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Attorneys for Plaintiffs

Joshua Jacopetti

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**JOSHUA JACOPETTI, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

A PLUS HOME HEALTH CARE, INC.; A
PLUS HOME HEALTH CARE AND
HOSPICE; and DOES 1 through 15 inclusive,

Defendants.

CASE NO.: **RG20058816****CLASS ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY PIECE RATE
EMPLOYEES FOR REST AND MEAL
BREAKS, AND NONPRODUCTIVE TIME;
- (2) FAILURE TO PAY FOR ALL HOURS
WORKED;
- (3) FAILURE TO PAY MINIMUM WAGE FOR
ALL HOURS WORKED;
- (4) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;
- (5) FAILURE TO KEEP ACCURATE
PAYROLL RECORDS
- (6) FAILURE TO PAY OVERTIME
COMPENSATION
- (7) FAILURE TO PROVIDE MEAL
PERIODS
- (8) FAILURE TO PROVIDE REST
PERIODS

1 (9) WAITING TIME PENALTIES

2 (10) VIOLATION OF THE UNFAIR
3 COMPETIOIN LAW

4 DEMAND FOR JURY TRIAL

5
6
7 Plaintiff, Joshua Jacopetti, on behalf of himself and all others similarly situated, complains
8 and allege as follows:

9 SUMMARY AND NATURE OF THE ACTION

10 1. This is a class action, pursuant to Code of Civil Procedure Section 382, on behalf of
11 Plaintiff and other "Clinicians and Piece Rate also known as Per Diem Employees"¹ whose employer
12 has denied them wages owed under California law and violated other provisions of the California
13 Labor Code.² Defendants A Plus Home Health Care, Inc., A Plus Home Hospice, Inc., and all
14 related companies that are jointly operated and owned by the same individuals, partners,
15 partnerships, corporations, limited liability corporations, hereafter referred to as "A Plus", or
16 Defendants, and Does 1 through 15 ("Doe Defendants"), have failed to pay Clinicians and Piece Rate
17 Employees for all hours worked, to pay minimum wage for all hours worked and nonproductive
18 time, and to issue accurate wage statements with all legally required information pursuant to
19 California Labor Code §226.2. Defendants have also failed to provide the overtime pay, meal
20 periods, and rest periods mandated by California law to Clinicians and Piece Rate Employees who
21 attend to Defendants' clients at various locations.

22 2. Plaintiff brings this action individually and on behalf of the following Class of
23 individuals:

24 ///

25 ///

26
27 ¹ Piece Rate and Per Diem are synonymous under the statute.

28 ² Reference to Code sections herein are to California State law, including the Labor Code and
Business and Professional Code, but excluding the Code of Civil Procedure.

1 **The Class:** All Clinicians, Piece Rate and/ or Per Diem Employees who at any time
2 during the four years preceding the filing of this complaint and /or during its
3 pendency were employed by Defendants in California.

4 3. Violations of the Class's rights include failure to pay nonproductive time and for
5 rest and meal breaks as required by Labor Code §§ 226.2.

6 4. Class claims further include failure to provide accurate wage statements with all
7 information required by Labor Code Sections 226 and 226.2, and to maintain accurate employee
8 records of all hours worked in violation of Labor Code § 1174. Defendants issue wage statements or
9 separate wage statement as required, that do not accurately reflect all hours worked or the applicable
10 hourly rate, and do not provide the name and address of the legal entities that employ Plaintiffs and
11 the Class.

12 5. The Class claims include violations of overtime, non-productive meal period, and
13 rest period payment requirements under Labor Code §§ 226.2, 226.7, 510, 1194(a) Cal. Code Regs.,
14 Title 8 § 11040. Defendants' express policy and practice requires Plaintiffs and class members to
15 work over 8 hours in a workday and/or over 40 hours in a workweek without overtime
16 compensation, and to work without statutorily-mandated meal and rest periods.

