

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 SHANNON HEUKLOM and MICHAEL
15 BURRIS, on behalf of the State of
16 California, as private attorney generals,

17 Plaintiffs,

18 vs.

19 CLARA MEDICAL GROUP, P.C., a
20 California Professional Corporation; and DOES
21 1 through 50, inclusive.

22 Defendants.

Case No.

CGC-20-587942

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2570.3 *et seq.*,
2802, California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

BY FAX

1 Plaintiffs Shannon Heuklom and Michael Burris (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as private attorney generals
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFFS bring this action against Defendant Clara Medical Group, P.C.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFFS do **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFFS do not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals to bring an action on
15 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole nature of this action.

17 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 4. DEFENDANT, in order to service customers, hires workers to aid DEFENDANT in
23 providing health membership services. The cost, as proscribed by law, of the personnel hired
24 to work for DEFENDANT, includes not only the pay and overtime pay of these employees but
25 the cost of the employer's share of tax payments to the federal and state governments for income
26 taxes, social security taxes, medicare insurance, unemployment insurance and payments for
27 workers' compensation insurance ("Business Related Expenses"). To avoid the payment of
28

1 these legally proscribed Business Related Expenses to the fullest extent possible, DEFENDANT
2 devised a scheme to place the responsibility for the payment of these costs and expenses of
3 DEFENDANT on the shoulders of the PLAINTIFFS and other Nurse Practitioners. As
4 employer, DEFENDANT is legally responsible for the payment of all these Business Related
5 Expenses.

6 **THE PARTIES**

7 5. DEFENDANT at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the State of California. DEFENDANT does
9 business as Forward.

10 6. DEFENDANT operates an online platform that connects individuals looking for
11 medical assistance with medical professionals on demand. DEFENDANT's membership
12 services also provides customers with access to new technology, allowing for customers to
13 manage their health care accordingly. DEFENDANT was founded in 2016. DEFENDANT
14 currently serves customers in the State of California, operating in San Francisco, Glendale,
15 Orange County and Los Angeles.

16 7. Plaintiff Heuklom was employed by DEFENDANT as a Nurse Practitioner from
17 October of 2017 to January 2020 and was classified by DEFENDANT as an independent
18 contractor during her entire employment with DEFENDANT.

19 8. Plaintiff Burris has been employed by DEFENDANT as a Nurse Practitioner since
20 March of 2020 and has been classified by DEFENDANT as an independent contractor during
21 his entire employment with DEFENDANT.

22 9. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person
23 or employer to engage in . . . [w]illful misclassification of an individual as an independent
24 contractor." The penalty for willful misclassification of employees is a "civil penalty of not less
25 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
26 each violation, in addition to any other penalties or fines permitted by law." It is further
27 provided that, in the event that an employer is found to have engaged in "a pattern or practice
28

1 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
2 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
3 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

4 10. Here, DEFENDANT has willfully misclassified PLAINTIFFS and other Nurse
5 Practitioners as described in Cal. Labor Code § 226.8 and Labor Code Section 2750.3 *et seq.*,
6 and further, that DEFENDANT has engaged in a “pattern or practice” of such violations as
7 contemplated by the California Labor Code.

8 11. Upon hire, the position of a Nurse Practitioners was represented by DEFENDANT
9 to the PLAINTIFFS and the other Nurse Practitioners as an independent contractor position
10 capable of paying an hourly rate for time worked for DEFENDANT. PLAINTIFFS and other
11 Nurse Practitioners were paid an hourly rate to perform services on DEFENDANT’s behalf.
12 PLAINTIFFS and other Nurse Practitioners were not compensated overtime wages for any of
13 their time spent working in excess of eight (8) hours in a workday and/or forty (40) hours in a
14 workweek. The finite set of tasks required to be performed by the Nurse Practitioners is, when
15 notified, provide medical assistance, input customers’ medical inquiries into DEFENDANT’s
16 software and to generally provide medical services to customers who requested DEFENDANT’s
17 services all in accordance with DEFENDANT’s business practices and policies.

18 12. To perform their job duties, the PLAINTIFFS and the other Nurse Practitioners
19 performed work subject to the control of DEFENDANT in that DEFENDANT had the authority
20 to exercise complete control over the work performed and the manner and means in which the
21 work was performed. DEFENDANT provided the customers and DEFENDANT provided the
22 instructions as to how to perform their services.

23 13. California Labor Code § 3357 defines “employee” as “every person in the service of
24 an employer under any appointment or contract of hire or apprenticeship, express or implied, oral
25 or written, whether lawfully or unlawfully employed.” In addition to the California Labor
26 Code’s presumption that workers are employees, the California Supreme Court has determined
27 the most significant factor to be considered in distinguishing an independent contractor from
28

1 an employee is whether the *employer or principal has control or the right to control the work*
2 *both as to the work performed and the manner and means in which the work is performed.*

3 DEFENDANT heavily controlled both the work performed and the manner and means in which
4 the PLAINTIFFS and the other Nurse Practitioners performed their work in that:

5 (a) PLAINTIFFS and other Nurse Practitioners were not involved in a distinct
6 business, but instead were provided with instructions as to how to perform their work and the
7 manner and means in which the work was to be performed by means of DEFENDANT's
8 manuals and written instructions;

9 (b) PLAINTIFFS and other Nurse Practitioners were continuously provided with
10 training and supervision, including following DEFENDANT's company documents and
11 received training from DEFENDANT as to how and in what way to perform services;

12 (c) DEFENDANT set the requirements as to what policies and procedures all of
13 the Nurse Practitioners were to follow;

14 (d) PLAINTIFFS and other Nurse Practitioners had no opportunity for profit or
15 loss because DEFENDANT only paid these employees based on the hours they worked for
16 DEFENDANT and DEFENDANT controlled and assigned the weekly schedules PLAINTIFFS
17 and other Nurse Practitioners were required to work. DEFENDANT also controlled which
18 Nurse Practitioners would receive a particular medical assignment;

19 (e) PLAINTIFFS and other Nurse Practitioners performed healthcare services
20 which is part of DEFENDANT's principal business and is closely integrated with and essential
21 to the employer's business of providing healthcare services to their customers;

22 (f) PLAINTIFFS and other Nurse Practitioners performed the work themselves
23 and did not hire others to perform their work for them;

24 (g) PLAINTIFFS and other Nurse Practitioner did not have the authority to make
25 employment-related personnel decisions;

26 (h) PLAINTIFFS and other Nurse Practitioners performed their work in a
27 particular order and sequence in accordance with DEFENDANT's company policy; and,
28

1 (i) DEFENDANT had the “right” to control every critical aspect of
2 DEFENDANT’s daily services in that DEFENDANT provided step-by-step instructions to
3 PLAINTIFFS and other Nurse Practitioners as to the entire process of assisting clients and
4 inputting medical inquiries. PLAINTIFFS and other Nurse Practitioners provided services
5 ONLY for DEFENDANT’s customers, which DEFENDANT controlled via the company’s
6 technology.

7 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
8 classification of the relationship between PLAINTIFFS and all the other Nurse Practitioners on
9 the one hand, and DEFENDANT on the other hand, PLAINTIFFS and all the other Nurse
10 Practitioners are and were employees of DEFENDANT and not independent contractors of
11 DEFENDANT and should therefore be properly classified as non-exempt, hourly employees.

12 15. PLAINTIFFS, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, bring this Representative Action on behalf of the State of California with respect to
15 themselves and all individuals who are or previously were employed by DEFENDANT in
16 California as Nurse Practitioners and who were classified as independent contractors
17 (“AGGRIEVED EMPLOYEES”) during the time period of April 15, 2019 until a date as
18 determined by the Court (the “PAGA PERIOD”).

