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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SACRAMENTO

10 SARAH GRAVES, individually and on
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 SUMMIT THERAPEUTIC SERVICES,
14 INC.; and DOES 1 through 20, inclusive,

15 Defendants.
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FILED/ENDORSED

JUL - 9 2020

By: N. Zeyaad
Deputy Clerk

Case No. 34-2020-00277369

[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay All Wages to Piece-Rate Workers
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Reimburse Necessary Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business and Professions Code §§ 17200, *et seq.*
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Sarah Graves, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Sarah Graves (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 against defendants Summit Therapeutic Services, Inc.; and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on behalf of herself individually and on behalf of California
8 citizens who are and were employed by Defendants as non-exempt employees throughout
9 California.

10 2. Defendants provide healthcare services in California.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime
18 wages);
 - 19 (b) failing to pay wages to piece-rate workers for time spent in rest breaks
20 and/or recovery periods, and non-productive time;
 - 21 (c) failing to provide lawful meal periods or compensation in lieu thereof;
 - 22 (d) failing to authorize or permit lawful rest breaks or provide compensation
23 in lieu thereof;
 - 24 (e) failing to reimburse all business expenses incurred by delivery drivers in
25 direct consequence of the discharge of his or her duties;
 - 26 (f) failing to provide accurate itemized wage statements; and
 - 27 (g) failing to pay all wages due upon separation of employment.
- 28

5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all others similarly situated in California to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§ 201-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 551, 552, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1454, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage

1 Orders as employers, whose employees were and are engaged throughout this county and the
2 State of California.

3 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
4 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
5 Complaint and serve such fictitiously named defendants once their names and capacities
6 become known.

7 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
8 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
9 at all relevant times.

10 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
11 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
12 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
14 the employer and/or joint employer of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
17 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
18 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
19 the official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the scope of
21 such agency or employment, or ratified each and every act or omission complained of herein.
22 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
23 each and all the other Defendants in proximately causing the damages herein alleged.

24 17. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

27 **CLASS ACTION ALLEGATIONS**
28

1 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
2 herself and all others similarly situated who were affected by Defendants' Labor Code,
3 Business and Professions Code §§ 17200, and IWC Wage Order violations.

4 19. All claims alleged herein arise under California law for which Plaintiff seeks
5 relief authorized by California law.

6 20. Plaintiff's proposed class consists of and is defined as follows:

7 Class

8 All California citizens currently or formerly employed by Defendants as non-
9 exempt employees in the State of California within four years prior to the filing of
10 this action to the date the class is certified ("Class").

11 21. Plaintiff also seeks to certify the following subclass of employees:

12 Waiting Time Subclass

13 All Class Members who separated their employment with Defendants at any time
14 within three years prior to the filing of this action to the date the class is certified
15 ("Subclass" or "Waiting Time Subclass").

16 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
17 subclasses, or modify or re-define any class or subclass definition as appropriate based on
18 investigation, discovery, and specific theories of liability.

19 23. Members of the Class and the Subclass described above will be collectively
20 referred to as "Class Members."

21 24. There are common questions of law and fact as to the Class Members that
22 predominate over any questions affecting only individual members including, but not limited to,
23 the following:

24 (a) Whether Defendants fail to pay Plaintiff and Class Members all wages
25 (including minimum wages and overtime wages) for all hours worked by
26 Plaintiff and Class Members.

27 (b) Whether Defendants required Plaintiff and Class Members to work over
28 eight (8) hours per day, over twelve (12) hours per day, over forty (40)

1 hours per week, and/or seven (7) consecutive days and failed to pay them
2 overtime compensation at the proper rate.

3 (c) Whether Defendants failed to pay Plaintiff and Class Members for non-
4 productive time, including rest breaks and recovery periods when they
5 were paid on a piece-rate basis.

6 (d) Whether Defendants deprived Plaintiff and Class Members of timely
7 meal periods or required Plaintiff and Class Members to work through
8 meal periods without proper compensation.

9 (e) Whether Defendants deprived Plaintiff and Class Members of rest breaks
10 or required Plaintiff and Class Members to work through rest breaks
11 without proper compensation.

12 (f) Whether Defendants failed to reimburse Plaintiff and Class Members for
13 necessary business expenses.

14 (g) Whether Defendants failed to provide Plaintiff and Class Members
15 accurate itemized wage statements.