17 6. Based on these violations of the Labor Code, Plaintiff brings claims on behalf of
18 himself and the Class for illegal business practices pursuant to Business and Professions Code §§
19 17200, *et seq.*; **(Plaintiff will amend this complaint to add claims for penalties pursuant to the**
20 **Private Attorney General Act, Labor Code § 2698, *et seq.* at the appropriate time);** and for
21 waiting time penalties for Defendants' failure to pay all earned wages due either upon termination or
22 within 72 hours of an unnoticed quit pursuant to Labor Code §§ 201-203. On behalf of himself and
23 the Class, Plaintiff also seek attorneys' fees and costs pursuant to Labor Code §§ 1194.2 and 218.5,
24 California Code of Civil Procedure § 1021.5, and any other applicable law.

25 ///

26 ///

27 ///

1 7. AB 1513 created new section 226.2 of the California Labor Code, which applies to
2 all employees compensated on a Piece Rate basis. The section, which became effective January 1,
3 2016, codifies statutory requirements for the payment of employees on a Piece Rate basis set forth
4 below:

5 1) Employees must be separately compensated for the time to take rest and
6 recovery breaks. These breaks must be paid at an hourly rate no less than the greater of either the
7 applicable minimum wage or the employee's average hourly wage for all time worked.

8 2) Employees must be separately compensated for "other nonproductive time,"
9 which is defined as "time under the employer's control, exclusive of rest and recovery periods, that is
10 not directly related to the activity being compensated on a Piece Rate basis", including but not
11 limited to, travel time between patients and extensive charting after work hours.

12 3) Section 226.2 provides that this "other nonproduction time" must be
13 compensated at an hourly rate no less than the applicable minimum wage but may also be
14 determined by actual records. "A Plus" keeps actual records with an average rate based on
15 averaging hours and total compensation for all Piece Rate employees.

16 4) Employee wage statements are be required to include the following
17 information, besides that which is already required under existing Labor Code section 226(a):

18 a. The total hours of compensable rest and recovery periods, the rate of
19 compensation for those periods, and the gross wages paid for those periods during the pay period.
20 "A Plus" did not do this for Piece Rate employees.

21 b. The total hours of other nonproductive time, the rate of compensation for
22 that time, and the gross wages paid for that time during the pay period. "A Plus" did not do this for
23 Piece Rate Employees.

24 8. Labor Code Section 226.2 also provides that an employer may assert an affirmative
25 defense to all liability for failure to compensate for rest and recovery periods and other non-
26 productive time if it satisfies certain statutorily prescribed requirements.

27 9. All Defendants, collectively referred to as "A Plus" did not avail itself to the
28

1 California Labor Code § 226.2 Safe Harbor Provision. Defendant "A Plus" also did not avail itself
2 to the California Labor Code § 226.2 Safe Harbor Provision. As of this date all provision of
3 California Labor Code 226.2 are applicable for "Clinicians" employed by Defendants.

4 **PARTIES;**

5 **JURISDICTION; AND VENUE**

6 10. Plaintiff Joshua Jacopetti resides in Newman, California. Plaintiff Joshua Jacopetti
7 was employed by Defendants and related entities from February 2019 to September 2019 and
8 worked as a Registered Nurse "Clinician" on a per diem basis. Typically, Plaintiff's daily schedule
9 provided to him by Defendants would not allow for rest or meal breaks, nor was he paid for the time
10 traveling from one patient to the next patient. Further, Plaintiff was never paid separately for non-
11 productive time and rest breaks. Plaintiff's duties included providing nursing care to patients in
12 homes, apartments, assisted living facilities and other place in which patients reside. Plaintiff has
13 provided these professional services in counties throughout Northern California. Plaintiff's base pay
14 was \$115 per visit according to Defendant's records and representations to Plaintiff. Plaintiff earned
15 approximately \$115,000 per year.

16 11. Plaintiff on behalf of himself and those similarly situated bring this action on behalf
17 of all "Clinicians", who provide clinical services, and Piece-Rate Employees. Said "Clinicians" are
18 more precisely identified as Occupational Therapists, Occupational Therapist Assistants, Physical
19 Therapists, Physical Therapy Assistants, Registered Nurses, License Vocational Nurses, Media
20 Social Workers, Speech Therapists, Physical Therapy Aids, Occupational Therapy Aides, Social
21 Workers, Chaplains, and other Clinicians that are paid by Piece Rate employed by "A Plus" and all
22 Defendants during the Class Period in California. Clinicians provide clinical services to
23 patients/clients of Defendants.

