

KAREN J. SLOAT (SBN 130730)
karen@karensloatlaw.com
SARAH Y. SORENSEN (SBN 300402)
sarah@karensloatlaw.com
LAW OFFICE OF KAREN J. SLOAT, APC
42-600 Caroline Court, Suite 101
Palm Desert, CA 92211
Tel.: 760.779.1313
Fax: 760.340.4834

CHRISTOPHER W. HELLMICH (SBN
224169) chellmich@hellmichlaw.com
HELLMICH LAW GROUP, PC
40101 Monterey Ave. B1, Suite #419
Rancho Mirage, CA 92270
Tel.: 949.287.5708

Attorneys for Plaintiff Suzonne Windham
and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

SUZONNE WINDHAM, on behalf of herself and
others similarly situated,

Plaintiffs,

vs.

MEDESTAR LOCUM TENENS, LLC, a Texas
Limited Liability Company; MACT HEALTH
BOARD, INC., a California nonprofit
corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No.: CVRI2101244

**CLASS ACTION COMPLAINT FOR
DAMAGES & PAGA ENFORCEMENT**

- (1) Failure to Pay Wages-Labor Code § 204;
- (2) Unpaid Overtime Wages-Labor Code § 510;
- (3) Unpaid Premium Wages for 30-Minute Duty-Free Meal Periods-Labor Code § 226.7;
- (4) Unpaid Premium Wages for 10-Minute Duty-Free Rest Breaks-Labor Code § 226.7;
- (5) Inaccurate Wage Statements-Labor Code § 226(a);
- (6) Failure to Keep Payroll Records-Labor Code § 1174(d);
- (7) Deficient Pay Penalties-Labor Code § 210;
- (8) Unreimbursed Business Expenses-Labor Code § 2802;
- (9) Waiting Time Penalties-Labor Code § 203;
- (10) Violation of Unfair Competition Law-Bus. & Prof. Code § 17200, *et seq.*;

- (11) Breach of Written Contract;
- (12) Retaliation-Labor Code §§ 986.6, 1102.5; and
- (13) California Private Attorneys General Act of 2004-Labor Code § 2698, *et. seq.*).

DEMAND FOR JURY TRIAL

Plaintiff, Suzonne Windham, on behalf of herself and on behalf of other aggrieved current and former employees, alleges as follows:

I. INTRODUCTION

1. Defendant Medestar Locum Tenens (“Medestar”) is a Texas recruiting and staffing agency that helps medical facilities fill their temporary needs for medical professionals and health care providers. Medestar provides staffing services throughout the United States, including California. Plaintiff’s investigation suggests that until approximately April 2020, Medestar misclassified every person it placed for work in California as being an independent contractor when those workers should have been classified as Medestar employees, according to the ABC-test enunciated in *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903, 916–17 (2018) (“*Dynamex*”).

2. The Supreme Court recently clarified the *Dynamex* ABC-test applies retroactively to actions and claims accruing before it issued the *Dynamex* opinion on April 30, 2018. *See generally, Vazquez v. Jan-Pro Franchising Int’l, Inc.*, No. S258191, 2021 WL 127201, at *1 (Cal. Jan. 14, 2021) (“*Jan-Pro*”).

3. Defendant MACT Health Board, Inc. (“MACT”) operates medical facilities in the counties of Mariposa, Amador, Calaveras & Tuolumne. No later than January 2020, MACT contracted with Medestar to provide MACT with health care providers to temporarily work at one or more of MACT’s facilities.

4. The Labor Code classifies staffing agencies as “Labor Contractors” and the companies who hire workers from the staffing agency as the “Client Employer.” *See* Labor Code § 2810.3(a). Both entities are jointly and severally liable to ensure the workers are provided their full wage and hour rights pursuant to the Labor Code.

5. Medestar placed Plaintiff Suzonne Windham (“Windham”) for temporary work with MACT from January 2020 to March 2020, but the parties extended her contract term until May 29, 2020. Medestar presented its form contract to Plaintiff, which classified her as an independent contractor and expressly disclaimed that she was a Medestar employee. It also identified each nine (9) hour shift Plaintiff was to work

1 during the contract term, the hourly rate of pay, and the MACT location where Plaintiff would perform the
2 work. Medestar could only terminate its contract with Plaintiff if Medestar first provided Plaintiff written
3 notice of the termination at least 30-days prior to the termination date.