16 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
17 wages due upon termination or within seventy-two (72) hours of
18 resignation.

19 (i) Whether Defendants' conduct was willful or reckless.

20 (j) Whether Defendants engaged in unfair business practices in violation of
21 Business and Professions Code §§ 17200, *et seq.*

22 25. There is a well-defined community of interest in this litigation and the proposed
23 Class and Subclass are readily ascertainable:

24 (a) Numerosity: The Class Members are so numerous that joinder of all
25 members is impractical. Although the members of the entire Class and Subclass are unknown
26 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
27 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
28 inspection of Defendants' employment and payroll records.

1 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
2 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
3 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
4 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
5 sustained by the Class Members because they arise out of and are caused by Defendants'
6 common course of conduct as alleged herein.

7 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
8 interests of all Class Members because it is in her best interest to prosecute the claims alleged
9 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's
10 attorneys, as proposed class counsel, are competent and experienced in litigating large
11 employment class actions and versed in the rules governing class action discovery,
12 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
13 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
14 for the prosecution of this action for the substantial benefit of the Class Members.

15 (d) Superiority: The nature of this action makes use of class action
16 adjudication superior to other methods. A class action will achieve economies of time, effort,
17 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
18 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
19 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
20 manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California
22 violate employment and labor laws every day. Current employees are often afraid to assert their
23 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
24 actions because they believe their former employers might damage their future endeavors
25 through negative references and/or other means. Class actions provide class members who are
26 not named in the complaint with a type of anonymity that allows for the vindication of their
27 rights while affording them privacy protections.

28 **GENERAL ALLEGATIONS**

1 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
2 California residents as non-exempt employees at Defendants' California business location(s).

3 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
4 California business location.

5 28. Defendants continue to employ non-exempt employees within California.

6 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
8 who were knowledgeable about California's wage and hour laws, employment and personnel
9 practices, and the requirements of California law.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive wages for all time
12 worked (including minimum wages and overtime wages) and that they were not receiving all
13 wages earned for work that was required to be performed. In violation of the Labor Code and
14 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
15 wages and overtime wages) at the proper rates for all hours worked, including but not limited to
16 daily overtime and double time, seventh day overtime and double time, and wages for
17 additional job duties, such as driving.

18 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known they had a duty to separately compensate Plaintiff and Class Members who
20 earned piece-rate pay for time spent in rest breaks or other non-productive time. In violation of
21 the Labor Code, Defendants did not pay piece-rate workers all wages owed.

22 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Class Members were entitled to receive all required meal
24 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
25 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
26 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
27 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
28 rate of pay when they did not receive a timely, uninterrupted meal period.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
3 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
4 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
5 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
6 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

7 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to reimbursement for
9 necessary expenditures incurred in connection with the performance and execution of their job
10 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
11 adequate reimbursement for necessary business expenses, including but not limited to
12 reimbursement for use of their personal cell phones and personal automobiles.

13 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and Class Members were entitled to receive itemized wage
15 statements that accurately showed the following information pursuant to the Labor Code: (1)
16 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
17 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
18 deductions, provided that all deductions made on written orders of the employee may be
19 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
20 for which the employee is paid; (7) the name of the employee and only the last four digits of his
21 or her social security number or an employee identification number other than a social security
22 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
25 were not provided with accurate itemized wage statements, including but not limited to wage
26 statements lacking inclusive dates of the pay period, rates of pay, and unpaid wages.

27 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that the Waiting Time Subclass was entitled to timely payment of wages

1 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
2 did not receive payment of all wages within permissible time periods.

3 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known they had a duty to compensate Plaintiff and Class Members, and
5 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
6 intentionally failed to do so in order to increase Defendants' profits.

7 38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
8 against Defendants on behalf of herself and all Class Members to recover, among other things,
9 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
10 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
11 expenses.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §3-4)

15 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
18 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
19 wage than the minimum so fixed is unlawful.

20 41. During the relevant time period, Defendants paid Plaintiff and Class Members
21 less than minimum wages when they failed to pay proper compensation for all hours worked.
22 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
23 Members were not being paid at least the lawful minimum wage for their work.

24 42. During the relevant time period, Defendants regularly failed to pay at least
25 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
26 §§ 1194 and 1197.

27 43. Defendants' failure to pay Plaintiff and Class Members the required minimum
28 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class

1 Members are entitled to recover the unpaid balance of their minimum wage compensation as
2 well as interest, costs, and attorneys' fees.

