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and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

ROLANDO FERREIRA, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

B. BRAUN MEDICAL, INC.; and DOES 1  
through 100, inclusive,

Defendants.

Case No. 30-2020-01141094-CU-OE-CXC

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

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

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

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Rolando Ferreira (“Plaintiff”) brings this putative class action, pursuant  
5 to California Code of Civil Procedure § 382, and representative action, pursuant to the Private  
6 Attorneys General Act of 2004 (“PAGA”) codified at California Labor Code § 2698, *et seq.*,  
7 against defendants B. Braun Medical Inc., and DOES 1 through 100, inclusive (collectively,  
8 “Defendants”), on behalf of himself individually, other aggrieved employees, and on behalf of  
9 California citizens who are and were employed by Defendants as non-exempt employees.

10 2. Defendants develops, manufactures, and markets innovative medical products  
11 and services to the healthcare industry.

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

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

- 18 (a) failing to pay at least minimum wages for all hours worked;
- 19 (b) failing to pay overtime compensation for all overtime worked;
- 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) failing to authorize or permit lawful rest breaks or provide compensation  
22 in lieu thereof;
- 23 (e) willfully failing to provide accurate itemized semi-monthly itemized  
24 wage statements;
- 25 (f) failing to pay all wages due upon separation of employment.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all  
27 others similarly situated in California to recover, among other things, unpaid wages and  
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201-203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

6. Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code section 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair, unlawful and fraudulent practices alleged in this Complaint.

### **JURISDICTION AND VENUE**

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

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

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

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

### **THE PARTIES**

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

12. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

1           13. Plaintiff is unaware of the true names or capacities of the defendants sued herein  
2 under the fictitious names DOES 1 through 100, but will seek leave of this Court to amend this  
3 First Amended Complaint and serve such fictitiously named defendants once their names and  
4 capacities become known.

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

10           15. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
11 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or  
12 DOES 1 through 100, acting as the agent or alter ego for the other, with legal authority to act  
13 on the other's behalf. The acts of any and all Defendants were in accordance with, and  
14 represent, the official policy of Defendants.

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

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

22                                   **CLASS ACTION ALLEGATIONS**

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

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

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

1                    Class

2                    All California citizens currently or formerly employed by Defendants as non-  
3                    exempt employees in the State of California at any time between April 6, 2016<sup>1</sup>  
4                    and the date the class is certified (“Class”).

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

6                    Waiting Time Subclass

7                    All Class Members who separated their employment with Defendants at any time  
8                    between April 6, 2017 and the class is certified (“Subclass” or “Waiting Time  
9                    Subclass”).

10                   22. Members of the Class and the Subclass described above will be collectively  
11                   referred to as “Class Members.” Plaintiff reserves the right to modify or re-define the Class,  
12                   establish additional subclasses, or modify or re-define any class or subclass definition as  
13                   appropriate based on investigation, discovery, and specific theories of liability.

14                   23. This action has been brought and may properly be maintained as a class action  
15                   under the California Code of Civil Procedure Section 382 because there are common questions  
16                   of law and fact as to the Class Members that predominate over any questions affecting only  
17                   individual members including, but not limited to, the following:

- 18                   (a) Whether Defendants fail to pay at least minimum wage for all hours  
19                   worked by Plaintiff and Class Members.
- 20                   (b) Whether Defendants required Plaintiff and Class Members to work over  
21                   eight hours per day, over 12 hours per day, over 40 hours per week, and  
22                   failed to pay them overtime compensation at the proper rate.
- 23                   (c) Whether Defendants deprived Plaintiff and Class Members of timely  
24                   meal periods or required Plaintiff and Class Members to work through  
25                   meal periods without proper compensation.

26 \_\_\_\_\_  
27 <sup>1</sup> The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court,  
28 Appendix I, Emergency Rule No. 9.