4 6. On or about March 27, 2020, Medestar informed Windham that due to AB-5 (law codifying
5 the *Dynamex* ABC test) it needed to reclassify Windham as Medestar's employee and not its independent
6 contractor. Medestar, however, failed to tell Windham that AB-5 became effective January 1, 2020.
7 Medestar's unilateral reclassification concedes the gravamen of Windham's misclassification claim such that
8 she should have been classified as an employee from her first day of work and entitled to all of wage and
9 hour protections for employees.

10 7. On April 1, 2020, MACT's Chief Executive Officer, John Alexander, demanded Medestar
11 immediately terminate Windham's employment, which it did, even though her contract term did not expire
12 until May 29, 2020.

13 8. Upon her termination, neither Medestar nor MACT compensated Plaintiff for the
14 contracted work term or cured their wage and hour violations.

15 9. Defendants decreased their employment-related costs at their businesses by willfully and
16 systematically violating California wage and hour laws.

17 10. Defendants worked together to place and employ medical professionals in clinics and
18 hospitals in California. Their staffing arrangement perpetuates a systematic scheme of wage abuse and
19 unlawful employment practices against Plaintiff and those similarly situated. These practices include, but are
20 not limited to:

- 21 a. Failure to pay all minimum and regular wages;
- 22 b. Failure to pay all overtime wages;
- 23 c. Failure to provide accurate wage statements;
- 24 d. Failure to provide uninterrupted duty-free meal and rest periods;
- 25 e. Failure to reimburse business expenses; and
- 26 f. Willfully misclassifying workers as independent contractors.

27 11. Plaintiff individually, and on behalf of those similarly situated, seeks restitution and monetary
28 relief against Defendants to recover, among other things, unpaid wages and benefits, interests, attorney's fees,

1 penalties, injunctive relief, and costs and expenses pursuant to the applicable California Labor Code Sections;
2 associated Industrial Welfare Commission (“IWC”) Wage Orders; Government Code, California Private
3 Attorneys General Act of 2004, as well as other applicable laws.

4 **II. PARTIES**

5 **A. Plaintiff Suzonne Windham**

6 12. Plaintiff Suzonne Windham is a resident of the city of Palm Desert in Riverside County,
7 California.

8 **B. Defendant Medestar Locum Tenens**

9 13. Defendant Medestar Locum Tenens (“Medestar”) is a Texas corporation with its principal
10 place of business located at 1603 LBJ Freeway, Suite 700, Dallas, Texas 75234.

11 14. Defendant Medestar is an employer as defined in Wage Order No. 4-2001.

12 15. At all times herein set forth, the Wage Orders, including without limitation, Wage Order 4,
13 were applicable to Plaintiff’s employment.

14 16. At all relevant times, Medestar was a “Temporary Services Employer” within the meaning of
15 Labor Code § 201.3.

16 17. At all relevant times, Medestar was a “Labor Contractor” within the meaning of the California
17 Labor Code § 2810.3(a).

18 18. At all relevant times, Medestar controlled and directed the terms of employment and
19 compensation of Plaintiff and other aggrieved current and former employees.

20 19. At all relevant times, Medestar maintained and exercised its power to hire, fire, discipline, and
21 promote Plaintiff and other aggrieved current and former employees.

22 20. At all relevant times, Medestar maintained control, oversight, and direction of Plaintiff,
23 including timekeeping, work allocation, task supervision, monitoring work product, payroll, and other
24 employment practices that applied to her and other aggrieved current and former employees.

25 21. At all relevant times, Medestar contacted Plaintiff and other aggrieved current and former
26 employees directly regarding the quality of their performance.

27 22. At all relevant times, Medestar and MACT were the joint employers of the Plaintiff and their
28 other aggrieved current and former employees.

C. Defendant M.A.C.T. Health Board, Inc.

23. Defendant M.A.C.T. Health Board, Inc. (“MACT”) is a domestic nonprofit corporation with its principal place of business located at 52 S. Main Street, Angels Camp, CA 95222.

24. Defendant MACT is an employer as defined in Wage Order No. 4-2001.

25. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order 4, were applicable to Plaintiff’s employment.

26. At all relevant times, Medestar was a “Client Employer” within the meaning of the California Labor Code § 2810.3(a).

27. At all relevant times, MACT controlled and directed the terms of employment and compensation of Plaintiff and other aggrieved current and former employees.

28. At all relevant times, MACT maintained and exercised its power to hire, fire, discipline, and promote Plaintiff and other aggrieved current and former employees.