19 16. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
20 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
21 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
22 DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
23 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.*, 2802, California
24 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
25 Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are
26 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

27 17. As a matter of company policy, practice and procedure, DEFENDANT has
28

1 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEE as
2 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
3 and state laws that require payment for all time worked, business expenses, and the employer's
4 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
5 and state governments and the AGGRIEVED EMPLOYEES, PLAINTIFFS and the
6 AGGRIEVED EMPLOYEES were underpaid throughout their employment with
7 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
8 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
9 to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal.
10 Civ. Proc. Code § 474. PLAINTIFFS are informed and believe, and based thereon, allege that
11 each of the Defendants designated herein is legally responsible in some manner for the unlawful
12 acts referred to herein. PLAINTIFFS will seek leave of Court to amend this Complaint to
13 reflect the true names and capacities of the Defendants when they have been ascertained and
14 become known.

15 18. The agents, servants and/or employees of the Defendants and each of them
16 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
17 as the agent, servant and/or employee of the Defendants, and personally participated in the
18 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
19 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
20 all Defendants are jointly and severally liable to the PLAINTIFFS and the other AGGRIEVED
21 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
22 agents, servants and/or employees.

23 THE CONDUCT

24 19. The finite set of tasks required of PLAINTIFFS and the other AGGRIEVED
25 EMPLOYEES as defined by DEFENDANT was executed by them through the performance of
26 non-exempt labor.
27
28

1 20. Although PLAINTIFFS and the other AGGRIEVED EMPLOYEES performed
2 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
3 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
4 by which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors"
5 exempt from compensation for overtime worked, meal breaks and rest breaks, and
6 reimbursement for business related expenses. By reason of this uniform misclassification, the
7 AGGRIEVED EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes
8 and mandatory insurance premiums. As a result of this uniform misclassification practice,
9 policy and procedure applicable to PLAINTIFFS and the other AGGRIEVED EMPLOYEES
10 who performed this work for DEFENDANT, DEFENDANT engaged in a company-wide
11 policy, practice and procedure which uniformly failed to properly classify PLAINTIFFS and the
12 other AGGRIEVED EMPLOYEES as employees and thereby failed to pay them overtime
13 wages for overtime worked, reimbursement of business related expenses, failed to provide them
14 with meal and rest breaks, and failed to reimburse these employees for the employer's share of
15 payroll taxes and mandatory insurance. The proper classification of these employees is
16 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
17 to meet this burden, DEFENDANT violated the California Labor Code and regulations
18 promulgated thereunder as herein alleged. DEFENDANT did not have in place a policy,
19 practice or procedure that provided meal and/or rest breaks to PLAINTIFFS and AGGRIEVED
20 EMPLOYEES as evidenced by DEFENDANT's business records which contain no record of
21 these breaks.

22 21. DEFENDANT, as a matter of law, has the burden of proving that employees are
23 properly classified and that DEFENDANT otherwise complies with applicable laws.
24 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
25 AGGRIEVED EMPLOYEES as independent contractors.

26 22. PLAINTIFFS and all the AGGRIEVED EMPLOYEES are and were uniformly
27 classified and treated by DEFENDANT as independent contractors at the time of hire and
28

1 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFFS and
2 the AGGRIEVED EMPLOYEES are properly classified under the applicable Industrial Welfare
3 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
4 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFFS and
5 AGGRIEVED EMPLOYEES in compliance with California labor laws, DEFENDANT's
6 practices violated and continue to violate California law. In addition, DEFENDANT acted
7 deceptively by falsely and fraudulently classifying PLAINTIFFS and each AGGRIEVED
8 EMPLOYEE as independent contractors when DEFENDANT knew or should have known that
9 this classification was false and not based on known facts. In doing so, DEFENDANT cheated
10 the competition by paying the AGGRIEVED EMPLOYEES less than the amount competitors
11 paid who complied with the law and cheated the AGGRIEVED EMPLOYEES by not paying
12 them in accordance with California law.

13 23. As a result of their rigorous work schedules, PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES were from time to time unable to take off duty meal breaks and were not fully
15 relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED EMPLOYEES were
16 required from time to time to perform work as ordered by DEFENDANT for more than five (5)
17 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed
18 to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second off-duty meal period
19 from time to time in which these employees were required by DEFENDANT to work ten (10)
20 hours of work. PLAINTIFFS and the other AGGRIEVED EMPLOYEES therefore forfeited
21 meal breaks without additional compensation and in accordance with DEFENDANT's strict
22 corporate policy and practice.

23 24. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED EMPLOYEES
24 were also required from time to time to work in excess of four (4) hours without being provided
25 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
26 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
27 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
28

1 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
2 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
3 PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one hour
4 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
5 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
6 DEFENDANT and DEFENDANT's managers.

7 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
8 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
9 incurred by PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of
10 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
11 2802, employers are required to indemnify employees for all expenses incurred in the course
12 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
13 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
14 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
15 directions of the employer, even though unlawful, unless the employee, at the time of obeying
16 the directions, believed them to be unlawful."

17 26. In the course of their employment PLAINTIFFS and other AGGRIEVED
18 EMPLOYEES as a business expense, are required by DEFENDANT to use personal cellular
19 phones and their home offices as a result of and in furtherance of their job duties as employees
20 for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
21 associated with the use of the personal cellular phones or home offices for DEFENDANT's
22 benefit. In order to work as a Nurse Practitioner for DEFENDANT, PLAINTIFFS and other
23 AGGRIEVED EMPLOYEES are required to communicate with DEFENDANT and as such it
24 is mandatory to have a cell phone that is compatible to remain in constant contact with
25 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
26 with DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred
27 unreimbursed business expenses which include, but are not limited to, costs related to the use
28

1 of their personal cellular phones and home office expenses all on behalf of and for the benefit
2 of DEFENDANT. Further, PLAINTIFFS and other AGGRIEVED EMPLOYEES are also not
3 reimbursed or indemnified by DEFENDANT for the cost associated with using their home
4 offices while working for DEFENDANT. As a result, in the course of their employment with
5 DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred unreimbursed
6 business expenses which include, but are not limited to, costs related to maintaining their home
7 offices, all on behalf of and for the benefit of DEFENDANT.

8 27. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
9 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
10 show, among other things, the correct amount of time worked, including, work performed in
11 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and correct
12 amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every employer
13 shall furnish each of his or her employees with an accurate itemized wage statement in writing
14 showing, among other things, gross wages earned and all applicable hourly rates in effect during
15 the pay period and the corresponding amount of time worked at each hourly rate. As a result,
16 DEFENDANT provided PLAINTIFFS and the other AGGRIEVED EMPLOYEES with wage
17 statements which violated Cal. Lab. Code § 226.

18 28. By reason of this conduct applicable to PLAINTIFFS and all the AGGRIEVED
19 EMPLOYEES, DEFENDANT engaged in a company-wide policy, practice and procedure
20 which failed to correctly classify PLAINTIFFS and the AGGRIEVED EMPLOYEES as
21 employees. The proper classification of these employees is DEFENDANT's burden. As a result
22 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
23 failed to pay all required overtime compensation for work performed by PLAINTIFFS and other
24 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
25 promulgated thereunder as herein alleged.

26 29. All of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
28

1 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
3 AJDAR 12157 (Certified for Publication 12/19/18).

4
5 **JURISDICTION AND VENUE**

6 30. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10.

8 31. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
9 395.5, because PLAINTIFFS reside in this County and DEFENDANT (i) currently maintains
10 and at all relevant times maintained its principal offices and facilities in this County and/or
11 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
12 alleged in this County against PLAINTIFFS and the AGGRIEVED EMPLOYEES.