- 1 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks  
2 or required Plaintiff and Class Members to work through rest breaks  
3 without proper compensation.'
- 4 (e) Whether Defendant failed to timely pay Plaintiff and class members all  
5 earned wages during their employment.
- 6 (f) Whether Defendants failed to provide Plaintiff and Class Members  
7 accurate itemized wage statements.
- 8 (g) Whether Defendants failed to timely pay the Waiting Time Subclass all  
9 wages due upon termination or within seventy-two (72) hours of  
10 resignation.
- 11 (h) Whether Defendants' conduct was willful or reckless.
- 12 (i) Whether Defendants engaged in unfair business practices in violation of  
13 Business and Professions Code §§ 17200, *et seq.*

14 24. There is a well-defined community of interest in this litigation and the proposed  
15 Class and Subclass are readily ascertainable:

16 (a) Numerosity: The Class Members are so numerous that joinder of all  
17 members is impractical. Although the members of the entire Class and Subclass are unknown  
18 to Plaintiff at this time, on information and belief, the class is estimated to be greater than 100  
19 individuals. The identities of the Class Members are readily ascertainable by inspection of  
20 Defendants' employment and payroll records.

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

27 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the  
28 interests of all Class Members because it is in his best interest to prosecute the claims alleged

1 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's  
2 attorneys, as proposed class counsel, are competent and experienced in litigating large  
3 employment class actions and versed in the rules governing class action discovery,  
4 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,  
5 will continue to incur attorneys' fees and costs that have been and will be necessarily expended  
6 for the prosecution of this action for the substantial benefit of the Class Members.

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

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

## 20 **GENERAL ALLEGATIONS**

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

23 26. Defendants continue to employ non-exempt employees within California.

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

28 ///

1           28. Through this action, Plaintiff alleges that Defendant has engaged in a systematic  
2 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders,  
3 all of which contribute to Defendant's deliberate unfair competition.

4           29. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
5 should have known that Plaintiff and class members were entitled to receive at least minimum  
6 wage and that they were not receiving at least minimum wage for work that was required to be  
7 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members  
8 were not paid at least minimum wage for all hours worked.

9           30. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
10 should have known that Plaintiff and class members were entitled to receive certain wages for  
11 overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiff and  
12 class members were not paid overtime for all overtime hours worked.

13           31. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
14 should have known that Plaintiff and class members were entitled to receive all meal periods or  
15 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay  
16 when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code  
17 and IWC Wage Orders, Plaintiff and class members did not receive all meal periods or payment  
18 of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when  
19 they did not receive a timely, uninterrupted meal period when working more than five hours  
20 and a second timely, uninterrupted meal period when working more than ten (10) hours.

21           32. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
22 should have known that Plaintiff and class members were entitled to receive all rest breaks or  
23 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay  
24 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff  
25 and class members did not receive all rest breaks or payment of one (1) additional hour of pay  
26 at Plaintiff's and class members' regular rate of pay when a rest break was missed.

27           33. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
28 should have known that Plaintiff and class members were entitled to timely payment of wages

1 during their employment. In violation of the California Labor Code, Plaintiff and class  
2 members did not receive payment of all wages within permissible time periods.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
4 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely  
5 payment of wages upon separation of employment. In violation of the California Labor Code,  
6 Plaintiff and Waiting Time Subclass members did not receive payment of all wages including,  
7 but not limited to, minimum wages and overtime wages within permissible time periods.

8 35. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or  
9 should have known that Plaintiff and class members were entitled to receive complete and  
10 accurate wage statements in accordance with California law. In violation of the California  
11 Labor Code, Plaintiff and class members were not furnished with complete and accurate wage  
12 statements showing their total hours worked, number of hours worked at each hourly rate and  
13 gross and net wages, among other things.

14 36. Plaintiff is informed and believes, and thereon alleges, that at all times  
15 mentioned herein, Defendant knew or should have known that it had a duty to compensate  
16 Plaintiff and class members, and that Defendant had the financial ability to pay such  
17 compensation but willfully, knowingly and intentionally failed to do so, all in order to increase  
18 Defendant's profits.

