; Eidson ¶ 16; Ilarraza ¶ 16; Moody ¶¶ 20-21.

27. Ramirez ¶¶ 20, 25; Ilarraza ¶ 15 ("It was common practice for employees to clock out for meal breaks even when they did not actually take a break. [CEO] Linda Parks insisted on this and, if employees did not abide by it, they would be written up or fired."); Motola ¶¶ 7-10; Spann ¶¶ 12, 15; Cruz ¶ 10; Sanchez ¶ 14; Alberts ¶ 15 ("The practice on the units . . . was that staff would swipe out and then back in again (making it look like we had a break), or else we would be written up"); Lane ¶ 9; Ruiz ¶¶ 14, 16; Radulescu ¶ 18; Galvan ¶ 11; Palionis ¶ 11; Empalmado ¶ 11; Breilein ¶¶ 16, 18; Alberts ¶ 15; Cabrera ¶¶ 14-15; Eidson ¶ 18; Lagerstrom ¶ 20; Moody ¶ 17; Johnson ¶¶ 15-16; Pittman ¶ 13; Contreras ¶ 8.

28. Chesson ¶ 11 ("Even when I forgot to clock in and out [for meal breaks that were not taken], it didn't matter because the Hospital would simply alter the hours on our payslips so that we were not paid for the extra time"); Lane Decl., ¶ 9 ("Evaldo Casas, the staffing coordinator, told me that he would manually add my meal breaks by hand to my time cards even if I did not take them"); *see also* Casas 134:22-135:7, 139:20-140:14, 141:11-22, 181:11-23, 182:17-185:2 (Evaldo Casas, the staffing coordinator at Las Encinas, was authorized to, and did, make adjustments to people's timecards when they did not clock in and out for meal periods); Seplow, Ex. 29 (showing adjustments made to time card by Mr. Casas to add "punches" for meal breaks).

class wide practice which effectively denied meal breaks to their patient care employees.

1. Statistical Evidence of Defendants' Illegal Practices

There is compelling statistical evidence of Defendants' common illegal practices, including that the data produced by Defendants show: (1) 44.1% of recorded meal breaks were less than 30 minutes in length; (2) 41.1% of recorded meal breaks were taken more than six hours after the start of the work period; (3) over 80% of the recorded meal breaks were either less than 30 minutes or started more than six hours after the start of the work period; (4) 87.4% of all work periods over 10 hours do not have a second meal break; (5) 33.6% of the second meal breaks that were taken were less than 30 minutes; (6) 73.0% of the second meal breaks that were taken began more than eleven hours after the start of the work period; (7) every second meal break taken was shorter than 30 minutes or was one that started more than eleven hours after the start of the work period; (8) 24.5% of the first recorded meal and 46% of the second recorded meal breaks are "round punch meal breaks," which means the meal breaks were added or edited by supervisors; (9) 86.1% of all sampled class members' time records showed "round punch work periods," which means the work periods were added or edited by supervisors; (10) there was a widespread practice of modifying potential class member's timekeeping records; (11) on days where no break relief was reflected in the Daily Schedules the timekeeping records still reflected an average of 2.2 meal breaks per day, suggesting that the timekeeping data over-reports the number of meal breaks. *See* Declaration of Brian Kriegler ("Kriegler"), ¶¶ 17-27.

E. Defendants' Policies And Procedures Regarding Overtime

According to Defendants' policies, overtime had to be approved in advance and employees could be disciplined for unapproved overtime.[29] Defendants actively discouraged employees from working overtime by, among other things, threatening them with discipline if they worked too much overtime, criticizing employees who requested overtime, and repeatedly denying

29. Cook 268:4-13, 269:9-17; Casas 186:22-187:1, 187:16-188:1; Seplow, Ex. 14; Ruiz ¶ 18; Motola ¶ 12; Lane ¶ 19; Cline ¶ 8; Ilarraza ¶ 22; Moody ¶ 26; Ramirez ¶ 31; Spann ¶ 18.