13
14 **FIRST CAUSE OF ACTION**

15 **For Violation of the Private Attorneys General Act**

16 **[Cal. Lab. Code §§ 2698, *et seq.*]**

17 **(By PLAINTIFFS and Against All Defendants)**

18 32. PLAINTIFFS reallege and incorporates by this reference, as though fully set forth
19 herein, the prior paragraphs of this Complaint.

20 33. PAGA is a mechanism by which the State of California itself can enforce state labor
21 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
22 labor law enforcement agencies. An action to recover civil penalties under PAGA is
23 fundamentally a law enforcement action designed to protect the public and not to benefit private
24 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
25 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
26 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
27 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
28 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be

1 subject to arbitration.

2 34. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
3 requirements and exhaust the administrative procedures under the Private Attorney General Act,
4 brings this Representative Action on behalf of the State of California with respect to themselves
5 and all individuals who are or previously were employed by DEFENDANT in California as
6 Nurse Practitioners and who were classified as independent contractors ("AGGRIEVED
7 EMPLOYEES") during the time period of April 15, 2019 until a date as determined by the
8 Court (the "PAGA PERIOD").

9 35. On April 15, 2020, PLAINTIFFS gave written notice by electronic mail to the Labor
10 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
11 the specific provisions of this code alleged to have been violated as required by Labor Code §
12 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The
13 statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired.
14 As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil
15 action under PAGA pursuant to Section 2699 as the proxies of the State of California with
16 respect to all AGGRIEVED EMPLOYEES as herein defined.

17 36. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
20 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
21 to pay overtime wages, (e) failed to pay wages when due, and (f) failed to reimburse employees
22 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
23 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
24 1197.1, 1198, 2570.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040,
25 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties

1 as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as
2 prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of
3 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other
4 AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15
16 Dated: October 19, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

17
18
19 By: 

Norman B. Blumenthal
Attorneys for Plaintiffs

20
21
22
23
24
25
26
27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

April 15, 2020

CA1965

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Clara Medical Group, P.C.
Certified Mail # 70142120000378197011
Adrian Aoun
660 4th St., #202
San Francisco, CA 94107

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who worked for Defendant Clara Medical Group, P.C. in California as Nurse Practitioners and who were classified as independent contractors during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiffs Shannon Heuklom and Michael Burris (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Defendant Clara Medical Group, P.C. (“Defendant”). Plaintiff Heuklom was employed by Defendant in California from October of 2017 to January of 2020 and was classified by Defendant as an independent contractor. Plaintiff Burris has been employed by Defendant in California since March of 2020 and classified as an independent contractor. However, the job duties of Plaintiffs and other Aggrieved Employees do not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiffs and other Aggrieved Employees. Plaintiffs and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiffs and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks.

Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiffs, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

SHANNON HEUKLOM and MICHAEL
BURRIS, individuals, on behalf of themselves,
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

CLARA MEDICAL GROUP, P.C., a
California Professional Corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF,
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE
IN VIOLATION OF CAL. LAB. CODE §§ 201,
202 AND 203

DEMAND FOR A JURY TRIAL

Plaintiffs Shannon Heuklom and Michael Burris (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except their own acts and knowledge, the following:

INTRODUCTION

1. Defendant Clara Medical Group, P.C. (“DEFENDANT”) in order to service customers hires workers to aid DEFENDANT in providing health membership services. The cost, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay and overtime pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, medicare insurance, unemployment insurance and payments for workers' compensation insurance ("Business Related Expenses"). To avoid the payment of these legally proscribed Business Related Expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of the PLAINTIFFS and other Nurse Practitioners. As employer, DEFENDANT is legally responsible for the payment of all these Business Related Expenses. This lawsuit is brought on behalf of these Nurse Practitioners who worked for DEFENDANT in California and were classified as independent contractors, in order to collect the wages due them as employees of DEFENDANT, the cost of the employer's share of payments to the federal and state governments for income taxes, social security taxes, medicare insurance, unemployment insurance and payments for workers' compensation insurance, plus penalties and interest.

THE PARTIES

2. DEFENDANT at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the State of California. DEFENDANT does business as Forward.

3. DEFENDANT operates an online platform that connects individuals looking for

1 medical assistance with medical professionals on demand. DEFENDANT's membership
2 services also provides customers with access to new technology, allowing for customers to
3 manage their health care accordingly. DEFENDANT was founded in 2016. DEFENDANT
4 currently serves customers in the State of California, operating in San Francisco, Glendale,
5 Orange County and Los Angeles.

6 4. Plaintiff Heuklom was employed by DEFENDANT as a Nurse Practitioner from
7 October of 2017 to January 2020 and was classified by DEFENDANT as an independent
8 contractor during her entire employment with DEFENDANT.

9 5. Plaintiff Burris has been employed by DEFENDANT as a Nurse Practitioner since
10 March of 2020 and has been classified by DEFENDANT as an independent contractor during
11 his entire employment with DEFENDANT.

12 6. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person
13 or employer to engage in . . . [w]illful misclassification of an individual as an independent
14 contractor." The penalty for willful misclassification of employees is a "civil penalty of not less
15 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
16 each violation, in addition to any other penalties or fines permitted by law." It is further
17 provided that, in the event that an employer is found to have engaged in "a pattern or practice
18 of these violations," the penalties increase to "not less than ten thousand dollars (\$10,000) and
19 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
20 penalties or fines permitted by law." Cal. Labor Code § 226.8.

21 7. Here, DEFENDANT has willfully misclassified PLAINTIFFS and other Nurse
22 Practitioners as described in Cal. Labor Code § 226.8 and Labor Code Section 2750.3 et seq.,
23 and further, that DEFENDANT has engaged in a "pattern or practice" of such violations as
24 contemplated by the California Labor Code.

25 8. Upon hire, the position of a Nurse Practitioners was represented by DEFENDANT
26 to the PLAINTIFFS and the other Nurse Practitioners as an independent contractor position
27 capable of paying an hourly rate for time worked for DEFENDANT. PLAINTIFFS and other
28

1 Nurse Practitioners were paid an hourly rate to perform services on DEFENDANT's behalf.
2 PLAINTIFFS and other Nurse Practitioners were not compensated overtime wages for any of
3 their time spent working in excess of eight (8) hours in a workday and/or forty (40) hours in a
4 workweek. The finite set of tasks required to be performed by the Nurse Practitioners is, when
5 notified, provide medical assistance, input customers' medical inquiries into DEFENDANT's
6 software and to generally provide medical services to customers who requested DEFENDANT's
7 services all in accordance with DEFENDANT's business practices and policies.

8 9. To perform their job duties, the PLAINTIFFS and the other Nurse Practitioners
9 performed work subject to the control of DEFENDANT in that DEFENDANT had the authority
10 to exercise complete control over the work performed and the manner and means in which the
11 work was performed. DEFENDANT provided the customers and DEFENDANT provided the
12 instructions as to how to perform their services.