24 12. Plaintiff further brings this action on behalf of all Piece Rate Employees subject to
25 the provisions of Labor Code § 226.2 and other related Labor Code provisions set forth in this
26 complaint.

27 13. Defendant "A Plus" employed Plaintiff as a Registered Nurse at all times relevant
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1 and represents the same interests as the remaining putative class members with issues identical /or
2 sufficiently similar as to the remaining class for the entire class period; "A Plus" and all Defendants
3 are California based companies headquartered in Pleasanton, California.

4 14. Plaintiff is ignorant of the true names and capacities of Doe Defendants and
5 therefore sue them by fictitious names. Plaintiff will amend this Complaint to allege the true names
6 and capacities of the Doe Defendants when ascertained. Plaintiff is informed and believe, and
7 thereon allege, that each of these fictitiously named Defendants is responsible in some manner for
8 the occurrences alleged herein. Plaintiff is further informed and believe, and allege thereon, that at
9 all times relevant, Doe Defendants have held executive positions with Defendants, and/or have acted
10 on behalf of Defendants by exercising decision-making responsibility for and by establishing
11 unlawful wage and hour practices or policies for Defendants.

12 **CLASS ACTION ALLEGATIONS**

13 15. Plaintiffs' claims have been brought and may properly be maintained as a class
14 action under California Civil Procedure, Section 382, because there is a well-defined community of
15 interest among the Class with respect to the claims asserted herein and the proposed Class are easily
16 ascertainable:

17 16. The Class Period is from four years prior to the filing of this complaint, through the
18 date of final disposition of this Action.

19 17. Numerosity: The members of the Class are sufficiently numerous that joinder of
20 all members is impracticable. Plaintiffs are informed and believe and on that basis allege that at any
21 one time Defendants employ approximately 150-300 Clinicians and Piece Rate Employees in
22 California and that all current Clinicians and Piece Rate Employees are putative class members of
23 the Class, as defined herein. In addition, the Class includes former Clinicians and Piece Rate
24 Employees employed by Defendants during the four years prior to the filing of this action and
25 unknown future Class members who will become employed by Defendants as Clinicians and Piece
26 Rate Employees prior to the final disposition of this action. Plaintiff estimated the entire Class size
27 as two hundred (200) to four hundred (400) over the entire Class Period.
28

1 18. Commonality: There are questions of law and fact common to the Class that are
2 answerable on a common basis, and these questions predominate over individual questions. The
3 questions of law and fact common to the Class include, without limitation:

- 4 (a) Whether Defendants have violated Labor Code § 226.2;
- 5 (b) Whether Defendants have a class wide policy and practice that violates minimum
6 wage laws by failing to pay the Class for all hours worked in violation of Labor Code
7 §§ 1194(a) and 1197;
- 8 (c) Whether Defendants' uniform wage statements fail to provide accurate and complete
9 information required by Labor Code § 226;
- 10 (d) Whether Defendants' policies and practices violate Labor Code § 1174 by failing to
11 maintain accurate records of all hours the Class worked each day-including overtime
12 hours, where applicable;
- 13 (e) Whether Defendants have a policy and practice of requiring Class Clinicians and
14 Piece Rate Employees to work hours in excess of eight (8) hours in a day or forty
15 (40) hours in a workweek for which Defendants do not pay overtime compensation in
16 violation of Labor Code § 510;
- 17 (f) Whether Defendants have a policy and practice, as alleged herein, of failing to
18 provide Class Clinicians and Piece Rate Employees meal periods in violation of
19 Wage Order 4 § 11 (A), Labor Code §§ 226.7 and 512;
- 20 (g) Whether Defendants have a policy and practice, as alleged herein, of failing to permit
21 and authorize Class Clinicians and Piece Rate Employees to take rest periods in
22 violation of Labor Code § 226.7;
- 23 (h) Whether Defendants are liable for waiting time penalties to the Class, pursuant to
24 Labor Code § 203, for failure to comply with Labor Code §§ 201-202; and/or
- 25 (i) Whether members of the Class have lost money or property as a result of Defendants'
26 violations of Business and Professions Code §§ 17200, *et seq.*
- 27
- 28

1 19. Typically: Plaintiff's claims are typical of the claims of the Class. As set forth
2 herein, Defendants' common course of conduct causes Plaintiff and similarly situated Clinicians and
3 Piece Rate Employees the same or similar injuries and damages. Plaintiff's claims are thereby
4 representative of and coextensive with the claims of the Class.

