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Joshua Jacopetti
Crystal Davis

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JOSHUA JACOPETTI, CRYSTAL DAVIS; on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

NATIONAL HOME HEALTH SERVICES,
INC.; NATIONAL HOME HEALTH
SERVICES – WEST, INC.; NATIONAL
HOME HEALTH STAFFING, INC.;
NATIONAL HOME HEALTH THERAPY
STAFFING, INC.; AVALON HOME HEALTH,
INC.; AVATAR HEALTH MONITORING,
INC.; ALEX RUDAKOV; ROMAN
BRAVERMAN and DOES 1 through 15
inclusive,

Defendants.

CASE NO.: **20CV373252**

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;**

1 (5) FAILURE TO KEEP ACCURATE
2 PAYROLL RECORDS

3 (6) FAILURE TO PAY OVERTIME
4 COMPENSATION

5 (7) FAILURE TO PROVIDE MEAL
6 PERIODS

7 (8) FAILURE TO PROVIDE REST
8 PERIODS

9 (9) FAILURE TO REIMBURSE
10 EMPLOYEE EXPENSES

11 (10) WAITING TIME PENALTIES

12 (11) VIOLATION OF THE UNFAIR
13 COMPETIOIN LAW

14 **DEMAND FOR JURY TRIAL**

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20 Plaintiffs, Joshua Jacopetti and Crystal Davis, on behalf of themselves and all others
21 similarly situated, complains, and allege as follows:

22 **SUMMARY AND NATURE OF THE ACTION**

23 1. This is a class action, pursuant to Code of Civil Procedure Section 382, on behalf of
24 Plaintiffs and "Employee Clinicians, Piece Rate Employees and/or Per Diem Employees"¹ whose
25 employer has denied them wages owed under California law and violated other provisions of the
26 California Labor Code.² Defendants National Home Health Services, Inc., National Home Health

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

1 Services–West, Inc., National Home Health Staffing, Inc., National Home Health Therapy Staffing,
2 Inc., Avalon Home Health, Inc., Avatar Health Monitoring, Inc., Alex Rudakov and Roman
3 Braverman (believed to be owners) of one or more corporate defendants, and all related companies
4 that are jointly operated and owned by the same individuals, partners, partnerships, corporations,
5 limited liability corporations, all believe to be doing business as National Home Health, hereafter
6 collectively referred to as “National”, or Defendants, and Does 1 through 15 ("Doe Defendants"),
7 have failed to pay Clinicians and Piece Rate Employees for all hours worked, to pay minimum wage
8 for all hours worked and nonproductive time, and to issue accurate wage statements with all legally
9 required information pursuant to California Labor Code §226.2. Defendants have also failed to
10 provide the overtime pay, meal periods, and rest periods mandated by California law to Clinicians
11 and Piece Rate Employees who attend to Defendants’ clients at various locations. Defendants failed
12 to reimburse Clinicians, under Labor Code §2802, for business expenses as set forth herein.

13 Plaintiffs bring this action as to Alex Rudakov and Roman Braverman, owners, as the alter
14 egos of all corporations identified herein in that there exists a unity of interest and ownership
15 between the owners and the corporation so that separate identities do not actually exist. See *Turman*
16 *v. Superior Court* (2017) 17 Cal. App, 5th 96; *Henderson v. Equilon Enterprises, LLC*, 40 Cal. App.
17 5th 969. The unity of interest and ownership is evidenced by: a) corporate and personal funds being
18 comingled, and assets, liabilities, personnel, Clinician assignments are not properly segregated; and,
19 b) owners use of corporate assets as their own; and, c) Rudakov and Braverman exercise their sole
20 discretions on wage and hour policies and practices for Clinicians throughout all companies they
21 own and operate; and, d) employing the same staff for all corporations with consistent California
22 Labor Code violations and policies and practices applied throughout all companies in which
23 Rudakov and Braverman have ownership interest in; and, e) using companies to transfer personal
24 liability and not properly conducting corporate business including Board Meetings, Shareholder
25 Meetings, the appointment of Officers and Directors or meeting other corporate requirements.

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28 Professional Code, but excluding the Code of Civil Procedure.