13 10. California Labor Code § 3357 defines "employee" as "every person in the service
14 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
15 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
16 Code's presumption that workers are employees, the California Supreme Court has determined
17 the most significant factor to be considered in distinguishing an independent contractor from
18 an employee is whether the *employer or principal has control or the right to control the work*
19 *both as to the work performed and the manner and means in which the work is performed.*
20 DEFENDANT heavily controlled both the work performed and the manner and means in which
21 the PLAINTIFFS and the other Nurse Practitioners performed their work in that:

22 (a) PLAINTIFFS and other Nurse Practitioners were not involved in a distinct
23 business, but instead were provided with instructions as to how to perform their work and the
24 manner and means in which the work was to be performed by means of DEFENDANT's
25 manuals and written instructions;

26 (b) PLAINTIFFS and other Nurse Practitioners were continuously provided
27 with training and supervision, including following DEFENDANT's company documents and
28

1 received training from DEFENDANT as to how and in what way to perform services;

2 (c) DEFENDANT set the requirements as to what policies and procedures all
3 of the Nurse Practitioners were to follow;

4 (d) PLAINTIFFS and other Nurse Practitioners had no opportunity for profit
5 or loss because DEFENDANT only paid these employees based on the hours they worked for
6 DEFENDANT and DEFENDANT controlled and assigned the weekly schedules PLAINTIFFS
7 and other Nurse Practitioners were required to work. DEFENDANT also controlled which
8 Nurse Practitioners would receive a particular medical assignment;

9 (e) PLAINTIFFS and other Nurse Practitioners performed healthcare services
10 which is part of DEFENDANT's principal business and is closely integrated with and essential
11 to the employer's business of providing healthcare services to their customers;

12 (f) PLAINTIFFS and other Nurse Practitioners performed the work
13 themselves and did not hire others to perform their work for them;

14 (g) PLAINTIFFS and other Nurse Practitioner did not have the authority to
15 make employment-related personnel decisions;

16 (h) PLAINTIFFS and other Nurse Practitioners performed their work in a
17 particular order and sequence in accordance with DEFENDANT's company policy; and,

18 (i) DEFENDANT had the "right" to control every critical aspect of
19 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
20 PLAINTIFFS and other Nurse Practitioners as to the entire process of assisting clients and
21 inputting medical inquiries. PLAINTIFFS and other Nurse Practitioners provided services
22 ONLY for DEFENDANT's customers, which DEFENDANT controlled via the company's
23 technology.

24 11. As a result, stripped of all the legal fictions and artificial barriers to an honest
25 classification of the relationship between PLAINTIFFS and all the other Nurse Practitioners on
26 the one hand, and DEFENDANT on the other hand, PLAINTIFFS and all the other Nurse
27 Practitioners are and were employees of DEFENDANT and not independent contractors of
28

1 DEFENDANT and should therefore be properly classified as non-exempt, hourly employees.

2 12. PLAINTIFFS brings this Class Action on behalf of themselves and a California
3 class, defined as all individuals who worked for DEFENDANT in California as Nurse
4 Practitioners and who were classified as independent contractors (the "CALIFORNIA CLASS")
5 at any time during the period beginning four (4) years prior to the filing of this Complaint and
6 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
7 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
8 million dollars (\$5,000,000.00).

9 13. As a matter of company policy, practice and procedure, DEFENDANT has
10 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as
11 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
12 and state laws that require payment for all time worked, business expenses, and the employer's
13 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
14 and state governments and the CALIFORNIA CLASS Members, PLAINTIFFS and the
15 CALIFORNIA CLASS Members were underpaid throughout their employment with
16 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
17 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
18 to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal.
19 Civ. Proc. Code § 474. PLAINTIFFS are informed and believe, and based thereon, allege that
20 each of the Defendants designated herein is legally responsible in some manner for the unlawful
21 acts referred to herein. PLAINTIFFS will seek leave of Court to amend this Complaint to
22 reflect the true names and capacities of the Defendants when they have been ascertained and
23 become known.

24 14. The agents, servants and/or employees of the Defendants and each of them
25 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
26 as the agent, servant and/or employee of the Defendants, and personally participated in the
27 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.

1 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
2 all Defendants are jointly and severally liable to the PLAINTIFFS and the other members of the
3 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
4 servants and/or employees.

5 6 **THE CONDUCT**

7 15. The finite set of tasks required of PLAINTIFFS and the other CALIFORNIA
8 CLASS Members as defined by DEFENDANT was executed by them through the performance
9 of non-exempt labor.

10 16. Although PLAINTIFFS and the other CALIFORNIA CLASS Members
11 performed non-exempt labor subject to DEFENDANT's complete control over the manner and
12 means of performance, DEFENDANT instituted a blanket classification policy, practice and
13 procedure by which all of these CALIFORNIA CLASS Members were classified as
14 "independent contractors" exempt from compensation for overtime worked, meal breaks and
15 rest breaks, and reimbursement for business related expenses. By reason of this uniform
16 misclassification, the CALIFORNIA CLASS Members were also required to pay
17 DEFENDANT's share of payroll taxes and mandatory insurance premiums. As a result of this
18 uniform misclassification practice, policy and procedure applicable to PLAINTIFFS and the
19 other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
20 DEFENDANT committed acts of unfair competition in violation of the California Unfair
21 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
22 company-wide policy, practice and procedure which uniformly failed to properly classify
23 PLAINTIFFS and the other CALIFORNIA CLASS Members as employees and thereby failed
24 to pay them overtime wages for overtime worked, reimbursement of business related expenses,
25 failed to provide them with meal and rest breaks, and failed to reimburse these employees for
26 the employer's share of payroll taxes and mandatory insurance. The proper classification of
27 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional
28

1 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
2 Code and regulations promulgated thereunder as herein alleged. DEFENDANT did not have
3 in place a policy, practice or procedure that provided meal and/or rest breaks to PLAINTIFFS
4 and CALIFORNIA CLASS Members as evidenced by DEFENDANT's business records which
5 contain no record of these breaks.

6 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
7 properly classified and that DEFENDANT otherwise complies with applicable laws.
8 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
9 CALIFORNIA CLASS Members as independent contractors.

10 18. PLAINTIFFS and all the CALIFORNIA CLASS Members are and were
11 uniformly classified and treated by DEFENDANT as independent contractors at the time of hire
12 and thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFFS
13 and the CLASS Members are properly classified under the applicable Industrial Welfare
14 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
15 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFFS and
16 CALIFORNIA CLASS Members in compliance with California labor laws, DEFENDANT's
17 practices violated and continue to violate California law. In addition, DEFENDANT acted
18 deceptively by falsely and fraudulently classifying PLAINTIFFS and each CALIFORNIA
19 CLASS Member as independent contractors when DEFENDANT knew or should have known
20 that this classification was false and not based on known facts. DEFENDANT also acted
21 deceptively by violating the California labor laws, and as a result of this policy and practice,
22 DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by
23 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
24 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
25 California law.

26 19. As a result of their rigorous work schedules, PLAINTIFFS and other
27 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
28

1 and were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA
2 CLASS Members were required from time to time to perform work as ordered by
3 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
4 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
5 Members with a second off-duty meal period from time to time in which these employees were
6 required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and the other
7 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
8 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

9 20. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
10 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
11 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
12 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
13 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
14 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
15 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
16 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
17 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
18 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
19 proper rest periods by DEFENDANT and DEFENDANT's managers.

20 21. DEFENDANT as a matter of corporate policy, practice and procedure,
21 intentionally, knowingly and systematically fails to reimburse and indemnify PLAINTIFFS and
22 the other CALIFORNIA CLASS Members for required business expenses incurred by
23 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
27 her employee for all necessary expenditures or losses incurred by the employee in direct
28

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful."