overtime requests that were justified and mandated.[30] Meanwhile, employees, in particular RNs who had to complete mandatory paperwork for their shifts, were under tremendous pressure to make sure that all of their work was done.[31] This routinely resulted in employees having to clock out at the end of their shifts yet continue to work to complete their assignments, since there was not enough time during regular shifts for employees to complete their required duties. Defendants knew that employees were working off-the-clock past the end of their shifts, and condoned and encouraged this conduct.[32] Likewise, the evidence shows that Las Encinas adjusted employee time records in order to eliminate overtime.[33] As a result of Defendants' knowing and intentional falsification of the payroll records in order to conceal their unlawful payment practices,

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30. Ilarraza ¶¶ 22-24 (when employees would request overtime, CEO Linda Parks would insinuate that they were incompetent for being unable to complete all job duties within their scheduled shift and threaten to discipline or terminate them); Motola ¶ 12 ("I was criticized for working or allowing overtime even though there was not enough time in my normal shifts for me and my staff to complete our duties"); Garcia ¶ 12; Cabrera ¶ 20; Chesson ¶ 15; Cline ¶ 8; Cruz ¶ 11; Empalmado ¶ 14; Eidson ¶ ¶ 25-26; Contreras ¶ ¶ 22-23.

31. Cook 320:25-321:7 (it was critical that nursing staff complete documentation on their patients); Seplow, Ex. 12 ("Staff will be held accountable for the accuracy of their documentation"); Contreras ¶ 24; Pittman ¶ 20; Sanchez ¶ 29; Ramirez ¶ 31; Moody ¶ 26; Ilarraza ¶ 22; Spann ¶ 11; Chesson ¶ 14; Palionis ¶ 13; Empalmado ¶¶ 10, 13; Breilein ¶ 7; Lane ¶ 19; Alberts ¶ 18; Cabrera ¶ 19; Cline ¶ 7; Eidson ¶ ¶ 22-23; Motola ¶ 12 ("I was told by [Director of Nursing Brenda] Nocon ... that working off the clock was the normal practice at Las Encinas because the hospital did not want to pay overtime but expected that all work would be completed before the end of the shift").

32. Ramirez ¶¶ 31-32 ("[W]hen I stayed past the end of my shift, the supervisors on the next shift would see me while doing their rounds. They would sometimes ask what I was doing and whether I was off-the-clock to ensure that I was not working on-the-clock."); Moody ¶¶ 26-27; Ilarraza ¶¶ 22, 24 ("When I worked as a nursing supervisor, I was aware that people were working off-the-clock past the end of their shifts, but I had no choice but to ignore this practice because I knew Linda Parks would not approve the overtime and I didn't want the employees or myself to get in trouble"); Motola ¶ 12; Cline ¶¶ 7-9; Sanchez ¶ 19 ("I would be instructed by my supervisor to clock out and continue to work off-the-clock"); Spann ¶ 16; Chesson ¶ 14; Empalmado ¶ 13; Palionis ¶ 13; Lane ¶ 19; Alberts ¶¶ 18-19; Eidson ¶¶ 23-24; Johnson ¶ 21; Pittman ¶ 20; Contreras ¶ 24; Seplow, Ex. 13.

33. Ramirez Decl., ¶ 34 (as the acting scheduling coordinator, Lisa Ramirez was instructed to alter time records when time clocks showed that employees worked overtime or did not receive a full 30-minute lunch).

employees did not receive all overtime compensation to which they were owed.

F. Defendants' Policies And Procedures Regarding Necessary Employee Expenditures

Defendants regularly required employees to make necessary expenditures in direct consequence of the discharge of their duties, yet failed to indemnify their employees for these costs. Specifically, employees routinely provided and/or paid for their own equipment, including cleaning supplies and medical devices, and were required to pay for other mandatory items such as key cards.[34] Additionally, employees were required to take annual CPR classes, which they did on their time and at their own expense.[35]

III. PROPOSED CLASSES AND SUBCLASSES

Plaintiffs seek certification on the basis of various subclasses which reflect that nature of the claims and the respective class wide practices and polices of Defendants. First, Plaintiffs propose that there be two overall subclasses: one for individuals employed by Las Encinas, and one for individuals employed by Charter Oak, between August 6, 2005 and the present date.[36]

Plaintiffs further proposes additional subclasses as set forth below.