29. At all relevant times, MACT maintained control, oversight, and direction of Plaintiff, including timekeeping, work allocation, task supervision, monitoring work product, payroll, and other employment practices that applied to her other aggrieved current and former employees.

30. At all relevant times, MACT contacted Plaintiff and other aggrieved current and former employees directly regarding the quality of their performance.

31. At all relevant times, Medestar and MACT were the joint employers of the Plaintiff and their other aggrieved current and former employees.

D. Defendant DOES 1 through 20

32. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, Defendants DOES 1 through 20, inclusive, were acting within the course and scope of their employment.

33. The true names and/or capacities, whether individual, agent, employee, servant, partner, joint venture, joint employer, representative, associate, corporate, agency, or otherwise, of Defendants named herein as DOES 1 through 20, inclusive, are unknown to Plaintiff who therefore sues these Defendants, and each of them, by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants are responsible in some manner for the events and happenings herein referred to and caused injury and damages proximately thereby to Plaintiff as herein alleged.

1 34. In doing the things hereinafter alleged, the individual Defendants, whether named or
2 unnamed, were acting in concert with and under the direction, or with the express or implied ratification, of
3 their superior, supervisors, and the employer and other named or unnamed Defendants. Plaintiff is informed
4 and believes and thereon alleges that the conduct of the individually named and the unnamed Defendants was
5 known to the other Defendants and such conduct was expressly or impliedly condoned and ratified by the
6 named Defendants. Plaintiff is further informed and believes that the named Defendants failed to criticize,
7 censure, terminate, suspend, or otherwise take any action against the other Defendants, once informed of
8 their conduct.

9 **III. JURISDICTION AND VENUE**

10 35. The Court has jurisdiction over this action pursuant to California State Constitution, Article
11 VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given
12 by statute to other courts. The statutes under which this action is brought do not specify any other basis for
13 jurisdiction.

14 36. This Court has jurisdiction over Defendants because the acts that gave rise to this Complaint
15 occurred in the State of California.

16 37. Venue is proper in this Court because Defendants recruited and entered the contract in dispute
17 with Plaintiff while she was residing in Riverside County. Defendants breached the contract and committed
18 other violations of the Labor Code against Plaintiff after she returned to her home in Riverside County.
19 Defendants, upon information and belief, employed other individuals and they transact business in the County
20 of Riverside.

21 38. Damages in this matter exceed and are greater than \$25,000.00 and the legal issues herein are
22 thereby subject to this Court’s unlimited jurisdiction.

23 **IV. STATUTE OF LIMITATIONS TOLLING**

24 39. In May 2020, the California Judicial Council approved a revision to Emergency Rule 9
25 regarding the statute of limitations for the filing of civil cases. The statute of limitations and repose for civil
26 causes of action that exceed 180 days was suspended from April 6, 2020 to October 1, 2020 (or a total of 178
27 days). Application of Emergency Rule 9 ensures that Plaintiff can fully recover all alleged damages.

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1 40. Plaintiff filed this action on March 1, 2021 (139 days after October 1, 2020). When applying
2 COVID tolling and considering, for example, the four-year statute of limitations as provided in Bus. & Prof.
3 Code § 17200, *et seq.*, the statutory period for claims alleged herein commences no later than January 21, 2017.

4 **V. CLASS ACTION ALLEGATIONS**

5 41. Plaintiff brings this action on her own behalf and on behalf of all other members of the general
6 public similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

7 42. The proposed Medestar Class is defined as follows: all current and former persons who
8 worked for Medestar within the State of California within the last four years from the date of this Complaint,
9 and who Medestar classified as “independent contractors” (the “Medestar Class Members”).

10 43. The proposed MACT Class is defined as follows: all current and former persons who worked
11 for MACT within the State of California within the last four years from the date of this Complaint, and who
12 MACT classified as “independent contractors” (the “MACT Class Members”). The Medestar Class Members
13 and MACT Class Members are collectively referred to as the Class Members.

14 44. Plaintiff reserves the right to establish subclasses as appropriate.

15 45. Each class is ascertainable and there is a well-defined community of interest in the litigation:

16 a. Numerosity: the Class Members are so numerous that joinder of all Class Members is
17 impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the
18 class is estimated to be greater than twenty (20) individuals and the identity of such membership is
19 readily ascertainable by inspection of Medestar and MACT’s records.

20 b. Typicality: Plaintiff’s claims are typical of all other Class Members as demonstrated
21 herein. Medestar and MACT employed Plaintiff and the alleged violations were committed against her
22 during her time of employment and she is, therefore, representative of the class of other alleged injured
23 employees. Plaintiff suffered the actual injuries for which she seeks to represent the class. Plaintiff will
24 fairly and adequately protect the interests of the other Class Members with whom she has a well-
25 defined community of interest.