2. Plaintiffs bring this action individually and on behalf of the following Class of individuals:

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

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

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

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

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

7. AB 1513 created new section 226.2 of the California Labor Code, which applies to

1 all employees compensated on a Piece Rate basis. The section, which became effective January 1,
2 2016, codifies statutory requirements for the payment of employees on a Piece Rate basis set forth
3 below:

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

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

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

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

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

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

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

26 9. All Defendants, collectively referred to as "National" did not avail itself to the
27 California Labor Code §226.2 Safe Harbor Provision. Defendant National also did not avail itself to
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1 the California Labor Code §226.2 Safe Harbor Provision. As of this date all provisions of California
2 Labor Code §226.2 are applicable for “Clinicians” employed by Defendants, until January 2021,
3 after which §226.2 has been revised deleting reference to the affirmative defense set forth in that
4 section.

5 10. The Class claims include, but are not limited to, reimbursements for all mobile
6 phones and electronic devices used by Clinicians to communicate, report charting, access schedules,
7 and log-in for instructions and assignments. Class Members were also not reimbursed for monthly
8 online service providers, such as Verizon and AT&T. Further, Class Members were not reimbursed
9 for required uniforms and medical devices, including but not limited to, scrubs, stethoscopes, and all
10 necessary Personal Protection Equipment (PPE). Class Members received no reimbursements the
11 entire class period, in violation of Labor Code §2802.

12 **PARTIES, JURISDICTION, and VENUE**

13 11. Plaintiff Joshua Jacopetti resides in Newman, California. Plaintiff Joshua Jacopetti
14 was employed by Defendants and related entities from April 2019 to March 2020 and worked as a
15 Registered Nurse “Clinician” on a per diem basis. Typically, Plaintiff’s daily schedule provided to
16 him by Defendants would not allow for rest or meal breaks, nor was he paid for the time traveling
17 from one patient to the next patient. Plaintiff was never paid separately for non-productive time and
18 rest breaks. Plaintiff was not reimbursed for mobile electronic devices and service fees required to
19 be used for the benefit of National. Plaintiff was not reimbursed for scrubs or stethoscope. Plaintiff’s
20 duties included providing nursing care to patients in homes, apartments, assisted living facilities and
21 other place in which patients reside. Plaintiff has provided these professional services in counties
22 throughout Northern California. Plaintiff’s base pay, as a W-2 employee, was \$65 - \$95 per visit
23 according to Defendant’s records and representations to Plaintiff. Plaintiff earned approximately
24 \$110,000 per year.

25 12. Plaintiff Crystal Davis resides in Modesto, California. Plaintiff Crystal Davis was
26 employed by Defendants and related entities from November 2019 to the present and worked as a
27 Licensed Vocational Nurse “Clinician” on a per diem basis. Typically, Plaintiff’s daily schedule
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1 provided to her by Defendants would not allow for rest or meal breaks, nor was she paid for the time
2 traveling from one patient to the next patient. Plaintiff was never paid separately for non-productive
3 time and rest breaks. Plaintiff was not reimbursed for mobile electronic devices and service fees
4 required to be used for the benefit of National. Plaintiff was not reimbursed for scrubs or
5 stethoscope. Plaintiff's duties included providing nursing care to patients in homes, apartments,
6 assisted living facilities and other place in which patients reside. Plaintiff has provided these
7 professional services in counties throughout Northern California. Plaintiff's base pay, as a W-2
8 employee, was \$45 per visit according to Defendant's records and representations to Plaintiff.

9 13. Plaintiffs on behalf of themselves and those similarly situated bring this action on
10 behalf of all "Clinicians", who provide clinical services, and Piece-Rate Employees. Said
11 "Clinicians" are more precisely identified as Occupational Therapists, Occupational Therapist
12 Assistants, Physical Therapists, Physical Therapy Assistants, Registered Nurses, License Vocational
13 Nurses, Medical Social Workers, Speech Pathologist, Speech Therapist, Physical Therapy Aides,
14 Occupational Therapy Aides, Home Health Aide, Social Workers, Chaplains, and other Clinicians
15 that are paid by Piece Rate or per hour, employed by National and all Defendants during the Class
16 Period in California. Clinicians provide clinical services to patients/clients of Defendants.