3 44. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
4 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
5 interest thereon.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 (Violation of Labor Code §§ 510, 551, 552, 1194, 1198, and 1454;

9 Violation of IWC Wage Order § 3)

10 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
13 unlawful to employ persons without compensating them at a rate of pay either one and one-half
14 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or
15 days worked by the person on a daily or weekly basis.

16 47. Specifically, the applicable IWC Wage Orders provide that Defendants are and
17 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
18 and one-half times (1½) their regular rate of pay when working and for all hours worked in
19 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
20 eight (8) hours of work on the seventh day of work in a workweek.

21 48. The applicable IWC Wage Orders further provide that Defendants are and were
22 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
23 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
24 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

25 49. California Labor Code § 510 codifies the right to overtime compensation at one
26 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
27 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
28 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours

1 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
2 seventh day of work in a workweek.

3 50. Labor Code § 510 and the applicable IWC Wage Orders provide that
4 employment of more than six days in a workweek is only permissible if the employer pays
5 proper overtime compensation as set forth herein.

6 51. Labor Code §§ 551 and 552, and the applicable IWC Wage Order provide that
7 employees must receive one day's rest in seven.

8 52. Plaintiff and Class Members were non-exempt employees entitled to the
9 protections of California Labor Code §§ 510, 551, 552, and 1194.

10 53. During the relevant time period, Defendants required Plaintiff and Class
11 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a
12 seventh consecutive day in a workweek without paying Plaintiff and Class Members proper
13 overtime wages for their work.

14 54. During the relevant time period, Defendants failed to pay Plaintiff and Class
15 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
16 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
17 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in
18 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of
19 work in a work week.

20 55. Labor Code § 1454 and the applicable IWC Wage Orders provide a domestic
21 work employee who is a personal attendant shall not be employed more than nine hours in any
22 workday or more than 45 hours in any workweek unless the employee receives one and one-
23 half times the employee's regular rate of pay for all hours worked over nine hours in any
24 workday and for all hours worked more than 45 hours in the workweek.

25 56. To the extent Defendants contend Plaintiff and Class Members were personal
26 attendants, during the relevant time period, Defendants failed to pay Plaintiff and Class
27 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
28 worked in excess of nine hours in any workday or more than 45 hours in any workweek.

57. In violation of state law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked.

58. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime and double time compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

59. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS

(Violation of Labor Code §§ 226.2; Violation of IWC Wage Order)

60. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

61. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

62. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than the higher of (a) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. (b) The applicable minimum wage.

63. During the relevant time period, Plaintiff and Class Members paid on a piece-rate basis were not compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

1 64. At all relevant times, Defendants knowingly and intentionally failed to comply
2 with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on
3 a piece-rate basis.

4 65. As a result of Defendants' failure to pay Plaintiff and Class Members
5 compensated rest and recovery periods, Plaintiff and Class Members suffered and continue to
6 suffer a loss of wages and compensation.

7 66. Pursuant to Labor Code § 226.2, Plaintiff and Class Members are entitled to
8 recover their unpaid compensation.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

12 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 68. Labor Code § 226.7 provides that no employer shall require an employee to work
15 during any meal period mandated by the IWC Wage Orders.

16 69. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
17 employ any person for a work period of more than five (5) hours without a meal period of not
18 less than 30 minutes, except that when a work period of not more than six (6) hours will
19 complete the day's work the meal period may be waived by mutual consent of the employer and
20 the employee."

21 70. Labor Code § 512(a) provides that an employer may not require, cause, or permit
22 an employee to work for a period of more than five (5) hours per day without providing the
23 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
24 the total work period per day of the employee is not more than six (6) hours, the meal period
25 may be waived by mutual consent of both the employer and the employee.

26 71. Labor Code § 512(a) also provides that an employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second meal period of not less than thirty (30) minutes, except that if the total hours

1 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
2 consent of the employer and the employee only if the first meal period was not waived.

3 72. During the relevant time period, Plaintiff and Class Members did not receive
4 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
5 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
6 second meal period.

7 73. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
8 requires an employer to pay an employee one (1) additional hour of pay at the employee's
9 regular rate of compensation for each work day that a compliant meal period is not provided.

10 74. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
11 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
12 § 226.7(b) and section 11 of the applicable IWC Wage Order.