5 20. Adequacy: Plaintiff will fairly and adequately represent the interests of all Class
6 members. Plaintiff is a member of the Class he seeks to represent, does not have any conflicts of
7 interests with proposed class members, will prosecute the case vigorously on behalf of the Class, and
8 has already devoted time and resources to the initial investigation of these claims. Plaintiff's counsel
9 is competent and experienced in litigating employment actions, including wage and hour class
10 actions.

11 21. Superiority of Class Action: A class action is superior to other available methods for
12 the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes
13 that current and former Clinicians and Piece Rate Employees among the Class are unwilling to bring
14 individual lawsuits for fear of retaliation by Defendants. Moreover, because the damages suffered
15 by certain individual members of the Class may be relatively small, the expense and burden of
16 individual litigation make it impracticable for Class members to pursue their claims separately. Class
17 action treatment will allow those similarly situated persons to litigate their claims in the manner that
18 is most efficient and economical for the parties and judicial system and will avoid inconsistent
19 outcomes because the same issues can be adjudicated in the same manner for all members of the
20 Class.

21 **FURTHER ALLEGATIONS ON BEHALF OF THE CLASS**

22 22. Upon information and belief, at all relevant times, Defendants have a policy and
23 practice of issuing uniform wage statements to Clinicians and Piece Rate Employees that fail to
24 provide the applicable hourly rates, the corresponding number of hours worked at each hourly rate,
25 and the name and address of the legal entities that employed the Clinicians and Piece Rate
26 Employees.

23. As a result, throughout the Class Period, in violation of Labor Code §§ 226.2 and 226(a), wage statements have failed to accurately reflect the gross and net wages earned, the total hours worked, all applicable hourly rates, and the name and address of all the legal entities that are the employers.

24. Upon information and belief, Defendants have failed to maintain accurate payroll records showing the correct hours worked daily, including all time worked by Clinicians and Piece Rate Employees . Defendants have also failed to provide those records upon request by Plaintiffs.

FIRST CAUSE OF ACTION

FAILURE TO PAY PIECE RATE EMPLOYEES FOR REST AND

MEAL BREAKS AND NONPRODUCTIVE TIME

(Cal. Lab. Code §226.2)

On Behalf of Plaintiffs and the Class against All Defendants

25. Plaintiff realleges the allegations contained in paragraphs 1 through 24.

26. AB 1513 creates new section 226.2 of the California Labor Code, which applies to all employees compensated on a piece-rate basis. The new section, which became effective January 1, 2016, codifies statutory requirements for the payment of employees on a piece-rate basis set forth below:

1) Employees must be separately compensated for the time to take rest and recovery breaks. These breaks must be paid at an hourly rate no less than the greater of either the applicable minimum wage or the employee's average hourly wage for all time worked.

2) Employees must be separately compensated for "other nonproductive time," which is defined as "time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis."

3) Section 226.2 provides that this "other nonproduction time" time must be compensated at an hourly rate no less than the applicable minimum wage but may also be determined by actual records. A Plus Home Health Care, Inc. keeps actual records and a base hourly rate based on averaging hours and total compensation.

1 4) Employee wage statements will be required to include the following
2 information, besides that which is already required under existing Labor Code section 226(a):

3 a. The total hours of compensable rest and recovery periods, the rate of
4 compensation for those periods, and the gross wages paid for those periods during the pay period.

5 b. The total hours of other nonproductive time, the rate of compensation for
6 that time, and the gross wages paid for that time during the pay period.

7 27. Labor Code Section 226.2 also provides that an employer may assert an affirmative
8 defense to all liability for failure to compensate for rest and recovery periods and other non-
9 productive time if it satisfies all of the following requirements by December 15, 2016:

10 28. Defendant "A Plus" and all defendants did not avail itself to the California Labor
11 Code §226.2 Safe Harbor Provision and is required to pay class members for meal and rest breaks
12 not included in their Piece Rates, and nonproductive time based on their average hourly rate, along
13 with interest.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY FOR ALL HOURS WORKED**

16 **(Cal. Lab. Code §§ 223, 226.2, 510, 1194; IWC Wage Orders 4, 15)**

17 **On Behalf of Plaintiffs and the Class against All Defendants**

18 29. Plaintiff realleges the allegations contained in paragraphs 1 through 28.