17 14. Plaintiffs further bring this action on behalf of all Piece Rate Employees subject to
18 the provisions of Labor Code §226.2 and other related Labor Code provisions set forth in this
19 complaint.

20 15. Defendant National employed Plaintiff, Joshua Jacopetti, as a Registered Nurse,
21 and Plaintiff, Crystal Davis, as a Licensed Vocational Nurse, at all times relevant and represents the
22 same interests as the remaining putative Class Members with issues identical /or sufficiently similar
23 as to the remaining class for the entire class period. National and all Defendants are California based
24 companies with headquarters located at 2880 Zanker Road, San Jose, California, in the county of
25 Santa Clara, California. According to National's web-site, www.nationalhha.com, Current
26 Positions, Infusion Registered Nurse-Vallejo, states "...National Home Health Services have eight
27 offices in Northern California working directly with Kaiser: South Bay, Peninsula, North Bay, East
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1 Bay, Contra Costa County, Mid Valley, Solano County, and Sacramento....”

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

10 CLASS ACTION ALLEGATIONS

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

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

17 19. **Numerosity:** The Members of the Class are sufficiently numerous that joinder of
18 all members is impracticable. Plaintiffs are informed and believe and on that basis allege that on any
19 given day Defendants employ approximately 300 Clinicians and Piece Rate Employees in California
20 and that all current Clinicians and Piece Rate Employees are putative Class Members of the Class, as
21 defined herein. In addition, the Class includes former Clinicians and Piece Rate Employees
22 employed by Defendants during the four years prior to the filing of this action and unknown future
23 Class Members who will become employed by Defendants as Clinicians and Piece Rate Employees
24 prior to the final disposition of this action. Plaintiffs estimate the entire Class size as three hundred
25 (300) to six hundred (600) over the entire Class Period. Clinicians provide in-home health care to
26 approximately 1600 patients at least twice a week.

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

- 3 (a) Whether Defendants have violated Labor Code §226.2;
- 4 (b) Whether Defendants have a class wide policy and practice that violates minimum
5 wage laws by failing to pay the Class for all hours worked in violation of Labor Code
6 §§1194(a) and 1197;
- 7 (c) Whether Defendants' uniform wage statements fail to provide accurate and complete
8 information required by Labor Code §226;
- 9 (d) Whether Defendants' policies and practices violate Labor Code §1174 by failing to
10 maintain accurate records of all hours the Class worked each day, including overtime
11 hours, where applicable;
- 12 (e) Whether Defendants have a policy and practice of requiring Class Clinicians and
13 Piece Rate Employees to work hours in excess of eight (8) hours in a day or forty (40)
14 hours in a workweek for which Defendants do not pay overtime compensation in
15 violation of Labor Code §510;
- 16 (f) Whether Defendants have a policy and practice, as alleged herein, of failing to
17 provide Class Clinicians and Piece Rate Employees meal periods in violation of
18 Wage Order 4 §11 (A), Labor Code §§226.7 and 512;
- 19 (g) Whether Defendants have a policy and practice, as alleged herein, of failing to permit
20 and authorize Class Clinicians and Piece Rate Employees to take rest periods in
21 violation of Labor Code §226.7;
- 22 (h) Whether Defendants are liable for waiting time penalties to the Class, pursuant to
23 Labor Code §203, for failure to comply with Labor Code §§201-202; and/or
- 24 (i) Whether Defendants are liable for reimbursement payments to Class Members in
25 violation of Labor Code §2802
- 26 (j) Whether Members of the Class have lost money or property as a result of Defendants'
27 violations of Business and Professions Code §§17200, *et seq.*
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1 21. **Typicality:** Plaintiffs claims are typical of the claims of the Class. As set forth
2 herein, Defendants' common course of conduct causes Plaintiffs and similarly situated Clinicians
3 and 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 22. **Adequacy:** Plaintiffs will fairly and adequately represent the interests of all Class
6 Members. Plaintiffs are Members of the Class they seek to represent, does not have any conflicts of
7 interests with proposed Class Members, will prosecute the case vigorously on behalf of the Class,
8 and has already devoted time and resources to the initial investigation of these claims. Plaintiff's
9 counsel is competent and experienced in litigating employment class actions, including wage and
10 hour class actions.