Rest breaks subclass

> All non-exempt employees who had responsibility for patient care, including without limitation, registered nurses, licensed psychiatric technicians, mental health workers, and all other similarly situated employees (collectively referred to as "PATIENT CARE WORKERS") who were denied rest breaks to which they were entitled pursuant to the California Labor Code, the California Industrial Welfare Commission's ("IWC") Wage Orders and all other applicable employment laws and regulations.

Meal break subclass

> All PATIENT CARE WORKERS who were denied meal breaks to which they were entitled pursuant to the California Labor Code, IWC Wage Orders and all

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34. Alberts ¶ 21; Ledbetter ¶ 22; Lane ¶ 21; Motola ¶ 13; Breilein ¶ 25; Empalmado ¶ 16; Garcia ¶ 14; Radulescu ¶ 24; Spann ¶ 20; Cruz ¶ 20; Contreras ¶ 28; Ilarraza ¶ 25 ; Johnson ¶ 22.

35. Seplow Decl., Ex. 16; Cook 463:15-464:20; Chesson ¶ 17; Breilein ¶ 23; Lane ¶ 20; Alberts ¶ 20; Cabrera ¶ 26; Eidson ¶ 29; Lagerstrom ¶ 26; Ilarraza ¶ 25; Contreras ¶¶ 25-26.

36. Las Encinas and Charter Oak are both part of the Aurora Behavioral Health Network and are owned and operated by Signature Healthcare. Nonetheless, for the purposes of this litigation, Plaintiffs have proposed to treat employees of the two hospitals as separate subclasses.

other applicable employment laws and regulations.

Overtime subclass

> All PATIENT CARE WORKERS who were denied wages for overtime to which they were entitled pursuant to the California Labor Code, IWC Wage Orders and all other applicable employment laws and regulations

Waiting time subclass

> All PATIENT CARE WORKERS who were not paid all unpaid wages due to them upon termination or resignation in the period proscribed by California Labor Code §§ 201, 202 or 203.

Itemized Statement subclass

> All PATIENT CARE WORKERS who were not provided with accurate itemized statements as required by California Labor Code § 226.

Improper expenses subclass

> All PATIENT CARE WORKERS who were required to purchase or pay for necessary work expenses such as supplies, key cards and mandatory training classes in violation of California law, including Labor Code § 2802.

IV. CLASS CERTIFICATION SHOULD BE GRANTED

In the recent landmark *Brinker* decision, the California Supreme Court reaffirmed the viability of class actions in wage and hour cases, including claims for meal and rest breaks violations. "Class actions have been statutorily embraced by the Legislature whenever 'the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court....'"139 Cal.Rptr.3d at 327 [quoting CCP § 382]. Moreover, as the California Supreme Court held in *Sav-On Drug Stores, Inc. v. Superior Court*:

> California's overtime laws are remedial and are to be construed so as to promote employee protection. And, as we have recognized, this state has a public policy which encourages the use of the class action device. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.

(2000) 34 Cal.4th 319, 326 [internal quotations and citations omitted].

In order to prevail on a motion for class certification, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a

well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." *Id.* "The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On,* 34 Cal.4th at 326.

> The ultimate question the element of predominance presents is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. The answer hinges on whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. A court must examine the allegations of the complaint and supporting declarations and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.

Brinker, 139 Cal.Rptr.3d at 327-28 [citations omitted]. In this case, Plaintiffs challenge the legality of Defendants' classwide practices and procedures regarding meal and rest breaks as applied to all class members, including the policies and practices requiring staff not to leave their units without relief, and which place the onus on staff to get approval for a missed break even when no relief is provided. Plaintiffs' theories of liability are supported by common evidence.

As the *Brinker* Court made clear at the class certification stage, the trial court should not wade into the merits of plaintiffs' claims. "The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Id.* at 329 [citations omitted]. Therefore "[a] class certification motion is not a license for a free-floating inquiry into the validity of the complaint's allegations; rather, resolution of disputes over the merits of a case generally must be postponed until after class certification has been decided." *Id.*

In applying these standards to the present case, it is clear that Plaintiffs have satisfied all of the elements necessary for class certification because common issues predominate.