19 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief  
20 against Defendants on behalf of himself and all Class Members to recover, among other things,  
21 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium  
22 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and  
23 expenses.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)

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

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

40. During the relevant time period, Defendant paid Plaintiff and class members less than minimum wage when they failed to pay compensation for all hours worked, such as during missed and/or interrupted meal periods or other unpaid hours.

41. During the relevant time period, Defendant regularly failed to pay at least minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

42. Defendant's failure to pay Plaintiff and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

43. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY OVERTIME WAGES

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)

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

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

46. Specifically, the applicable IWC Wage Order provides that Defendant are and were required to pay Plaintiff and class members employed by Defendant, at the rate of one and

1 one-half times their regular rate of pay for all hours worked in excess of 8 hours in a day or 40  
2 hours in a workweek.

3 47. The applicable IWC Wage Order further provides that Defendant are and were  
4 required to pay Plaintiff and class members employed by Defendant, at a rate of double their  
5 regular rate of pay for all hours worked in excess of 12 in a day or in excess of 8 hours in a day  
6 on the seventh consecutive day of work.

7 48. California Labor Code § 510 codifies the right to overtime compensation at one  
8 and one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40  
9 hours in a week or for the first 8 hours worked on the seventh day of work, and to overtime  
10 compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day  
11 or in excess of 8 hours in a day on the seventh consecutive day of work.

12 49. During the relevant time period, Plaintiff and class members worked in excess  
13 of 8 hours in a day, in excess of 12 hours in a day and/or in excess of 40 hours in a week.

14 50. During the relevant time period, Plaintiff and class members were not paid  
15 proper overtime compensation for all the hours they worked in excess of 8 hours in a day, in  
16 excess of 12 hours in a day and/or in excess of 40 hours in a week. For example, Defendant  
17 failed to properly pay Plaintiff and class members for overtime hours worked while off-the-  
18 clock.

19 51. During the relevant time period, Defendant willfully failed to pay all overtime  
20 wages owed to Plaintiff and class members.

21 52. Defendant's failure to pay Plaintiff and class members the unpaid balance of  
22 overtime compensation, as required by California law, violates the provisions of California  
23 Labor Code §§ 510 and 1198, and is therefore unlawful.

24 53. Pursuant to California Labor Code § 1194, Plaintiff and class members are  
25 entitled to recover their unpaid balance of the full amount of unpaid overtime compensation, as  
26 well as interest, costs and attorneys' fees.

27 54. In committing the violations as herein alleged, Defendant has knowingly and  
28 willfully refused to perform their obligations to compensate Plaintiff and class members for all

1 wages earned. As a direct result, Plaintiff and class members have suffered and continue to  
2 suffer substantial losses relating to the use and enjoyment of such compensation, wages, lost  
3 interest on such monies and expenses and attorneys' fees in seeking to compel Defendant to  
4 fully perform their obligations under state law, all to their respective damage in amounts  
5 according to proof at trial.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

23 59. Labor Code § 512(a) also provides that an employer may not employ an  
24 employee for a work period of more than ten (10) hours per day without providing the employee  
25 with a second meal period of not less than thirty (30) minutes, except that if the total hours  
26 worked is no more than twelve (12) hours, the second meal period may be waived by mutual  
27 consent of the employer and the employee only if the first meal period was not waived.  
28

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

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

8           62.     At all relevant times, Defendant failed to pay Plaintiff and class members the full  
9 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b)  
10 and section 11 of the applicable IWC Wage Order.

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

#### 14                               **FOURTH CAUSE OF ACTION**

##### 15                               **FAILURE TO PERMIT REST BREAKS**

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

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

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

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

26           67.     During the relevant time period, Plaintiff and Class Members did not receive a  
27 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because  
28

1 they were required to work through their daily rest periods, were not permitted to take timely  
2 rest periods, and/or were not authorized to take their rest periods.

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

6 69. At all relevant times, Defendant failed to pay Plaintiff and class members the full  
7 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b)  
8 and section 12 of the applicable IWC Wage Order. As a result of Defendants' failure to pay  
9 Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was  
10 not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and  
11 compensation.