19 30. Section 2(K) of Wage Order 4 defines "[h]ours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is suffered
21 or permitted to work, whether or not required to do so."

22 31. California law requires payment of all wages due, whether established by contract or
23 by law, for "all hours worked." Cal. Code Regs., tit. 8, §§ 11040, subd. (4)(8), 11150, subd. (4)(8);
24 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 40-41; *Armenia v. Osmose, Inc.*
25 (2005) 135 Cal. App. 4th 314, 324.

26 32. At all relevant times, Defendants have failed to pay for all hours worked to Plaintiff
27 and the Class.
28

1 initial violation that is intentionally committed; (2) and two hundred fifty dollars (\$250) for a
2 subsequent violation for the same specific offense for each underpaid employee for each pay period
3 regardless of whether the initial violation is intentionally committed; (3) restitution of wages; and (4)
4 liquidated damages, all payable to the employee.

5 42. At all relevant times, Defendants have failed to pay minimum wages to Plaintiff and
6 the Class as alleged above in violation of Labor Code §§ 226.2, 1194, 1194.2, 1197, 1197.1, the
7 Minimum Wage Orders.

8 43. As a result of Defendants' conduct, Plaintiff and the Class have been deprived of
9 minimum wage in an amount to be determined at trial, and are entitled to recovery of the unpaid
10 balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys'
11 fees, and costs of suit pursuant to Labor Code § 1194, liquidated damages, and interest thereon
12 pursuant to Labor Code § 1194.2, and civil penalties, restitution of wages, and liquidated damages
13 pursuant to Labor Code § 1197.1.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

16 **(Cal. Lab. Code §§ 226, 226.2 & 226.3)**

17 **On Behalf of Plaintiff and the Class Against All Defendants**

18 44. Plaintiff realleges the allegations contained in paragraphs 1 through 43.

19 45. Labor Code § 226(a) requires employers, at the time of each payment of wages, to
20 provide each employee with an accurate wage statement itemizing, among other things, the total
21 hours worked by the employee, the applicable hourly rate, the gross and net wages earned by the
22 employee in the pay period, and the name and address of the legal entity that is the employer. Labor
23 Code § 226.2 requires employers to also provide the following information on itemized wage
24 statements provided to employees at the time of payment of wages; the total hours of compensable
25 rest and recovery periods, the total hours of "other nonproductive time," the rate of compensation,
26 and the gross wages paid for compensable rest and recovery periods and "nonproductive time"
27 during the pay period.
28

1 46. Labor Code § 226(e) provides that an employee suffering injury as a result of a
2 knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to
3 recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in which
4 a violation occurs and \$100 per employee for each violation in subsequent pay periods (up to a
5 maximum of \$4,000), in addition to attorneys' fees and costs.

6 47. Plaintiff and the Class are informed, believe and allege thereon, that since at least four
7 years before the filing of this action, Defendants have knowingly and intentionally failed to provide
8 accurate itemized wage statements to Plaintiffs and the Class in accordance with Labor Code §§
9 226(a) and 226.2.

10 48. Plaintiff and the Class are informed, believe, and allege thereon, that the wage
11 statements Defendants provided to Plaintiffs and the Class do not reflect all hours worked, the
12 applicable wage rates paid, the identity of all of the legal entities that employ Plaintiffs and the
13 Class, the total hours of compensable rest and recovery periods, the total hours of "other
14 nonproductive time" worked, and the rate of compensation and gross wages paid for compensable
15 rest and recovery periods and "nonproductive time" during the pay period.

16 49. As a result of Defendants' acts and omissions in violation of Labor Code § 226,
17 Defendants are liable to Plaintiffs and the Class for \$50 for each initial pay period when a violation
18 occurred and \$100 for each subsequent violation up to \$4,000, and reasonable attorneys' fees and
19 costs of this suit pursuant to Labor Code § 226(e).

20 50. Pursuant to Labor Code § 226.3, Defendants are also liable for civil penalties per
21 employee per violation.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**

24 **(Cal. Labor Code §§ 226.2, 1174 & 1174.5)**

25 **On Behalf of Plaintiff and the Class Against All Defendants**

26 51. Plaintiff realleges the allegations contained in paragraphs 1 through 50.