26 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class
27 member, with whom she has a well-defined community of interest and typicality of claims, as
28 demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members.

1 Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action
2 discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action
3 will continue to incur, costs and attorney fees, that have been, are, and will be necessarily expended
4 for the prosecution of this action for the substantial benefit of each class member.

5 d. Superiority: a class action is superior to other available methods for the fair and
6 efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

7 e. Public policy considerations: certification of this lawsuit as a class action will advance
8 public policy objectives. Unfortunately, employers in California routinely violate state employment
9 and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct
10 or indirect retaliation. However, class actions provide the Class Members who are not named in the
11 Complaint anonymity that allows for the vindication of their rights.

12 46. There are common questions of law and fact as to the Class Members that predominate over
13 questions affecting only individual members. The common questions of law and fact, among others, exist as
14 to the members of each class:

15 **Medestar Class:**

16 a. Whether Medestar improperly misclassified Plaintiff and other Medestar Class
17 Members prior to April 1, 2020, as independent contractors instead of as non-exempt hourly
18 employees;

19 b. Whether Medestar's failure to pay wages was willful;

20 c. Whether Medestar had a policy and practice of failing to afford their "independent
21 contractors" uninterrupted 30-minute meal breaks and uninterrupted 10-minute rest breaks;

22 d. Whether Medestar required Plaintiff and other Medestar Class Members who were
23 classified as "independent contractors" to work over eight (8) hours per day and/or over forty (40)
24 hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other
25 Medestar Class Members;

26 e. Whether Medestar failed to timely pay all wages due to Plaintiff and the other Medestar
27 Class Members during their employment;
28

1 f. If Medestar failed to timely pay all wages due to Plaintiff and the other Medestar Class
2 Members during their employment, did Medestar, upon Plaintiff and the other Medestar Class
3 Members' separation, pay all wages and penalties due to them including waiting time penalties and
4 deficient pay penalties;

5 g. Whether Medestar complied with wage reporting as required by IWC Wage Orders
6 and the Labor Code;

7 h. Whether Medestar kept complete and accurate payroll records as required by IWC
8 Wage Orders and the Labor Code;

9 i. Whether Medestar failed to reimburse Plaintiff and the other Medestar Class Members
10 for necessary business-related expenses and costs;

11 j. Whether Medestar's conduct was willful or reckless;

12 k. Whether Medestar engaged in unfair business practices in violation of Cal. Bus. &
13 Prof. Code § 17200, *et. seq.*;

14 l. Whether Medestar engaged in retaliation in violation of public policy when Plaintiff
15 and other Medestar Class Members engaged in the protected activity of complaining about unfair
16 employment practices;

17 m. The appropriate amount of damages, restitution, and/or monetary penalties resulting
18 from Medestar's violation of California law; and

19 n. Whether Plaintiff and the other Medestar Class Members are entitled to compensatory
20 damages pursuant to the California Labor Code.

21 **MACT Class:**

22 o. Whether MACT improperly misclassified Plaintiff and other MACT Class Members
23 prior to April 1, 2020, as independent contractors instead of as non-exempt hourly employees;

24 p. Whether MACT failure to pay wages was willful;

25 q. Whether MACT had a policy and practice of failing to afford their "independent
26 contractors" uninterrupted 30-minute meal breaks and uninterrupted 10-minute rest breaks;

27 r. Whether MACT required Plaintiff and other MACT Class Members who were
28 classified as "independent contractors" to work over eight (8) hours per day and/or over forty (40)

hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other MACT Class Members;

s. Whether MACT failed to timely pay all wages due to Plaintiff and the other MACT Class Members during their employment;

t. If MACT failed to timely pay all wages due to Plaintiff and the other MACT Class Members during their employment, did MACT, upon Plaintiff and the other MACT Class Members' separation, pay all wages and penalties due to them including waiting time penalties and deficient pay penalties;

u. Whether MACT complied with wage reporting as required by IWC Wage Orders and the Labor Code;

v. Whether MACT kept complete and accurate payroll records as required by IWC Wage Orders and the Labor Code;

w. Whether MACT failed to reimburse Plaintiff and the other MACT Class Members for necessary business-related expenses and costs;

x. Whether MACT's conduct was willful or reckless;

y. Whether MACT engaged in unfair business practices in violation of Cal. Bus. & Prof. Code § 17200, *et. seq.*;

z. Whether MACT engaged in retaliation in violation of public policy when Plaintiff and other MACT Class Members engaged in the protected activity of complaining about unfair employment practices;

aa. The appropriate amount of damages, restitution, and/or monetary penalties resulting from MACT's violation of California law; and

bb. Whether Plaintiff and the other MACT Class Members are entitled to compensatory damages pursuant to the California Labor Code.