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

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

22 24. 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.

27 25. As a result, throughout the Class Period, in violation of Labor Codes §§226.2 and
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1 226(a), wage statements have failed to accurately reflect the gross and net wages earned, the total
2 hours worked, all applicable hourly rates, and the name and address of all the legal entities that are
3 the employers.

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

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY PIECE RATE EMPLOYEES FOR REST AND**
9 **MEAL BREAKS AND NONPRODUCTIVE TIME**

10 **(Cal. Lab. Code §226.2)**

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

12 27. Plaintiffs reallege the allegations contained in paragraphs 1 through 26.

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

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

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

23 3) Section 226.2 provides that this "other nonproduction time" time must be
24 compensated at an hourly rate no less than the applicable minimum wage but may also be
25 determined by actual records. National keeps actual records and a base hourly rate based on
26 averaging hours and total compensation.

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

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

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

6 29. Labor Code §226.2 also provides that an employer may assert an affirmative
7 defense to all liability for failure to compensate for rest and recovery periods and other non-
8 productive time if it satisfies all of the requirements set forth in the statute, which was revised
9 deleting the affirmative defense effective January 1, 2021.

10 30. Defendant National and all defendants did not avail itself to the Labor Code §226.2
11 Safe Harbor Provision and is required to pay Class Members for meal and rest breaks not included in
12 their Piece Rates, and nonproductive time based on their average hourly rate, along with interest.

13 **SECOND CAUSE OF ACTION**

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

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

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

17 31. Plaintiffs reallege the allegations contained in paragraphs 1 through 30.

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

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

25 34. At all relevant times, Defendants have failed to pay for all hours worked to Plaintiffs
26 and the Class.

27 35. At all relevant times, Defendants have failed to pay the agreed upon rate for all hours
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1 worked to Plaintiffs and the Class.

2 36. By their failure to pay Plaintiffs and the Class for all the time they worked,
3 Defendants have violated the provisions of the applicable Wage Orders and Labor Code sections that
4 require proper compensation for all hours worked.

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

10 **(Cal. Lab. Codes §§226.2, 1194, 1194.2, 1197, 1197.1)**

11 **On Behalf of Plaintiffs and the Class Against All Defendants**

12 38. Plaintiffs reallege the allegations contained in paragraphs 1 through 37.

13 39. Labor Codes §§1197 and 226.2 applicable Wage Orders require employers to pay at
14 least the applicable minimum wage for all hours worked.

15 40. The Minimum Wage Order (MW-2014) requires all employers to pay a minimum
16 wage for all hours worked during the applicable time frame.

17 41. Labor Code §1194 entitles an employee receiving less than the legal minimum wage
18 to recover in a civil action the unpaid balance of the full amount of this minimum wage, including
19 interest thereon, reasonable attorneys' fees, and costs of suit.

20 42. Labor Code §1194.2 entitles an employee receiving less than the legal minimum
21 wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
22 thereon.

23 43. Labor Code §1197.1 subjects an employer or other person who caused an employee
24 to be paid a wage less than the minimum wage to: (1) a civil penalty equal to one hundred dollars
25 (\$100) for each underpaid employee for each pay period in which the employee is underpaid for an
26 initial violation that is intentionally committed; (2) and two hundred fifty dollars (\$250) for a
27 subsequent violation for the same specific offense for each underpaid employee for each pay period
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1 regardless of whether the initial violation is intentionally committed; (3) restitution of wages; and (4)
2 liquidated damages, all payable to the employee.

3 44. At all relevant times, Defendants have failed to pay minimum wages to Plaintiffs and
4 the Class as alleged above in violation of Labor Codes §§226.2, 1194, 1194.2, 1197, 1197.1, the
5 Minimum Wage Orders.

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

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

14 **(Cal. Lab. Codes §§226, 226.2 & 226.3)**

15 **On Behalf of Plaintiffs and the Class Against All Defendants**

16 46. Plaintiffs reallege the allegations contained in paragraphs 1 through 45.