## 12 **FIFTH CAUSE OF ACTION**

### 13 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

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

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

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

23 72. During the relevant time period, Defendant willfully failed to pay Plaintiff and  
24 Waiting Time Subclass Members all their earned wages upon termination including, but not  
25 limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours of  
26 their leaving Defendant's employ.

27 ///

28 ///

73. Defendant's failure to pay Plaintiff and Waiting Time Subclass Members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendant's employ, is in violation of California Labor Code §§ 201 and 202.

74. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

75. Defendant willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

76. Based on these violations, Plaintiff and the Waiting Time Subclass seek to represent request relief as described herein and below.

## SIXTH CAUSE OF ACTION

## FAILURE TO FURNISH ACCUTATE WAGE STATEMENTS

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

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

78. Defendant has intentionally and willfully failed to provide Plaintiff and class members with complete and accurate wage statements. The deficiencies include failing to accurately report, among other things, gross wages earned, total hours worked by the employee, net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hour rate by the employee.

79. As a result of Defendant's violation of California Labor Code § 226(a), Plaintiff and class members have suffered injury and damage to their statutorily protected rights. Specifically, Plaintiff and class members have been injured by Defendant's intentional violation

1 of California Labor Code § 226(a) because they were denied both their legal right to receive,  
2 and their protected interest in receiving, accurate itemized wage statements under California  
3 Labor Code § 226(a). In addition, because Defendant failed to provide the accurate rates of pay  
4 on wage statements, Defendant has prevented Plaintiff and class members from determining if  
5 all hours worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff  
6 has had to file this lawsuit in order to analyze whether in fact Plaintiff was paid correctly and  
7 the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time.  
8 Plaintiff would not have had to engage in these efforts and incur these costs had Defendant  
9 provided the accurate rate of pay. This has also delayed Plaintiff's ability to demand and  
10 recover the underpayment of wages from Defendant.

11 80. California Labor Code § 226(a) requires an employer to pay the greater of all  
12 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,  
13 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,  
14 plus attorney's fees and costs, to each employee who was injured by the employer's failure to  
15 comply with California Labor Code § 226(a).

16 81. Defendant's violations of California Labor Code § 226(a) prevented Plaintiff and  
17 class members from knowing, understanding and disputing the wages paid to them, and resulted  
18 in an unjustified economic enrichment to Defendant. As a result of Defendant's knowing and  
19 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members  
20 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be  
21 shown according to proof at trial.

22 82. Plaintiff and class members are also entitled to injunctive relief under California  
23 Labor Code § 226(g), compelling Defendant to comply with California Labor Code § 226, and  
24 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

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

4 83. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs,  
5 as though fully set forth herein.

6 84. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of  
7 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice .  
8 ..."

9 85. A violation of California Business and Professions Code §§ 17200, *et seq.* may  
10 be predicated on the violation of any state or federal law. In the instant case, Defendant's  
11 policies and practices have violated state law causing Plaintiff and class members to suffer and  
12 continue to suffer injuries in fact. As alleged herein, Defendant systematically engaged in  
13 unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as  
14 failing to pay minimum and overtime wages, failing to provide meal periods or compensation  
15 thereof, failing to authorize or permit paid rest breaks or compensation in lieu thereof, failing to  
16 pay all wages due and owing upon separation of employment and in a timely manner, and  
17 failing to furnish accurate wage statements, all in order to decrease their costs of doing business  
18 and increase their profits.

19 86. At all times relevant herein, Defendant intentionally avoided paying Plaintiff and  
20 class members wages and monies, thereby creating for Defendant an artificially lower cost of  
21 doing business in order to undercut their competitors and establish and/or gain a greater  
22 foothold in the marketplace.

23 87. At the time Plaintiff and class members were hired, Defendant knowingly,  
24 intentionally and wrongfully misrepresented to each of them their conformance with the  
25 California Labor Code and IWC Wage Orders including proper payments required by law.

26 88. At all relevant times herein, Defendant held themself out to Plaintiff and class  
27 members as being knowledgeable concerning the labor laws of California

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89. At all times relevant herein, Plaintiff and class members relied on and believed Defendant's representations concerning their conformance with California's wage and hour laws all to their detriment.