VI. PAGA ALLEGATIONS

47. At all times set forth herein, the Private Attorneys General Act of 2004 ("PAGA") was applicable to and governed Defendants Medestar and MACT's joint employment of Plaintiff and other current and former aggrieved employees.

1 48. At all times set forth herein, PAGA states that any provision of the California Labor Code
2 that authorizes the levying of a civil penalty, including but not limited to: meal and rest break premiums,
3 unpaid wages, premium wages, deficient pay, wage statement violations, and waiting time penalties to be
4 assessed and collected by the California Labor and Workforce Development Agency (“LWDA”) for violations
5 of the California Labor Code may, as an alternative, to be recovered through a civil action brought by an
6 aggrieved employee on behalf of herself and other current or former employees pursuant to procedures
7 outlined in California Labor Code § 2699.3.

8 49. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is any
9 person that was employed by the alleged violator and against whom one or more of the alleged violations was
10 committed.

11 50. Plaintiff was jointly employed by Defendants Medestar and MACT and the alleged violations
12 were committed against her during her time of employment, therefore, she is an aggrieved employee. Plaintiff
13 and the other employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that
14 they are current or former Medestar and/or MACT employees and one or more of the alleged violations were
15 committed against them.

16 51. Pursuant to California Labor Code §§ 2699.3 and 2699.5, aggrieved employees, including
17 Plaintiff, may pursue a civil action arising under PAGA against Defendants Medestar and MACT after the
18 following requirements have been met:

19 a. The aggrieved employee shall be given written notice by online submission
20 (“Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions
21 of the California Labor Code alleged to have been violated, including the facts and theories to support
22 the alleged violations.

23 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
24 employee by certified mail that it does not intend to investigate the alleged violation within sixty (60)
25 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice,
26 or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of
27 the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California
28

1 Labor Code § 2699 to recover civil penalties in addition to any other penalties to which the employee
2 may be entitled.

3 52. Prior to filing this action, Plaintiff provided written notice on February 18, 2021, by online
4 submission to the LWDA, and by certified mail to Defendants Medestar and MACT of the specific provisions
5 of the California Labor Code they are alleged to have violated, including the facts and theories to support the
6 alleged violations. A true and correct copy of the Plaintiff's February 18, 2021, written notice is appended as
7 **Exhibit 1**. Upon waiting the required sixty-five (65) days of the date of the submission of Plaintiff's Notice
8 and if LWDA does not act Plaintiff will seek to amend this Complaint to reflect her compliance with this
9 statutory obligation.

10 53. Therefore, the administrative prerequisites under California Labor Code § 2699.3(a) to recover
11 civil penalties, in addition to other remedies, for violations of California Labor Code §§ 98.6, 201, 201.3, 202,
12 203, 204, 210, 216, 218.5, 223, 225.5, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2753,
13 2800, 2802, and 2810.3 are satisfied.

14 **VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 54. Plaintiff fully exhausted her administrative remedies, to the extent they are required, and has
16 timely filed this action.

17 55. Alternatively, Plaintiff alleges she is exempt from exhausting any internal or external
18 administrative remedies.

19 **VIII. FACTUAL ALLEGATIONS**

20 **A. General Background**

21 56. Medestar is a healthcare recruiting and staffing agency matching medical professionals and
22 providers with healthcare facilities, such as clinics and hospitals. Medestar matches professionals and facilities
23 in all fifty states, including California. In October 2019, Staffing Industry Analysts named Medestar as one of
24 the "largest locum tenens firms in the U.S."

25 57. MACT operates multiple health care facilities in the California counties of Mariposa, Amador,
26 Calaveras, and Tuolumne. These facilities serve the general public and American Indian populations in the
27 areas of medical, dental, behavioral health, optometry, and chiropractic care.

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1 58. Upon information and belief, prior to January 1, 2020, Medestar entered a contract with
2 MACT for Medestar to supply MACT with as many temporary workers as MACT needed.

3 59. Upon information and belief, the contract does not limit or cap the number of temporary
4 workers that Medestar will or can supply to MACT.