13 75. As a result of Defendants' failure to pay Plaintiff and Class Members an
14 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
15 Class Members suffered and continue to suffer a loss of wages and compensation.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

18 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

19 76. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 77. Labor Code § 226.7(a) provides that no employer shall require an employee to
22 work during any rest period mandated by the IWC Wage Orders.

23 78. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
25 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
26 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.
28

1 79. During the relevant time period, Plaintiff and Class Members did not receive a
2 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
3 they were required to work through their daily rest periods, were not permitted to take timely
4 rest periods, and/or were not authorized to take their rest periods.

5 80. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
6 requires an employer to pay an employee one (1) additional hour of pay at the employee's
7 regular rate of compensation for each work day that a compliant rest period is not provided.

8 81. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
9 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
10 226.7(b) and section 12 of the applicable IWC Wage Order.

11 82. As a result of Defendants' failure to pay Plaintiff and Class Members an
12 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
13 Members suffered and continue to suffer a loss of wages and compensation.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

16 **(Violation of Labor Code §§ 2800, 2802)**

17 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 84. Labor Code § 2800 states that an employer shall in all cases indemnify his
20 employee for losses.

21 85. Labor Code § 2802 requires employers to indemnify their employees for all
22 necessary expenditures or losses incurred by employees in direct consequence of the discharge
23 of their duties.

24 86. Section 9 of the applicable IWC Wage Order states that when tools or equipment
25 are required by the employer or are necessary to the performance of a job, such tools and
26 equipment shall be provided and maintained by the employer.

1 87. During the relevant time period, Defendants required Plaintiff and class members
2 to use their personal cellular devices for work purposes, without paying Plaintiff and class
3 members for a reasonable percentage of their cell phone bills.

4 88. During the relevant time period, Defendants required Plaintiff and class members
5 to use their own automobiles for deliveries, without properly compensating them for gas
6 mileage and wear and tear on their vehicles.

7 89. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
8 Plaintiff and class members for these expenses.

9 90. In committing the violations as herein alleged, Defendants have intentionally and
10 willfully failed to fully reimburse Plaintiff and class members for necessary business-related
11 costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to
12 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
13 expenses, and attorney's fees.

14 **SEVENTH CAUSE OF ACTION**

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

16 (Violation of Labor Code § 226; Violation of IWC Wage Order)

17 91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

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

3 93. During the relevant time period, Defendants have knowingly and intentionally
4 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
5 and Class Members. Defendants provided Plaintiff and Class Members with wage statements
6 that were missing or inaccurately stated one or more of the following items: (1) gross wages
7 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
8 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
9 provided that all deductions made on written orders of the employee may be aggregated and
10 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
11 employee is paid, (7) the name of the employee and the last four digits of his or her social
12 security number or an employee identification number other than a social security number, (8)
13 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
14 rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee.

16 94. As a result of Defendants' knowing and intentional failure to comply with Labor
17 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
18 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
19 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
20 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
21 their protected interest in receiving, accurate itemized wage statements under Labor Code
22 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
23 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
24 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
25 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
26 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
27 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
28

1 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
2 wages from Defendants.

3 95. Plaintiff and Class Members are entitled to recover from Defendants the greater
4 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
5 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
6 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
7 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

8 96. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
9 and Class Members from knowing, understanding, and disputing the wages paid to them and
10 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
11 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
12 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
13 shown according to proof at trial.

14 97. Class Members that are still employed by Defendants are also entitled to
15 injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with
16 California Labor Code § 226. Accordingly, affected Class Members seek the recovery of
17 attorneys' fees and costs incurred in obtaining this injunctive relief.

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

20 (Violation of Labor Code §§ 201, 202, and 203; Violation of IWC Wage Order)

21 98. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 99. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
24 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
25 if an employee voluntarily leaves his employment, his or her wages shall become due and
26 payable not later than seventy-two (72) hours thereafter, unless the employee has given
27 seventy-two (72) hours previous notice of an intention to quit, in which case the employee is
28 entitled to his or her wages at the time of quitting.

1 100. During the relevant time period, Defendants willfully failed to pay the Waiting
2 Time Subclass all their earned wages upon termination, including, but not limited to, proper
3 minimum wage and overtime compensation, meal period premiums, and rest period premiums
4 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
5 employ.

6 101. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
7 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
8 in violation of Labor Code §§ 201 and 202.