90. As a result of Defendant's intentional, willful, purposeful and wrongful misrepresentation of their conformance with the California Labor Code and IWC Wage Orders, Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing statutes and regulations as herein alleged, Defendant's acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, et seq.

91. Defendant's violations of the California Labor Code and IWC Wage Orders and their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because they were done in a systematic manner over a period of time to the detriment of Plaintiff and class members.

92. As a result of the unfair business practices of Defendant, as alleged herein, Plaintiff and class members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

93. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general public. Based on Defendant's conduct as alleged herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

## EIGHTH CAUSE OF ACTION

**ENFORCEMENT OF LABOR CODE §§ 2698, ET SEQ. (“PAGA”)**

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

95. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

1 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or  
2 employees for violation of the Labor Code may, as an alternative, be recovered through a civil  
3 action brought by an aggrieved employee on behalf of himself or herself and other current or  
4 former employees pursuant to the procedures specified in Labor Code § 2699.3.

5 96. For all provisions of the Labor Code except those for which a civil penalty is  
6 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred  
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two  
8 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay  
9 period in which Defendants violated these provisions of the Labor Code.

10 97. The following sections of the Labor Code include those violated by Defendants  
11 and those upon which Plaintiff seeks the recovery of civil penalties:

12 (a) Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194, 1194.2, 1197, and  
13 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages)  
14 owed to Plaintiff and other aggrieved employees during employment and upon separation of  
15 employment as herein alleged;

16 (b) Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff  
17 and other aggrieved employees and failure to pay premium wages for missed meal periods as  
18 herein alleged;

19 (c) Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other  
20 aggrieved employees and failure to pay premium wages for missed rest periods as herein  
21 alleged; and

22 (d) Labor Code §§ 226 for failure to provide accurate itemized wage statements  
23 to Plaintiff and other aggrieved employees as herein alleged.

24 98. Plaintiff is an “aggrieved employee” because he was employed by the alleged  
25 violator and had one or more of the violations committed against him, and therefore is properly  
26 suited to represent the interests of all other aggrieved employees.

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

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

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

## **PRAYER FOR RELIEF**

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

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

2. For appointment of Rolando Ferreira as the class representative;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful,

1 unfair, or fraudulent and, therefore, constituting unfair competition under Business and  
2 Professions Code §§ 17200, *et seq.*;

3 12. For pre-judgment interest;

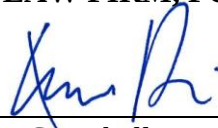
4 13. For civil penalties;

5 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted  
6 by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e),  
7 1194, and 2698, *et seq.* ; and

8 15. For such other relief as the Court deems just and proper.

9  
10 Dated: December 7, 2020

**AEGIS LAW FIRM, PC**

11  
12 By:  \_\_\_\_\_

Jessica L. Campbell

Alexander G.L. Davies

13 Attorneys for Plaintiff  
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1 **CERTIFICATE OF SERVICE**

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

4 On January 12, 2021, I served the foregoing document entitled:

5 • **FIRST AMENDED CLASS ACTION COMPLAINT**

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

7 Michael A. Hood  
8 Alison L. Lynch  
9 Kyle C. Worrell  
10 JACKSON LEWIS, P.C.  
200 Spectrum Center Dr., Suite 500  
Irvine, CA 92618  
11 Telephone: 949.885.1360  
Facsimile: 949.885.1380  
12 [Michael.hood@jacksonlewis.com](mailto:Michael.hood@jacksonlewis.com)  
13 [Alison.lynch@jacksonlewis.com](mailto:Alison.lynch@jacksonlewis.com)  
[Kyle.worrell@jacksonlewis.com](mailto:Kyle.worrell@jacksonlewis.com)

14 *Attorneys for Defendants:*

15 B. BRAUN MEDICAL, INC.

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

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

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

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

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

3 Executed on January 12, 2021, at Irvine, California.

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6 Andrea Drocco  
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