5 60. Upon information and belief, prior to January 1, 2020, and continuing through the present,
6 Medestar actually provided MACT with temporary workers who worked at one or more MACT facilities.

7 61. On April 15, 2018, the California Supreme Court issued its opinion in *Dynamex* and announced
8 the ABC-test governing independent contractor work relationships.

9 62. On January 14, 2021, the Supreme Court in *Jan-Pro* confirmed the *Dynamex* ABC-test applied
10 retroactively, *i.e.*, before April 15, 2018, in determining whether a company's worker was properly classified
11 as an independent contractor. *See, Jan-Pro*, 2021 WL 127201, at *1.

12 63. On January 1, 2020, California Assembly Bill 5 ("AB 5"), which effectively codified the
13 *Dynamex* ABC-test became enforceable.

14 64. As California employers, Medestar and MACT are presumed to have known about both
15 *Dynamex* and AB 5 and their respective effect on how a California employer can lawfully classify a worker as
16 an independent contractor.

17 **B. Medestar Enters Employment Contract with Windham.**

18 65. In 2019, Medestar recruited Plaintiff while she was residing in Riverside County to provide
19 temporary nursing services at medical facilities throughout the southwest, including Arizona and California.

20 66. On January 4, 2020, when Plaintiff was residing in Riverside County, Medestar identified
21 Plaintiff as a potential fit to fill a temporary staffing need of MACT.

22 67. On the same date, Medestar and Plaintiff entered into a written agreement ("Agreement"). A
23 true and correct copy of the employment contract is appended as **Exhibit 2**. The Agreement expressly
24 classified Plaintiff as Medestar's independent contractor and not as its employee.

25 68. The Agreement is an adhesion contract in that Medestar drafted it and presented its form
26 contract to Plaintiff on a take-it or leave-it proposition. Plaintiff was not permitted to negotiate any material
27 contract term. Upon information and belief, Medestar used the same or a similar Agreement appearing as
28

1 **Exhibit 2** to hire the other Medestar Class Members who worked for Medestar in California during the
2 statutory class period.

3 69. However, the health care work that Plaintiff was to perform for Medestar and MACT does
4 not meet the *Dynamex* ABC-test qualifying her to be classified as an independent contractor. That is:

5 a. Plaintiff was not free from the control and direction of Medestar and/or MACT in
6 connection with the performance of her work, both under the contract for the performance of such
7 work and in fact; or

8 b. Plaintiff did not perform work that was outside the usual course of Medestar and/or
9 MACT's business; or

10 c. Plaintiff was not customarily engaged in an independently established trade,
11 occupation, or business of the same nature as the work performed for Medestar and/or MACT.

12 70. Despite the existence of both *Dynamex* and the January 1, 2021, effective date of AB 5,
13 Medestar and MACT purportedly hired Plaintiff as an independent contractor to perform nursing services.

14 71. Upon information and belief, MACT knew, approved, advised, or ratified Medestar's
15 improper classification of Plaintiff as an independent contractor from her first day of employment.

16 72. On January 10, 2020, Medestar emailed Plaintiff a confirmation that on January 4, 2020, she
17 accepted Medestar's offer to provide MACT with temporary health care services in MACT's family practice
18 department in its Tuolumne County clinic.

19 73. The Agreement (**Exhibit 2**) provided that Medestar would pay Plaintiff \$95/hour, and she
20 was to work nine (9) hours per day from 8:00 a.m. to 5:00 p.m. Monday through Friday. The fixed contractual
21 term of Plaintiff's employment was from January 28, 2020, through April 30, 2020.

22 74. Upon information and belief, other Medestar Class Members subject to the same or similar
23 employment Agreement (**Exhibit 2**) had fixed rates of pay and fixed nine-hour shifts.

24 75. Plaintiff began working at the MACT clinic on January 28, 2020.

25 76. On or about February 27, 2020, Medestar extended, by way of a written amendment, the
26 contract term of Plaintiff's employment Agreement from an end date of April 30, 2020, to May 29, 2020. A
27 true and correct copy of the amendment is appended as **Exhibit 3**. The amendment provided for the same
28

1 rate of pay and with the same nine-hour shift from 8:00 a.m. to 5:00 p.m. Monday through Friday at the same
2 MACT facility.

3 77. The parties memorialized the amendment in Medestar's February 28, 2020, confirmatory
4 email. The email guaranteed that Medestar and MACT would employ Plaintiff at a specific hourly rate of pay,
5 for specific shifts listed by day and hour through May 29, 2020.