9 102. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
10 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
11 then the wages of the employee shall continue as a penalty from the due date at the same rate
12 until paid or until an action is commenced; but the wages shall not continue for more than thirty
13 (30) days.

14 103. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
15 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
16 members' regular daily wages at their regular hourly rate of pay for each day they were not
17 paid, up to a maximum of thirty (30) days.

18 NINTH CAUSE OF ACTION

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

20 (Violation of Business and Professions Code §§ 17200, *et seq.*)

21 104. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 105. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
24 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice .
25 ..."

26 106. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
27 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies
28

1 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
2 suffer injuries-in-fact.

3 107. Defendants' policies and practices violated state law in at least the following
4 respects:

- 5 (a) Failing to pay all wages earned (including minimum wage and overtime
6 wages) to Plaintiff and Class Members in violation of Labor Code §§
7 510, 551, 552, 1182.12, 1194, 1194.2, 1197, 1198, and 1454.
- 8 (b) Failing to pay all wages earned by piece rate workers during rest and
9 recovery periods in violation of Labor Code § 226.2.
- 10 (c) Failing to provide compliant meal periods without paying Plaintiff and
11 Class Members premium wages for every day said meal periods were not
12 provided in violation of Labor Code §§ 226.7 and 512.
- 13 (d) Failing to authorize or permit compliant rest breaks without paying
14 Plaintiff and Class Members premium wages for every day said rest
15 breaks were not authorized or permitted in violation of Labor Code §
16 226.7.
- 17 (e) Failure to reimburse necessary business expenses in violation of Labor
18 Code §§ 2800 and 2802.
- 19 (f) Failing to provide Plaintiff and Class Members with accurate itemized
20 wage statements in violation of Labor Code § 226.
- 21 (g) Failing to timely pay all earned wages to the members of the Waiting
22 Time Subclass upon separation of employment in violation of Labor
23 Code §§ 201, 202, and 203.

24 108. As alleged herein, Defendants systematically engaged in unlawful conduct in
25 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
26 (minimum and overtime wages), failing to provide meal periods and rest breaks or
27 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all
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1 wages due and owing upon separation of employment in a timely manner, all in order to
2 decrease their costs of doing business and increase their profits.

3 109. At all relevant times herein, Defendants held themselves out to Plaintiff and
4 Class Members as being knowledgeable concerning the labor and employment laws of
5 California.

6 110. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
7 and Class Members wages and monies, thereby creating for Defendants an artificially lower
8 cost of doing business in order to undercut their competitors and establish and/or gain a greater
9 foothold in the marketplace.

10 111. As a result of Defendants' intentional, willful, purposeful, and wrongful
11 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
12 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
13 according to proof at trial.

14 112. By violating the foregoing statutes and regulations as herein alleged,
15 Defendants' acts constitute unfair and unlawful business practices under California Business
16 and Professions Code §§ 17200, *et seq.*

17 113. As a result of the unfair and unlawful business practices of Defendants, as
18 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
19 restitution in an amount to be shown according to proof at trial.

20 114. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
22 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
23 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
24 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
25 Procedure § 1021.5.

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- d. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse necessary business expenses to Plaintiff and other aggrieved employees as herein alleged;
- f. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and
- g. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

119. Plaintiff is an “aggrieved employee” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

120. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

121. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

122. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Sarah Graves as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and
15. For such other relief as the Court deems just and proper.

Dated: July 9, 2020

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff Sarah Graves

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On July 9, 2020, I served the foregoing document entitled:

- 5 • **[Amended as a matter of right, pursuant to Labor Code section
2699.3(a)(2)(C)] FIRST AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original
7 ☒ a true copy thereof on the party(ies) addressed below as follows:

8 David S. Henshaw
9 HENSHAW & HENRY, PC
10 1871 The Alameda, Suite 333
San Jose, CA 95126
Telephone: 408.533.1075
Fax: 408.583.4016

11 *Attorney for Defendant:*
12 SUMMIT THERAPEUTIC SERVICES, INC.

13 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
14 correspondence for mailing. Under that practice it would be deposited with the U.S.
15 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
16 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

17 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
18 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

19 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
20 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

21 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
22 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
23 *5(b)(2)(A).*)

24 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

25 Executed on July 9, 2020, at Irvine, Califor

26 

27 _____
28 Andrea Drocco

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David S. Henshaw
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San Jose CA 95126-1746