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

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

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

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

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

18 52. Pursuant to Labor Code §226.3, Defendants are also liable for civil penalties per
19 employee per violation.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**

22 **(Cal. Labor Codes §§226.2, 1174 & 1174.5)**

23 **On Behalf of Plaintiffs and the Class Against All Defendants**

24 53. Plaintiffs reallege the allegations contained in paragraphs 1 through 52.

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

4 55. Labor Code §1174.5 subjects an employer who willfully fails to maintain the accurate
5 and complete records of subdivision (d) of §1174 to a civil penalty of five hundred dollars (\$500).

6 56. Defendants have violated Labor Code §1174(d) and Wage Order 4 by willfully failing
7 to keep required payroll records showing the actual hours worked each day by Plaintiffs and the
8 Class.

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

13 58. Plaintiffs and the Class are entitled to recover a civil penalty of \$500 for each
14 violation under Labor Code §1174.5 and request further relief as described below.

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME COMPENSATION**

17 **(Cal. Lab. Codes §§510, 1194; Wage Order 4)**

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

19 59. Plaintiffs reallege the allegations contained in paragraphs 1 through 58.

20 60. Labor Code §510 and Wage Order 4, § 3(A) require employers to pay employees
21 one-and-one-half (1-1/2) times the regular hour rate for all those hours worked in excess of eight (8)
22 in one workday and in excess of forty (40) hours in one workweek and for the first eight hours
23 worked on the seventh day of work in any one workweek. Labor Code §510 and Wage Order 4,
24 §3(A) further require employers to pay employees two (2) times the regular rate of pay for hours
25 worked in excess of twelve (12) hours per day and, on the seventh consecutive workday, any work in
26 excess of eight (8) hours.

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

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

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

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Cal. Lab. Codes §§226.7, 512, IWC Wage Order 4)**

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

13 64. Plaintiffs reallege the allegations contained in paragraphs 1 through 63.

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

18 66. Labor Codes §§226.7, 512 and Wage Order 4 provide that an employee shall receive
19 a premium of one hour pay for each day worked in which they miss a meal period.

20 67. Defendants have failed to pay Plaintiffs and the Class premium pay for missed meal
21 periods.

22 68. By their failure to provide meal periods, and their failure to pay premium pay,
23 Defendants violate the provisions of the applicable Wage Orders and Labor Code sections.

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Cal. Lab. Codes §§226.7, 512, IWC Wage Order 4)**

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

5 70. Plaintiffs reallege the allegations contained in paragraphs 1 through 69.

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

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

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

13 74. Defendants have failed to pay Plaintiffs and the Class premium pay for missed rest
14 periods.

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

20 **NINTH CAUSE OF ACTION**

21 **EMPLOYEE REIMBURSEMENTS**

22 **(Cal. Lab. Code §2802)**

23 **On Behalf of Plaintiffs and the Class Against All Defendants**

24 76. Plaintiffs reallege the allegations contained in paragraphs 1 through 75.

25 77. During the Class Period, Defendants routinely failed to provide reimbursement to the
26 Class Members, including Plaintiffs, for expenses for all necessary expenditures of losses incurred
27 by the employee in direct consequence of the discharge of his or her duties, or of his or her
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1 obedience to the directions of the employer as required by Labor Code §2820; Wage Orders of the
2 California Industrial Welfare Commission; and other applicable regulations, statutes, and Wage
3 Orders comprising California wage and hour laws. More specifically, Plaintiffs and Class Members
4 were not reimbursed for required electronic mobile devices and related month service fees, business
5 expenses, travel expenses, necessary medical equipment and required uniform expenses incurred in
6 performance of their duties and responsibilities as employees of National. *See Cochran v. Schwan's*
7 *Home Service (2014) 228 Cal. App. 4th 1137*

8 78. As alleged herein, the Class Members, including Plaintiffs, are entitled to
9 reimbursement for all necessary expenditures of losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
11 employer under California wage and hour law.

12 79. The Class Members, including Plaintiffs, have been deprived of their right to
13 reimbursement for all necessary expenditures of losses incurred by the employee in direct
14 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
15 employer, as a direct and proximate result of Defendants' failure and refusal to provide
16 reimbursement. The Class Members including Plaintiffs, are entitled to recover such amounts
17 pursuant to Labor Code §2802, plus interest thereon, penalties, and attorney's fees and costs.