A. The Class is Ascertainable.

Ascertainability is determined largely by examining the class definition, the size of the class, and the means available for identifying class members. *See Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207. "Class members are ascertainable where they

may be readily identified without unreasonable expense or time by reference to official records." *Id.* at 1206. Here, the proposed class and subclasses are ascertainable because all of the class members, who are non exempt patient care former and current employees of Defendants, may be identified through Defendants' employee and payroll files.

B. Numerosity is Satisfied.

The numerosity requirement is met if the class is so large that joinder of all members would be impracticable. CCP § 382. With 550 putative class members of each hospital, the proposed classes and subclasses are sufficiently numerous. Joinder of all of these class members would be impracticable and a class-wide proceeding is preferable because this number is so large. *See Hebbard v. Colgrov* (1972) 28 Cal.App. 3d 1017, 1030 (no set minimum to meet numerosity prerequisite and class as few as 28 members is acceptable). This case more than satisfies the numerosity requirement.

C. Common Questions of Law and Fact Predominate.

Common questions of law and fact predominate in this case. Since at least August 2005, putative class members were subject to the same employment practices (failure to pay overtime, failure to provide meal and rest breaks, and requiring employees to pay for required and necessary business expenses) on a class-wide basis.[37]

The predominant issues in this case focus on the whether Defendants' policies and practices violated California law regarding meal and rest breaks and the payment of overtime wages and expenses for necessary work items and/or expenses. The resolution of these issues is particularly amenable to class treatment as each issue implicates uniform policies or practices applied among all class members, as exemplified in the class members' declarations, deposition testimony, and from Defendants' own policies and documents. *See Sav-On* at 334 ("Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'")

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37. All of the proposed class members are governed by Wage Order 5, which applies to healthcare workers in public facilities like hospitals. See Wage Order 5, section 2(P); 8 Cal.Code Regs. § 11050(P)(4).

1. Common issues predominate with respect to Plaintiffs' rest break claims.

As set forth above, Defendants had a uniform practice and policy regarding 10 minute rest breaks which Plaintiffs contend did not comport with California law.[38] Due to patient care requirements, staff could not leave their units for breaks unless they were provided with relief. Nonetheless, it was Defendants' policy and practice not to schedule anyone to come to the units to provide relief for rest breaks. As a result of this policy, employees were routinely denied their 10 minute rest breaks. In addition, Defendants' offered no method through which employees could request compensation for missed rest breaks. These uniform policies demonstrate that common issues predominate the question of whether Defendants violated California law.

Indeed, in *Brinker*, the Plaintiffs presented evidence of a common rest break policy that did not conform to California law. The Court noted that "The issue for the trial court was whether any of the rest break theories of recovery advanced by [Plaintiff] were likely to prove amenable to class treatment." 135 Cal.Rptr.3d at 336. "Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Id.* at 337.[39] Accordingly, in light of the evidence of Defendants' uniform policy and practice resulting in the systemic denial of 10 minute rest breaks to patient care employees, the rest break class should be certified.

2. Common issues predominate with respect to Plaintiffs' meal break claims.

Plaintiffs have also presented substantial evidence of Defendants' common practices and policies which violate California law requiring that employees be allowed to take a 30 minute uninterrupted meal break in which employees are relieved of all duties for each five hours of

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38. "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."*Brinker*, 135 Cal.Rptr.3d at 334. Thus, 10-minute rest breaks accrue after the second and sixth hours of work in an eight hour shift. *Id.*

39. The *Brinker* Court held: "No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it."*Id.* at 337. Here, employees did not have an opportunity to decline to take their rest breaks because such breaks were not provided.

work. These common policies prohibit employees from leaving their units unless they are provided with break relief. Defendants own records, as well as expert testimony and declarations from class members, demonstrate that break relief was routinely not provided during the first five hours of an employee's shift. Moreover, Defendants' uniform policies placed the burden on an employee who did not receive his or her meal break to seek approval to be paid for a missed meal break, despite evidence that employees were discouraged from seeking such compensation by management and that approval for missed breaks was frequently denied.