4 22. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
5 Members as a business expense, are required by DEFENDANT to use personal cellular phones
6 and their home offices as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
8 associated with the use of the personal cellular phones or home offices for DEFENDANT's
9 benefit. In order to work as a Nurse Practitioner for DEFENDANT, PLAINTIFFS and other
10 CALIFORNIA CLASS Members are required to communicate with DEFENDANT and as such
11 it is mandatory to have a cell phone that is compatible to remain in constant contact with
12 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
13 with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
14 unreimbursed business expenses which include, but are not limited to, costs related to the use
15 of their personal cellular phones and home office expenses all on behalf of and for the benefit
16 of DEFENDANT. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are also
17 not reimbursed or indemnified by DEFENDANT for the cost associated with using their home
18 offices while working for DEFENDANT. As a result, in the course of their employment with
19 DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
20 unreimbursed business expenses which include, but are not limited to, costs related to
21 maintaining their home offices, all on behalf of and for the benefit of DEFENDANT.

22 23. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
23 other members of the CALIFORNIA CLASS with complete and accurate wage statements
24 which failed to show, among other things, the correct amount of time worked, including, work
25 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
26 and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every
27 employer shall furnish each of his or her employees with an accurate itemized wage statement
28

1 in writing showing, among other things, gross wages earned and all applicable hourly rates in
2 effect during the pay period and the corresponding amount of time worked at each hourly rate.
3 As a result, DEFENDANT provided PLAINTIFFS and the other members of the CALIFORNIA
4 CLASS with wage statements which violated Cal. Lab. Code § 226.

5 24. By reason of this uniform conduct applicable to PLAINTIFFS and all the
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
7 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to
9 correctly classify PLAINTIFFS and the CALIFORNIA CLASS Members as employees. The
10 proper classification of these employees is DEFENDANT's burden. As a result of
11 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
12 failed to pay all required overtime compensation for work performed by PLAINTIFFS and other
13 CALIFORNIA CLASS Members and violated the California Labor Code and regulations
14 promulgated thereunder as herein alleged. 1. Specifically as to PLAINTIFFS, they

15 worked for DEFENDANT in California as a Nurse Practitioners and were classified by
16 DEFENDANT as independent contractors. Upon hire, the position of a Nurse Practitioner was
17 represented by DEFENDANT to PLAINTIFFS as an independent contractor position capable
18 of paying an hourly rate for time worked for DEFENDANT. The finite set of tasks required to
19 be performed by the Nurse Practitioners is, when notified, provide medical assistance, input
20 customers' medical inquiries into DEFENDANT's software and to generally provide medical
21 advice to customers who requested DEFENDANT's services all in accordance with
22 DEFENDANT's business practices and policies. During the CALIFORNIA CLASS PERIOD,
23 PLAINTIFFS as Nurse Practitioners, were classified by DEFENDANT as an independent
24 contractor and thus did not receive pay for all overtime worked. During the CALIFORNIA
25 CLASS PERIOD, PLAINTIFFS were also required to perform work as ordered by
26 DEFENDANT for more than five (5) hours during a shift without receiving a meal or rest break
27 as evidenced by daily time reports for PLAINTIFFS. PLAINTIFFS therefore forfeited meal and
28

1 rest breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice which did not provide for mandatory meal and rest breaks. To
3 date, DEFENDANT has not fully paid Plaintiff Hueklom all wages still owed to her or any
4 penalty wages owed to her under Cal. Lab. Cde 203. The amount in controversy for
5 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

6 **THE CALIFORNIA CLASS**

7 25. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
9 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
10 individuals who worked for DEFENDANT in California as Nurse Practitioners and who were
11 classified as independent contractors (the "CALIFORNIA CLASS") at any time during the
12 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
13 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
14 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

16 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
17 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
18 accordingly.

19 27. All CALIFORNIA CLASS Members who performed and continue to perform this
20 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in
21 that they are subject to DEFENDANT's uniform policy and systematic practice that required
22 them to perform work without compensation as required by law.

23 28. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in
24 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
25 Wage Order requirements, and the applicable provisions of California law, intentionally,
26 knowingly and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and
27 deceptively instituted a practice to ensure that all individuals employed as independent
28

1 contractors were not properly classified as non-exempt employees from the requirements of
2 California Labor Code §§ 510, *et seq.*

3 29. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated
4 the rights of the PLAINTIFFS and the CALIFORNIA CLASS Members under California law,
5 without limitation, in the following manners:

6 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
7 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
8 employer, devised and implemented a scheme whereby PLAINTIFFS and
9 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
10 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
11 overtime, business related expenses, and DEFENDANT's share of
12 employment taxes, social security taxes, unemployment insurance and
13 workers' compensation insurance;

14 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
15 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
16 having in place company policies, practices and procedures that uniformly
17 misclassified PLAINTIFFS and the CALIFORNIA CLASS Members as
18 independent contractors;

19 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
21 failing to have in place a company policy, practice and procedure that
22 accurately determined the amount of working time spent by PLAINTIFFS
23 and the CALIFORNIA CLASS Members performing non-exempt
24 employee labor;

25 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
26 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS with all legally required
28

1 meal and rest breaks; and,

- 2 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
3 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
4 failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
5 members with necessary expenses incurred in the discharge of their job
6 duties.

7 30. As a result of DEFENDANT's uniform policies, practices and procedures, there
8 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who
9 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
10 limited, to the following:

- 11 (a) Whether PLAINTIFFS and other CALIFORNIA CLASS Members were
12 misclassified as independent contractors by DEFENDANT;
- 13 (b) Whether the PLAINTIFFS and the CALIFORNIA CLASS Members all
14 afforded all the protections of the California Labor Code that apply when
15 properly classified as non-exempt employees;
- 16 (c) Whether DEFENDANT's policies, practices and pattern of conduct
17 described in this Complaint was and is unlawful;
- 18 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
19 federal employment taxes as required by state and federal tax laws;
- 20 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
21 CALIFORNIA CLASS Members as independent contractors exempt from
22 hourly wages laws for all time worked and failing to pay the
23 CALIFORNIA CLASS Members all amounts due violates applicable
24 provisions of California State law;
- 25 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
26 CALIFORNIA CLASS Members with accurate records of all time
27 worked, including overtime worked;
- 28

1 (g) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct; and,

3 (h) Whether DEFENDANT's conduct was willful.

4 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
7 that the joinder of all such persons is impracticable and the disposition of their claims as a class
8 will benefit the parties and the Court;

9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply
11 uniformly to every CALIFORNIA CLASS Member;

12 (c) The claims of the representative PLAINTIFFS are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the CALIFORNIA CLASS
14 Members, were classified as an independent contractor upon hiring based on the defined
15 corporate policies and practices and labors under DEFENDANT's systematic procedure that
16 failed to properly classify the PLAINTIFFS and the CALIFORNIA CLASS Members.
17 PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices.
18 PLAINTIFFS and the CALIFORNIA CLASS Members were and are similarly or identically
19 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged
20 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members that they
21 were not entitled to overtime wages, the employer's share of payment of payroll taxes and
22 mandatory insurance, and reimbursement for business expenses based on the defined corporate
23 policies and practices, and unfairly failed to pay these employees who were improperly
24 classified as independent contractors; and,

25 (d) The representative PLAINTIFFS will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and have retained counsel who is competent
27 and experienced in Class Action litigation. There are no material conflicts between the claims
28

1 of the representative PLAINTIFFS and the CALIFORNIA CLASS Members that would make
2 class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
3 the claims of all employees in the CALIFORNIA CLASS.

4 32. In addition to meeting the statutory prerequisites to a Class Action, this Action
5 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 (a) Without class certification and determination of declaratory, injunctive,
7 statutory and other legal questions within the class format, prosecution of separate actions by
8 individual members of the CALIFORNIA CLASS will create the risk of:

9 (i) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA CLASS which would establish incompatible standards of
11 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

12 (ii) Adjudication with respect to individual members of the
13 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
14 other members not party to the adjudication or substantially impair or impeded their ability to
15 protect their interests.