6 78. Plaintiff worked nine hours per day as specified in the contract; however, she was only paid
7 for eight hours of work per day. She was never paid any overtime for working the ninth hour on each daily
8 shift.

9 79. Upon information and belief, Medestar Class Members were similarly denied being paid
10 overtime for working more than eight hours per day or forty hours in a week.

11 80. At no time during Plaintiff's employment did either Medestar or MACT issue to Plaintiff a
12 written policy regarding her right to take statutorily required meal and rest periods. As such, Medestar and
13 MACT have presumptively violated Plaintiff's statutory rights to required meal and rest periods.

14 81. Upon information and belief, Medestar failed to provide Medestar Class Members with written
15 notice of their right to take statutorily required meal and rest periods. As such, Medestar has presumptively
16 violated the Medestar Class Members' statutory rights to required meal and rest periods.

17 82. Upon information and belief, MACT failed to provide MACT Class Members with written
18 notice of their right to take statutorily required meal and rest periods. As such, MACT has presumptively
19 violated the MACT Class Members' statutory rights to required meal and rest periods.

20 83. Plaintiff was not provided with an uninterrupted off-duty 30-minute meal period for each shift
21 of five hours she worked. Plaintiff was also not provided with an uninterrupted off-duty 10-minute rest break
22 for every four hours worked. Instead, Plaintiff updated her charts or performed other work tasks while eating
23 lunch.

24 84. On or about March 27, 2020, Medestar admitted to Plaintiff that due to AB 5 it had improperly
25 classified her as an independent contractor when she should have been classified as an employee. Medestar
26 then attempted to convert Plaintiff to being an employee.

27 85. However, in the process Medestar unilaterally, secretly, and unlawfully decreased Plaintiff's
28 hourly rate from \$95/hour to \$87.73/hour, or \$7.27 less than the contracted and agreed hourly rate. Plaintiff's

1 personnel file is devoid of any amendment to the Agreement in which Plaintiff permitted Medestar to decrease
2 her hourly rate.

3 86. Plaintiff was improperly paid at this lower rate from March 21, 2020, through April 1, 2020.

4 87. On April 1, 2020, after her shift, Medestar's Garrett Youngblood called Plaintiff and verbally
5 informed her that her work at the MACT clinic was immediately terminated. Mr. Youngblood told Plaintiff
6 that MACT's CEO, Alexander, directed Medestar to terminate her employment. Mr. Youngblood said
7 COVID was resulting in fewer patients at the facility.

8 88. On April 2, 2020, Mr. Youngblood sent Plaintiff a "Medestar Candidate Cancellation Letter"
9 for the MACT clinic via email. The email was a copy of the previous email confirming the term of her
10 employment; however, the remaining contracted shifts through May 29, 2020, were changed to state they were
11 "canceled."

12 89. Upon her termination, Plaintiff immediately returned to her home in Palm Desert, Riverside
13 County. Medestar verbally and in writing told Plaintiff it would reimburse her for her moving expenses.
14 Plaintiff requested Medestar confirm it would reimburse her for the cost of a moving truck, but never received
15 a response. Given the abrupt nature of the termination and lack of response, Plaintiff was understandably
16 worried that she would not be reimbursed for the truck. She did not rent one and had to leave several
17 household items behind. Regardless, Medestar also failed to reimburse her for gas on her return trip despite
18 multiple requests and promises to do so.

19 90. Defendants failed to pay Plaintiff all wages owed upon terminating her contract. After Plaintiff
20 returned to her residence in Riverside County, Medestar and MACT finally provided Plaintiff's paycheck, but
21 it was more than one week after they terminated her employment. Moreover, Defendants violated numerous
22 Labor Code provisions in that when they tendered the final paycheck it failed to provide Plaintiff with all of
23 the wages she was owed, including overtime and premium wages for missed meal and rest periods.

24 91. During her employment, as COVID was taking hold and without any vaccine yet available,
25 medical professionals, including those at MACT were taking pneumonia inoculations as a prophylactic
26 measure against COVID. MACT assigned Plaintiff to work with and treat COVID patients. Naturally,
27 Plaintiff requested the pneumonia inoculation, which MACT provided. However, when Plaintiff asked if
28 MACT would pay the \$240 cost for the inoculation MACT failed to provide a clear response. Medestar advised

1 Plaintiff that it believed MACT would pay the cost, but Medestar told Plaintiff that it would consider paying
2 the cost.