18 80. In committing the forgoing sets, Defendants were guilty of malice, fraud and
19 oppression, and in addition to the actual damages cause thereby, Class Members are entitled to
20 recover damages for the sake of example and by way of punishing Defendants.

21 **TENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(Cal. Lab. Codes §§201, 202 & 203)**

24 **On Behalf of Plaintiffs and the Class Against All Defendants**

25 81. Plaintiffs reallege the allegations contained in paragraphs 1 through 80.

26 82. This count is brought on behalf of Members of the Class who are no longer employed
27 by Defendants.

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

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

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

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

21 **ELEVENTH CAUSE OF ACTION**

22 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

23 **(Cal. Bus. & Prof. Codes §§17200, et seq.)**

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

25 87. Plaintiffs reallege the allegations contained in paragraphs 1 through 86.

26 88. Beginning on a date unknown to Plaintiffs, through Defendants' acts and omissions
27 alleged herein, Defendants have committed and continue to commit (within the four years prior to
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1 the filing of this Complaint) unlawful acts that have violated and continue to violate Business and
2 Professions Code §17200.

3 89. Defendants' unlawful acts include violating Labor Code sections as alleged in the
4 first through eighth causes of action, as well as Wage Order Number 4 and Wage Order Number 15,
5 as also alleged above.

6 90. Defendants' violation of these statutes and regulations independently and separately
7 constitute an unlawful business practice within the meaning of Business and Professions Code
8 §17200.

9 91. As a result of the aforementioned acts, Plaintiffs and the Class have lost and continue
10 to lose money or property and suffered and continue to suffer injury in fact. Defendants continue to
11 hold unpaid wages legally belonging to Plaintiffs and the Class.

12 92. Plaintiffs and the Class are entitled to restitution in the amounts unlawfully withheld
13 by Defendants, with interest, injunctive relief, as well as an award of attorneys' fees and costs. *See*
14 *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 173 ("Unlawfully withheld
15 wages may be recovered as restitution in a UCL action.").

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs Joshua Jacopetti and Crystal Davis on behalf of themselves and the
18 above described Class of similarly situated Clinicians and Piece Rate Employees, pray for relief as
19 follows, jointly and severally from all Defendants:

20 A. Certification of this action as a class action on behalf of the proposed classes,
21 pursuant to California Code of Civil Procedure §382.

22 B. Designation of the Plaintiffs as Class Representatives of the Class they seek to
23 represent;

24 C. Approve provisions of class notice to all Clinicians and Piece Rate Employees who
25 worked for Defendants in California during the Class Period described above;

26 D. Appropriate civil penalties under Labor Codes §§558 and 2699;

27 E. An award of statutory damages pursuant to Labor Code §226.2;

1 F. An award of unpaid minimum wage and overtime, meal period and rest period
2 compensation subject to proof at trial;

3 G. An award of statutory penalties, liquidated damages, and restitution of all amounts
4 owed to Plaintiffs and similarly situated Clinicians and Piece Rate Employees in an amount
5 according to proof;

6 H. An award for reimbursement of expenses pursuant to Labor Code §2802;

7 I. Injunctive relief;

8 J. Pre-judgment and post-judgment interest, as provided by law;

9 K. Reasonable attorneys' fees and costs of suit, including but not limited to expert fees
10 and fees pursuant to Labor Codes §§218.5, 1194.2; California Code of Civil Procedure §1021.5, and
11 any other applicable law; and

12 L. Such other equitable relief as the Court may deem just and proper.

13
14 Dated: November 15, 2020

Respectfully submitted,
PEREZ LAW OFFICES

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16
17 By: Anthony M. Perez, Jr.
18 ANTHONY M. PEREZ, JR.
19 Attorneys for Plaintiffs

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21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs and Members of the Class hereby request a trial by jury.

23
24 Dated: November 15, 2020

Respectfully submitted,
PEREZ LAW OFFICES

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26
27 By: Anthony M. Perez, Jr.
28 Anthony M. Perez, Jr.