27 52. In relevant part, Labor Code § 1174(d) requires employers to keep payroll records
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1 showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage
2 Orders require employers to keep accurate records for each employee in regards to total wages paid
3 each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as
4 time records showing when employees begin and end each work period, including meal periods, split
5 shift intervals, and total daily hours. Wage Order 4 § 7 (A); Wage Order 15 § 7 (A).

6 53. Labor Code § 1174.5 subjects an employer who willfully fails to maintain the
7 accurate and complete records of subdivision (d) of § 117 4 to a civil penalty of five hundred dollars
8 (\$500).

9 54. Defendants have violated Labor Code § 1174(d) and Wage Order 4 by willfully
10 failing to keep required payroll records showing the actual hours worked each day by Plaintiff and
11 the Class.

12 55. As a result of Defendants' failure to maintain accurate payroll records, Plaintiffs and
13 the Class have suffered actual economic harm as they have been precluded from accurately
14 monitoring their number of hours worked and thus prevented from seeking all wages owed,
15 including minimum wage for all hours worked and earned overtime pay.

16 56. Plaintiff and the Class are entitled to recover a civil penalty of \$500 for each violation
17 under Labor Code § 1174.5 and request further relief as described below.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION**

20 **(Cal. Lab. Code §§ 510, 1194; Wage Order 4)**

21 **On Behalf of Plaintiff and the Class against All Defendants**

22 57. Plaintiff realleges the allegations contained in paragraphs 1 through 56.

23 58. Labor Code § 510 and Wage Order 4, § 3(A) require employers to pay employees
24 one-and-one-half (1-1/2) times the regular hour rate for all those hours worked in excess of eight (8)
25 in one workday and in excess of forty (40) hours in one workweek and for the first eight hours
26 worked on the seventh day of work in any one workweek. Labor Code § 510 and Wage Order 4, §
27 3(A) further require employers to pay employees two (2) times the regular rate of pay for hours
28

1 worked in excess of twelve (12) hours per day and, on the seventh consecutive workday, any work in
2 excess of eight (8) hours.

3 59. Labor Code § 1194 entitles an employee receiving less than the legal overtime
4 compensation to recover in a civil action the unpaid balance of the full amount of this minimum
5 wage, including interest thereon, reasonable attorney's fees, and costs of suit.

6 60. At all relevant times, Defendants have failed to pay overtime compensation to
7 Plaintiffs and the Class as alleged above in violation of Labor Code§ 510 and Wage Order 4, § 3(A).

8 61. As a result of Defendants' conduct, Plaintiff and the Class have been and continue to
9 be deprived of overtime compensation in an amount to be determined at trial, and are entitled to
10 recovery of such amounts, including interest thereon, reasonable attorney's fees, and costs of suit
11 pursuant to Labor Code § 1194.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Cal. Lab. Code§§ 226.7, 512, IWC Wage Order 4)**

15 **On Behalf of Plaintiff and the Class against All Defendants**

16 62. Plaintiffs realleges the allegations contained in paragraphs 1 through 61.

17 63. Labor Code§ 512 and Wage Order 4 require that an employee receive a meal period
18 of one half hour in which the employee is relieved of all duty for every five (5) hours worked.
19 Employers must provide a second meal period of no fewer than 30 minutes for all workdays on
20 which an employee works more than 10 hours.

21 64. Labor Code §§ 226. 7, 512 and Wage Order 4 provide that an employee shall receive
22 a premium of one hour pay for each day worked in which they miss a meal period.

23 65. Defendants have failed to pay Plaintiff and the Class premium pay for missed meal
24 periods.

25 66. By their failure to provide meal periods, and their failure to pay premium pay,
26 Defendants violate the provisions of the applicable Wage Orders and Labor Code sections.

67. As a result of Defendants' unlawful acts, Plaintiffs and the Class have been deprived of wages in amounts to be determined at trial, and are entitled to recover such amounts, plus interest thereon, attorneys' fees, costs, and penalties.