Likewise, Plaintiffs have presented evidence that management encouraged and condoned employees to clock out for breaks and continue working so that it would appear that employees had taken their breaks when they really did not. This policy is subject to common proof including testimony from witnesses who were told by hospital management to clock out for breaks and keep working, as well as an analysis of Defendants' own schedules and time records which will demonstrate that employees consistently were denied their uninterrupted 30 minute meal breaks. Indeed, there is testimony that Directors of Nursing at Las Encinas instructed employees to clock out and clock back in for breaks–which demonstrates that this is Defendants' actual policy and practice. These common practices satisfy the requirements set forth in *Brinker* for certification of a missed meal break class. As the Court held in *Brinker*:

> [A]n employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. (*Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962–963. . ., *see also Jaimez v. DAIOHS USA, Inc.*, (2010) 181 Cal.App.4th 1286, 1303-04 [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC* (S.D.Cal.2010) 267 F.R.D. 625, 638 [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand'" would be illegal].) The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

139 Cal.Rptr.3d at 343.[40/]

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40. In comparable meal and rest break cases, all of which were approved in *Brinker*, courts have held that the showing of a question of common interest is sufficient to certify a class. *See Jaimez*, 181 Cal.App.4th at 1305 ("For purposes of the class certification motion, the predominant common factual issue is whether [employees] missed meal breaks because [Defendant's] policy and practice of designating delivery schedules and routes precluded

In this case, Plaintiffs have presented evidence of both formal and informal company wide policies and practices which result in the denial of meal breaks to class members, including statistical analysis of Defendants' records.[41] Therefore, the *Brinker* standard for certification of a meal break class has been satisfied.

3. Common issues predominate with respect to Plaintiffs' overtime claims.

Wage Order 5, which governs the class members in this case provides that hospital employees who work more than eight hours per day or forty hours per week are entitled to overtime pay of at least one and one half their normal rate of pay. Wage Order 5, at 3-1. Nonetheless, Plaintiffs have presented evidence that Defendants systematically failed to pay overtime wages to their patient care employees. Employees report that Defendants chronically understaffed their hospitals, thus requiring employees to work off the clock after their scheduled shifts ended in order to fulfill mandatory regulations regarding patient care and the completion of required documents and paperwork. Defendants created a culture such that those employees who worked overtime were discouraged from reporting it due to widespread fear of retaliation and termination. Therefore, employees would continue to work after they had clocked out at the end of their regularly scheduled shifts in order to complete mandatory paperwork. There is compelling evidence that the practice of "off the clock work" was condoned and encouraged by

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[employees] from timely completing their routes and taking the legally required rest breaks . . . this issue is subject to common proof, including evidence of schedules, a sample of the actual route times, and driver testimony"); *Bufil*, 162 Cal.App.4th at 1208 ("the issues slated for contest are primarily common issues involving common evidence. It would not be efficient or fair to relegate these complaints to multiple trial."); *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal.App.4th 1524, 1534 ("Determining whether a sufficient community of interest exists to warrant class certification, however, depends not on the differences among individual drivers' use of their gap time but on the reasonableness of [Defendant's] policies as applied to its drivers as a whole").

41. "California courts and others have in a wide variety of contexts considered pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate." *Sav-On*, 34 Cal. 4th at 333; *see also Dilts*, 267 F.R.D. at 638-39 (holding that anecdotal evidence, as well statistical sampling, are appropriate means of common proif in meal and rest break class action).

management.[42] Moreover, there is evidence of a practice of shaving hours and altering time records to reduce overtime.

4. Common issues predominate with respect to Plaintiffs' necessary expenditures claims.

Pursuant to California Labor Code § 2802, an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendants routinely failed to do so. As a result of the substandard conditions at Defendants' hospitals employees had to provide and pay for their own equipment including cleaning supplies, hand sanitizer and medical devices (including stethoscopes and blood pressure cuffs), and to pay for other mandatory items such as key cards. Additionally, employees were required to take annual CPR classes, which they did on their own time and at their own expense. Such expenses were clearly incurred in direct consequence of these employees' duties. These claims are based on Defendants' common practices and policies and therefore are proper for class certification.