16 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
17 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
18 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
19 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter,
20 uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members
21 were properly classified as independent contractors, and thereby denied these employees wages
22 and payments for business expenses and the employer's share of payroll taxes and mandatory
23 insurance as required by law.

24 (i) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
26 this claim the PLAINTIFFS seek declaratory relief holding that DEFENDANT's policies and
27 practices constitute unfair competition, along with incidental equitable relief as may be
28 necessary to remedy the conduct declared to constitute unfair competition.

1 (c) Common questions of law and fact exist as to members of the
2 CALIFORNIA CLASS with respect to the practices and violations of California and federal law
3 as listed above, and predominate over any question affecting only individual members, and a
4 Class Action is superior to other available methods for the fair and efficient adjudication of the
5 controversy, including consideration of:

6 (i) The interest of the CALIFORNIA CLASS Members in individually
7 controlling the prosecution or defense of separate actions;

8 (ii) The extent and nature of any litigation concerning the controversy
9 already commenced by or against members of the CALIFORNIA CLASS;

10 (iii) In the context of wage litigation because as a practical matter a
11 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
12 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an
13 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only
14 means to assert their claims through a representative;

15 (iv) The desirability or undesirability of concentrating the litigation of
16 the claims in the particular forum;

17 (v) The difficulties likely to be encountered in the management of a
18 Class Action; and,

19 (vi) The basis of DEFENDANT's policies and practices uniformly
20 applied to all the CALIFORNIA CLASS Members.

21 33. The Court should permit this Action to be maintained as a Class Action pursuant
22 to Cal. Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual members;

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

27 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
28 to bring all CALIFORNIA CLASS Members before the Court;

1 (d) PLAINTIFFS, and the CALIFORNIA CLASS Members, will not be able
2 to obtain effective and economic legal redress unless the action is maintained as a Class Action;

3 (e) There is a community of interest in obtaining appropriate legal and
4 equitable relief for the acts of unfair competition, statutory violations and other improprieties,
5 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's
6 actions have inflicted upon the CALIFORNIA CLASS;

7 (f) There is a community of interest in ensuring that the combined assets and
8 available insurance of DEFENDANT are sufficient to adequately compensate the
9 CALIFORNIA CLASS Members for any injuries sustained;

10 (g) DEFENDANT has acted or has refused to act on grounds generally
11 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
12 with respect to the CLASS as a whole;

13 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
14 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
15 DEFENDANT's Nurse Practitioners in California classified as independent contractors during
16 the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices and
17 procedures as herein alleged; and,

18 (i) Class treatment provides manageable judicial treatment calculated to bring
19 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
20 of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

21 34. DEFENDANT maintains records from which the Court can ascertain and identify
22 by name and job title, each of DEFENDANT's employees who have been systematically,
23 intentionally and uniformly subjected to DEFENDANT's corporate policies, practices and
24 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
25 any additional job titles of similarly situated employees when they have been identified.

26
27 **THE CALIFORNIA LABOR SUB-CLASS**

28 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and

1 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
2 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
3 as Nurse Practitioners and who were classified as Independent Contractors (the “CALIFORNIA
4 LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the
5 Complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR
6 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
7 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
8 dollars (\$5,000,000.00).

9 36. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
10 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare
11 Commission (“IWC”) Wage Order requirements intentionally, knowingly, and wilfully, on the
12 basis of job title alone and without regard to the actual overall requirements of the job,
13 systematically classified PLAINTIFFS and the other members of the CALIFORNIA LABOR
14 SUB-CLASS as independent contractors in order to avoid the payment of overtime wages, and
15 in order to avoid the obligations under the applicable California Labor Code provisions. To the
16 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
17 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
18 accordingly.

19 37. DEFENDANT maintains records from which the Court can ascertain and identify
20 by job title each of DEFENDANT’s employees who as CALIFORNIA LABOR SUB-CLASS
21 Members have been systematically, intentionally and uniformly misclassified as independent
22 contractors as a matter of DEFENDANT’s corporate policy, practices and procedures.
23 PLAINTIFFS will seek leave to amend the complaint to include these additional job titles when
24 they have been identified.

25 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

27 39. DEFENDANT, as a matter of corporate policy, practice and procedure,
28

1 erroneously classified all Nurse Practitioners as independent contractors making these
2 employees exempt from California labor laws. All Nurse Practitioners, including
3 PLAINTIFFS, performed the same finite set of tasks and were paid by DEFENDANT according
4 to uniform and systematic company procedures, which, as alleged herein above, failed to
5 correctly pay minimum and overtime compensation. This business practice was uniformly
6 applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore,
7 the propriety of this conduct can be adjudicated on a class-wide basis.

8 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
9 under California law by:

- 10 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
11 failing to pay PLAINTIFFS and the members of the CALIFORNIA
12 LABOR SUB-CLASS the correct overtime pay for a workday longer than
13 eight (8) hours and/or a workweek longer than forty (40) hours, for which
14 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 15 (b) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and the
16 members of the CALIFORNIA LABOR SUB-CLASS who were
17 improperly classified as independent contractors with an accurate itemized
18 statement in writing showing the gross wages earned, the net wages
19 earned, all applicable hourly rates in effect during the pay period and the
20 corresponding amount of time worked at each hourly rate by the
21 employee;
- 22 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
23 the CALIFORNIA CLASS members with necessary expenses incurred in
24 the discharge of their job duties;
- 25 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
27 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
28

1 and the legally required rest breaks; and,

- 2 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
3 when an employee is discharged or quits from employment, the employer
4 must pay the employee all wages due without abatement, by failing to
5 tender full payment and/or restitution of wages owed or in the manner
6 required by California law to the members of the CALIFORNIA LABOR
7 SUB-CLASS who have terminated their employment.

8 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
9 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
11 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
12 Members is impracticable and the disposition of their claims as a class will
13 benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the CALIFORNIA
16 LABOR SUB-CLASS and will apply uniformly to every member of the
17 CALIFORNIA LABOR SUB-CLASS;
- 18 (c) The claims of the representative PLAINTIFFS are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS.
20 PLAINTIFFS, like all other members of the CALIFORNIA LABOR
21 SUB-CLASS, were improperly classified as independent contractors and
22 was thus overtime pay and meal and rest breaks, among other things, as a
23 result of DEFENDANT's systematic classification practices.
24 PLAINTIFFS and all other members of the CALIFORNIA LABOR SUB-
25 CLASS sustained economic injuries arising from DEFENDANT's
26 violations of the laws of California; and,
- 27 (d) The representative PLAINTIFFS will fairly and adequately represent and
28

1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFFS and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

8 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
9 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

10 (a) Without class certification and determination of declaratory, injunctive,
11 statutory and other legal questions within the class format, prosecution of
12 separate actions by individual members of the CALIFORNIA LABOR
13 SUB-CLASS will create the risk of:

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA LABOR SUB-CLASS which
16 would establish incompatible standards of conduct for the parties
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,

18 2) Adjudication with respect to individual members of the
19 CALIFORNIA LABOR SUB-CLASS which would as a practical
20 matter be dispositive of interests of the other members not party to
21 the adjudication or substantially impair or impede their ability to
22 protect their interests.