EIGHT CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Cal. Lab. Code §§ 226.7, 512, IWC Wage Order 4)

On Behalf of Plaintiff and the Class against All Defendants

68. Plaintiffs reallege the allegations contained in paragraphs 1 through 67.

69. Labor Code § 226.7 and Wage Order 4 require that the employer provide rest periods in which the employee is relieved of all duty at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

70. Labor Code §§ 226.7, 512 and Wage Order 4 provide that an employee shall receive premium pay of one hour pay for days worked in which they miss a rest period.

71. Plaintiffs and the Class were regularly denied their right to take rest periods in which they were relieved of all duty.

72. Defendants have failed to pay Plaintiffs and the Class premium pay for missed rest periods.

73. By their failure to provide rest periods, and their failure to pay premium pay, Defendants violate the provisions of the applicable Wage Orders and Labor Code sections. As a result of Defendants' unlawful acts, Plaintiff and the Class have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties.

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Cal. Lab. Code §§ 201, 202 & 203)

On Behalf of Plaintiff and the Class Against All Defendants

74. Plaintiffs reallege the allegations contained in paragraphs 1 through 73.

75. This count is brought on behalf of members of the Class who are no longer employed by Defendants.

76. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice and, within 72 hours of resignation made without 72 hours' notice.

77. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by §§ 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

78. Plaintiffs and the Class are informed, believe, and allege thereon that since at least four years prior to the filing of this action, Defendants have failed to pay all earned wages to Plaintiff and the Class during their employment with Defendants. In addition, beginning at least four years prior to the filing of this action, members of the Class have been discharged, laid off, resigned, retired or otherwise voluntarily left employment, but Defendants did not pay earned wages upon separation of employment in violation of Labor Code §§ 201 and 202. Defendants' conduct in this regard has been willful.

79. As a consequence of Defendants' willful failure to pay wages due to each such employee following separation from employment as required by Labor Code §§ 201 and 202, members of the Class whose employment ended during the four years prior to the date of the initial filing of this action and continuing through the date of its final disposition are entitled to recover from Defendants an additional sum as a penalty, pursuant to Labor Code § 203, equal to thirty (30) days wages per person plus interest for each employee who separated from employment with Defendants, in amounts according to proof at trial.

TENTH CAUSE OF ACTION

VIOLATIONS OF THE UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code §§ 17200, et seq.)

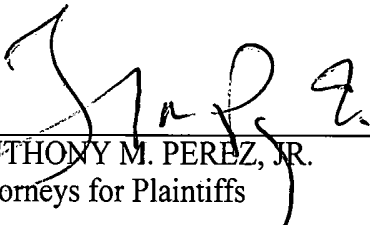
On Behalf of Plaintiff and the Class against All Defendants

80. Plaintiff realleges the allegations contained in paragraphs 1 through 79.

- 1 E. An award of statutory damages pursuant to Labor Code § 226.2;
- 2 F. An award of unpaid minimum wage and overtime, meal period and rest period
- 3 compensation subject to proof at trial;
- 4 G. An award of statutory penalties, liquidated damages, and restitution of all amounts
- 5 owed to Plaintiffs and similarly situated Clinicians and Piece Rate Employees in an amount
- 6 according to proof;
- 7 H. Injunctive relief;
- 8 I. Pre-judgment and post-judgment interest, as provided by law;
- 9 J. Reasonable attorneys' fees and costs of suit, including but not limited to expert fees
- 10 and fees pursuant to Labor Code § 218.5, 1194.2; California Code of Civil Procedure § 1021.5, and
- 11 any other applicable law; and
- 12 K. Such other equitable relief as the Court may deem just and proper.

13 Dated: March 13, 2020

Respectfully submitted,
PEREZ LAW OFFICES

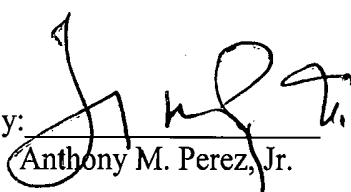
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16 By: _____
17 ANTHONY M. PEREZ, JR.
18 Attorneys for Plaintiffs

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20 **DEMAND FOR JURY TRIAL**

21 Plaintiff and Members of the Class hereby request a trial by jury.

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23 Dated: March 13, 2020

Respectfully submitted,
PEREZ LAW OFFICES

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25 
26 By: _____
27 Anthony M. Perez, Jr.
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