5. Common issues predominate with respect to Plaintiffs' waiting time and inaccurate wage statements claims.

Labor Code §§ 201, 202 and 203 require employers to pay all wages due and owing to an employee immediately upon discharge or within 72 hours of the employee quitting his or her employment. If an employer willfully fails to pay such wages, it is liable for penalties. Labor Code § 203. Likewise, Labor Code section 226 mandates that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to [issue accurate itemized wage statements] is entitled to recover" penalties. Because employees who were denied compensation for missed breaks and overtime are owed waiting time penalties, and further received inaccurate wage statements, these classes should also be certified if either the rest or meal break, or overtime, classes are certified, as these claims are derivative of the underlying break and overtime claims. *See Dilts v. Penske Logistics, LLC*, 267 F.R.D. at 640; *Schulz v. QualxServ, LLC*, 2012 WL 1439066, *8-9 (S.D. Cal. 2012). Moreover, Plaintiffs' claims pursuant to

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42. In *Brinker*, the off the clock class was not certified because the plaintiff did not provide evidence of a " systematic company policy to pressure or require employees to work off the clock." 139 Cal.Rptr.3d at 352. In contrast, Plaintiffs have presented such evidence here.

Business & Professions Code §§ 17200 *et seq* are premised on Defendants' violation of the Labor Code and should be certified for the same reasons. *Id.*

D. Plaintiffs Satisfy the Typicality Requirement.

Typicality requires only that the proposed class representative's interests in the action be significantly similar to those of the other members of the proposed class. The proposed representative's claim need not be identical to the claims of other members of the class; it is sufficient that the representative is similarly situated, so that he or she will have the motive to litigate on behalf of all class members *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. Here, typicality is easily met. Plaintiffs are patient care employees who worked at Defendants' facilities providing patient care.[43] Plaintiffs were subjected to the same unlawful employment practices as the other patient care employees of Defendants.

E. Plaintiffs and their Counsel are Adequate Class Representatives.

The requirement that Plaintiffs fairly and adequately represent the class is met by fulfilling two conditions. First, Plaintiffs must be represented by counsel qualified to conduct the pending litigation. Second, Plaintiffs' interests cannot be antagonistic to those of the class. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450; *accord Richmond v. Dart* (1981) 29 Cal.3d 462,470. Plaintiffs' counsel is qualified to diligently represent the interests of the proposed class. *See* Seplow ¶¶ 48-53. There is no indication of any conflicts between Plaintiffs and the Class. *McGhee*, 60 Cal. App. 3d at 450.

V. CONCLUSION

For all the foregoing reasons, Plaintiffs' motion for class certification should be granted.

DATED: May 25, 2012

SCHONBRUN DESIMONE SEPLOW
HARRIS HOFFMAN & HARRISON LLP

By: _____
Michael D. Seplow

43. Plaintiffs Valerie Alberts (RN), Rudolph Breilein (LPT), Robin Motola (RN and nursing supervisor), Cyndi Lane (MHW), and Shelby Eidson (MHW) were employees at Las Encinas during part or all of the relevant class period. Aviance Contreras worked as an MHW at Las Encinas and has been employed as a BHS at Charter Oak.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is: 723 Ocean Front Walk, Venice, California 90291.

On **May 25, 2012**, I served the foregoing documents described as:

NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION

on all interested parties in this action by placing ___ an original or **X** a true copy thereof in a sealed envelope addressed as follows:

Douglas R. Hart
Katherine A. Roberts
Max Fischer
Sidley Austin LLP
555 West 5th Street
Los Angeles, CA 90013-3000

____ **[MAIL]** I caused such envelope to be deposited in the mail at Venice, California. The envelope was mailed with postage thereof fully prepaid.

X **[BY PERSONAL SERVICE]** I caused such document to be personally served at Los Angeles, California.

____ **[BY E-MAIL]** I caused such documents to be delivered to the above e-mail addresses.

____ **[BY FAX]** I transmitted said document to the above fax number(s).

X **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2012 at Venice, California.

Emma Huang

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is: 723 Ocean Front Walk, Venice, California 90291.

On **May 25, 2012**, I served the foregoing documents described as:

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____ **[BY E-MAIL]** I caused such documents to be delivered to the above e-mail addresses.

____ **[BY FAX]** I transmitted said document to the above fax number(s).

X **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2012 at Los Angeles, California.

RENÉ CORTEZ