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
24 or refused to act on grounds generally applicable to the CALIFORNIA
25 LABOR SUB-CLASS, making appropriate class-wide relief with respect
26 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
27 DEFENDANT uniformly classified and treated the members of the
28

1 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
2 thereafter, uniformly failed to take proper steps to determine whether the
3 CALIFORNIA LABOR SUB-CLASS Members were properly classified
4 as independent contractors, and thereby denied these employees the
5 protections afforded to them under the California Labor Code;

6 (c) Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
8 violations of California law as listed above, and predominate over any
9 question affecting only individual CALIFORNIA LABOR SUB-CLASS
10 Members, and a Class Action is superior to other available methods for the
11 fair and efficient adjudication of the controversy, including consideration
12 of:

13 1) The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of
15 separate actions in that the substantial expense of individual actions
16 will be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA LABOR SUB-
18 CLASS Members when compared to the substantial expense and
19 burden of individual prosecution of this litigation;

20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,

26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28

1 matter be dispositive of the interests of the other members
2 not parties to the adjudication or substantially impair or
3 impede their ability to protect their interests;

4 3) In the context of wage litigation because a substantial number of
5 individual CALIFORNIA LABOR SUB-CLASS Members will
6 avoid asserting their legal rights out of fear of retaliation by
7 DEFENDANT, which may adversely affect an individual's job
8 with DEFENDANT or with a subsequent employer, the Class
9 Action is the only means to assert their claims through a
10 representative; and,

11 4) A class action is superior to other available methods for the fair and
12 efficient adjudication of this litigation because class treatment will
13 obviate the need for unduly and unnecessary duplicative litigation
14 that is likely to result in the absence of certification of this action
15 pursuant to Cal. Code of Civ. Proc. § 382.

16 43. This Court should permit this action to be maintained as a Class Action pursuant
17 to Cal. Code of Civ. Proc. § 382 because:

18 (a) The questions of law and fact common to the CALIFORNIA LABOR
19 SUB-CLASS predominate over any question affecting only individual
20 CALIFORNIA LABOR SUB-CLASS Members;

21 (b) A Class Action is superior to any other available method for the fair and
22 efficient adjudication of the claims of the members of the CALIFORNIA
23 LABOR SUB-CLASS because in the context of employment litigation a
24 substantial number of individual CALIFORNIA LABOR SUB-CLASS
25 Members will avoid asserting their rights individually out of fear of
26 retaliation or adverse impact on their employment;

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
28

1 numerous that it is impractical to bring all members of the CALIFORNIA
2 LABOR SUB-CLASS before the Court;

3 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
4 Members, will not be able to obtain effective and economic legal redress
5 unless the action is maintained as a Class Action;

6 (e) There is a community of interest in obtaining appropriate legal and
7 equitable relief for the acts of unfair competition, statutory violations and
8 other improprieties, and in obtaining adequate compensation for the
9 damages and injuries which DEFENDANT's actions have inflicted upon
10 the CALIFORNIA LABOR SUB-CLASS;

11 (f) There is a community of interest in ensuring that the combined assets of
12 DEFENDANT are sufficient to adequately compensate the members of the
13 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

14 (g) DEFENDANT has acted or refused to act on grounds generally applicable
15 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
16 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
17 CLASS as a whole;

18 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANT. The
20 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
21 CLASS Members who are or previously were employed by DEFENDANT
22 in California as Nurse Practitioners and classified as independent
23 contractors during the CALIFORNIA LABOR SUB-CLASS PERIOD;
24 and,

25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION AND VENUE

44. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Action is brought as a Class Action on behalf PLAINTIFFS and on behalf of similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

45. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5, because PLAINTIFFS reside in this County and DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

///
///
///
///

FIRST CAUSE OF ACTION

For Unlawful, Unfair and Deceptive Business Practices

[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFFS and the CLASS and Against All Defendants)

46. PLAINTIFFS and the CALIFORNIA CLASS Members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

47. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code § 17021.

48. Section 17200 of the California Business & Professions Code defines unfair competition as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other equitable relief with respect to unfair competition as

1 follows:

2 Any person who engages, has engaged, or proposes to engage in unfair
3 competition may be enjoined in any court of competent jurisdiction. The court
4 may take such orders or judgments, including the appointment of a receiver, as
5 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

6 California Business & Professions Code § 17203.

7 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
8 engage in a business practice which violates California law, including but not limited to the
9 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221,
10 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3, & 2802, and California Code of
11 Regulations § 11090, for which this Court should issue declaratory, injunctive, and other
12 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and
13 remedy the conduct held to constitute unfair competition, including restitution of wages
14 wrongfully withheld, business expenses wrongfully withheld and for the payment of the
15 employer's share of income taxes, social security taxes, unemployment insurance and workers'
16 compensation insurance.

17 50. By the conduct alleged herein DEFENDANT has obtained valuable property,
18 money, and services from PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
19 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment
20 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.
21 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and
22 pecuniary compensation alone would not afford adequate and complete relief.

23 51. All the acts described herein as violations of, among other things, the California
24 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
25 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
26 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,
27 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*
28

1 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
2 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the
3 CALIFORNIA CLASS Members that they were not entitled to overtime wages, payment for
4 payroll taxes or mandatory insurance and other benefits as required by California law, when in
5 fact these representations were false and likely to deceive and for which this Court should
6 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
7 restitution of wages wrongfully withheld.

8 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
9 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
10 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
11 DEFENDANT.

12 54. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
13 to, and do, seek such relief as may be necessary to restore to them the money and property
14 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
16 unfair business practices, including earned but unpaid wages for all overtime worked.

17 55. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
20 engaging in any unlawful and unfair business practices in the future.

21 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
22 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
23 to provide all legally required meal and rest breaks to PLAINTIFFS and the other members of
24 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

25 57. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
26 CALIFORNIA CLASS member, overtime wages, payment for the employer's share of payroll
27 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
28

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

4 58. PLAINTIFFS further demand on behalf of themselves and each member of the
5 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
6 duty paid rest period was not timely provided as required by law.

7 59. By and through the unlawful and unfair business practices described herein,
8 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
9 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked
10 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
11 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
12 to unfairly compete against competitors who comply with the law.

13 60. All the acts described herein as violations of, among other things, the Industrial
14 Welfare Commission Wage Orders, the California Code of Regulations, and the California
15 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
16 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
17 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

18 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
19 to, and do, seek such relief as may be necessary to restore to them the money and property
20 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
21 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
22 unfair business practices.

23 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
24 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
25 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
26 engaging in any unlawful and unfair business practices in the future.

27 63. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
28

1 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
2 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
3 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
5 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
6 engage in these unlawful and unfair business practices.

7
8 **SECOND CAUSE OF ACTION**

9 **For Failure To Pay Minimum Wages**

10 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

12 **and Against All Defendants)**

13 64. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 65. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
17 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
18 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
19 accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
20 Members.

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

23 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

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

1 69. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice
4 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
5 other members of the CALIFORNIA LABOR SUB-CLASS.

6 70. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
8 result of implementing a uniform policy and practice that denied accurate compensation to
9 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards
10 to minimum wage pay.

11 71. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately calculates the correct time worked and consequently underpays the actual time
13 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
14 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
15 benefits in violation of the California Labor Code, the Industrial Welfare Commission
16 requirements and other applicable laws and regulations.

17 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not
19 receive the correct minimum wage compensation for their time worked for DEFENDANT.

20 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
21 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
22 that they were entitled to, constituting a failure to pay all earned wages.

23 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
24 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS for the true time they worked, PLAINTIFFS and the other members of the
26 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
27 injury in amounts which are presently unknown to them and which will be ascertained according
28

1 to proof at trial.

2 75. DEFENDANT knew or should have known that PLAINTIFFS and the other
3 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
4 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
5 nonfeasance, to not pay PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
6 Members for their labor as a matter of uniform company policy, practice and procedure, and
7 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the
8 other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for
9 their time worked.

10 76. In performing the acts and practices herein alleged in violation of California labor
11 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
12 all time worked and provide them with the requisite compensation, DEFENDANT acted and
13 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
15 for their legal rights, or the consequences to them, and with the despicable intent of depriving
16 them of their property and legal rights, and otherwise causing them injury in order to increase
17 company profits at the expense of these employees.

18 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
19 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
20 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
21 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
22 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
23 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
24 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
25 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
26 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
27 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA
28

1 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

2
3 **THIRD CAUSE OF ACTION**

4 **For Failure To Pay Overtime Wages**

5 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

6 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
7 **Defendants)**

8 78. PLAINTIFFS and the CALIFORNIA CLASS Members reallege and incorporate
9 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

10 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
11 to pay PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members overtime wages
12 for the time they worked in excess of the maximum hours permissible by law as required by Cal.
13 Lab. Code §§ 510 & 1198, even though PLAINTIFFS and the CALIFORNIA LABOR SUB-
14 CLASS Members were regularly required to work, and did in fact work, overtime that
15 DEFENDANT never recorded as evidenced by DEFENDANT's business records and witnessed
16 by DEFENDANT's employees.

17 80. By virtue of DEFENDANT's unlawful failure to pay compensation to
18 PLAINTIFFS and the CALIFORNIA CLASS Members for all overtime worked by these
19 employees, PLAINTIFFS and CALIFORNIA CLASS Members have suffered, and will
20 continue to suffer, an economic in amounts which are presently unknown to them and which
21 can be ascertained according to proof at trial.

22 81. DEFENDANT knew or should have known that PLAINTIFFS and the
23 CALIFORNIA CLASS Members were misclassified as independent contractors and
24 DEFENDANT's systematically elected, either through intentional malfeasance or gross
25 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice
26 and procedure.

27 82. PLAINTIFFS and the CALIFORNIA CLASS Members therefore request
28

1 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
2 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code
3 and/or other statutes. To the extent overtime compensation is determined to be owed to the
4 CALIFORNIA CLASS Members who have terminated their employment, these employees
5 would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
6 are sought herein. Further, PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
7 Members are entitled to seek and recover statutory costs.

8 83. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
10 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
11 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
12 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
13 disregard for their legal rights, or the consequences to them, and with the despicable intent of
14 depriving them of their property and legal rights, and otherwise causing them injury in order to
15 increase corporate profits at the expense of these employees.

16 17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

21 84. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

24 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
28

1 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
2 duties for the legally required off-duty meal periods. As a result of their rigorous work
3 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
4 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
6 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
7 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFFS
8 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
9 which these employees were required by DEFENDANT to work ten (10) hours of work. As a
10 result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore
11 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
12 strict corporate policy and practice.

13 86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
14 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
15 CLASS Members who were not provided a meal period, in accordance with the applicable
16 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
17 each workday that a meal period was not provided.

18 87. As a proximate result of the aforementioned violations, PLAINTIFFS and
19 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
20 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
21 suit.

22
23 **FIFTH CAUSE OF ACTION**

24 **For Failure to Provide Required Rest Periods**

25 **[Cal. Lab. Code §§ 226.7 & 512]**

26 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
27 **Defendants)**

88. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

89. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

90. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

91. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All

Defendants)

92. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

93. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

94. From time to time, DEFENDANT violated Labor Code § 226, in that DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time worked by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS at the effective overtime rates of pay. DEFENDANT also violated Labor Code Section 226 in

1 that DEFENDANT failed to properly and accurately itemize the amount of penalties paid to
2 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members when they missed their
3 meal and rest breaks.

4 95. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
5 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR
6 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
7 true amount of time worked and the amount of employment taxes which were not properly paid
8 to state and federal tax authorities. These damages are difficult to estimate. Therefore,
9 PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
10 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
11 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
12 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
13 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS
14 herein).

15
16 **SEVENTH CAUSE OF ACTION**

17 **For Failure to Reimburse Employees for Required Expenses**

18 **[Cal. Lab. Code § 2802]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

21 96. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
23 of this Complaint.

24 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
28 though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

1 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
2 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
3 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
4 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA
5 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
6 associated with the use of their personal cellular phones and home offices for DEFENDANT's
7 benefit. In order to work as a Nurse Practitioner for DEFENDANT, PLAINTIFFS and other
8 CALIFORNIA CLASS Members were required to use DEFENDANT's mobile application and
9 as such it is mandatory to have a cell phone that is compatible with DEFENDANT's mobile
10 application. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS
11 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
12 business expenses which included, but were not limited to, the costs related to the use of their
13 personal cellular phones and home offices all on behalf of and for the benefit of DEFENDANT.
14 Further, PLAINTIFFS and other CALIFORNIA CLASS Members are also not reimbursed or
15 indemnified by DEFENDANT for the cost associated with using their home offices while
16 working for DEFENDANT. As a result, in the course of their employment with DEFENDANT,
17 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
18 expenses which include, but are not limited to, costs related to maintaining their home offices,
19 all on behalf of and for the benefit of DEFENDANT. These expenses are necessary to complete
20 their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
21 waiver of this expectation. Although these expenses are necessary expenses incurred by
22 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed
23 to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
24 members for these expenses as an employer is required to do under the laws and regulations of
25 California.

26 99. PLAINTIFFS therefore demand reimbursement for expenditures or losses
27 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
28

1 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **SEVENTH CAUSE OF ACTION**

5 **For Failure to Pay Wages When Due**

6 **[Cal. Lab. Code §§ 201, 202, 203]**

7 **(By Plaintiff Hueklom and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 100. Plaintiff Hueklom, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

12 101. Cal. Lab. Code § 200 provides that:

13 As used in this article:

14 (a) "Wages" includes all amounts for labor performed by employees of every
15 description, whether the amount is fixed or ascertained by the standard of time,
16 task, piece, Commission basis, or other method of calculation.

17 (b) "Labor" includes labor, work, or service whether rendered or performed under
18 contract, subcontract, partnership, station plan, or other agreement if the labor to
19 be paid for is performed personally by the person demanding payment.

20 102. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
21 an employee, the wages earned and unpaid at the time of discharge are due and payable
22 immediately."

23 103. Cal. Lab. Code § 202 provides, in relevant part, that:

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her wages
28 at the time of quitting. Notwithstanding any other provision of law, an employee
who quits without providing a 72-hour notice shall be entitled to receive payment
by mail if he or she so requests and designates a mailing address. The date of the
mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

104. There was no definite term in Plaintiff Hueklom's or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

105. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

106. The employment of Plaintiff Hueklom and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages, to these employees who actually worked overtime, as required by law.

107. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, Plaintiff Hueklom demands up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANT to pay minimum and overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

- 1 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 2 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 3 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
- 4 action pursuant to Cal. Code of Civ. Proc. § 382;
- 5 B) Compensatory damages, according to proof at trial, including compensation due
- 6 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
- 7 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
- 8 plus interest thereon at the statutory rate; and,
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 10 in which a violation occurs and one hundred dollars (\$100) per each member of
- 11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 15 the applicable IWC Wage Order;
- 16 E) The amount of the expenses PLAINTIFFS and each member of the
- 17 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
- 18 plus interest, and costs of suit; and,
- 19 F) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
- 20 CLASS as a penalty from the due date thereof at the same rate until paid or until
- 21 an action therefore is commenced, in accordance with Cal. Lab. Code § 203
- 22 3. On all claims:
- 23 A) An award of interest, including prejudgment interest at the legal rate;
- 24 B) Such other and further relief as the Court deems just and equitable; and,
- 25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 26 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
- 27 §2802.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: April 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiffs

K:\D\Dropbox\Pending Litigation\Clara Medical Group P.C. - Hueklom\p-Complaint-Draft.wpd