3 92. As a reasonable safety precaution, Plaintiff took the pneumonia inoculation. Upon her
4 termination, and after Ms. Windham had returned to her home in Riverside County, MACT demanded
5 Plaintiff reimburse \$240.00 for the cost of the injection. Plaintiff correctly recognized the inoculation was a
6 necessary business expense that her employer should pay, so she refused to pay MACT the cost of the
7 inoculation. From her home in Riverside County, Ms. Windham asked John Alexander, MACT's CEO, for
8 the contact information for MACT's Board of Directors so she could appeal the decision.

9 93. On May 28, 2020, Alexander emailed Plaintiff that the MACT Board rejected her appeal and
10 again insisted she pay remit \$240 for the cost of the injection.

11 94. Upon information and belief, without providing Plaintiff with any reasonable period of time
12 to pay the expense MACT immediately caused a collection agency to pursue Plaintiff for the recovery of the
13 injection's \$240 cost. MACT's malicious and retaliatory use of a collection agency, to force Ms. Windham to
14 pay a business expense MACT and/or Medestar should have paid, has caused Ms. Windham to suffer
15 embarrassment, humiliation, and grief.

16 95. Plaintiff paid the \$240 expense to MACT in order to avoid having the collection agency take
17 action that would damage her credit.

18 96. Upon information and belief, after April 1, 2020, Medestar continued to provide temporary
19 workers to California Client Employers, including MACT.

20 97. Upon information and belief, after April 1, 2020, MACT continued to use Labor Contractors
21 to provide temporary workers who were classified as independent contractors.

22 **IX. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **(Wages Not Timely Paid During Employment - Labor Code §§ 201.3, 204)**

25 **(Against All Defendants and DOES 1 through 20)**

26 98. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully
27 set forth herein.

28 ///

1 99. Labor Code § 201.3(b)(1)(A) provides that temporary workers are to be paid no less frequently
2 than weekly.

3 100. At all times herein set forth, California Labor Code § 204 provides that all wages earned by
4 any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than
5 those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the
6 month during which the labor was performed.

7 101. At all times herein set forth, California Labor Code § 204 provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than
9 those wages due upon termination of an employee, are due and payable between the 1st and 10th of the
10 following month.

11 102. At all times herein set forth, California Labor Code § 204 provides that all wages earned for
12 labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll
13 periods.

14 103. Plaintiff and the other Class Members are properly classified as temporary workers pursuant
15 to Labor Code § 201.3.

16 104. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order
17 4, were, upon information and belief, applicable to Plaintiff's employment.

18 105. Medestar and MACT are individually, jointly, and severally liable to Plaintiff and the other
19 Class Members, pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order
20 violations as alleged herein.

21 106. As set forth herein, Plaintiff performed work for which she was not properly or fully
22 compensated. Medestar and MACT failed to pay or cause Plaintiff to be paid all wages earned while she was
23 employed by Medestar and MACT.

24 107. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff
25 and other Class Members all wages due to them, within any time period permissible under Labor Code §§
26 201.3, 204, and 1194.

27 108. Plaintiff and other Class Members are entitled to recover all remedies available for violations
28 of Labor Code §§ 201.3, 204 as well as Labor Code §§ 203 and 210.

109. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff and other Class Members intend to seek an award of recover reasonable attorney's fees and costs pursuant to Labor Code §§ 98.2, 218.5, 510, and 1194, and other applicable laws.

SECOND CAUSE OF ACTION

(Unpaid Overtime - Labor Code §§ 510 and 1198)

(Against All Defendants and DOES 1 through 20)

110. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

111. 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 time-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.

112. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other Class Members employed by Defendants working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

113. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other Class Members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

114. California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

115. During the relevant time period, Plaintiff and other Class Members and worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

116. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other Class Members.

117. Defendants' failure to pay Plaintiff and other Class Members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code §§ 510, 1194 and 1198, and is therefore unlawful.

118. Plaintiff and other Class Members are entitled to recover all remedies available for violations of Labor Code §§ 201.3, 204 as well as Labor Code §§ 203 and 210.

119. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 98.2, 218.5, 510, and 1194, and other applicable laws.

THIRD CAUSE OF ACTION

(Unpaid Meal Period Premiums - Violation of California Labor Code § 226.7)

(Against All Defendants and DOES 1 through 20)

120. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

121. Plaintiff and other Class Members are entitled to recover unpaid earnings while working during meal periods that were denied and/or interrupted. Jurisdiction in this Court is invoked pursuant to California Labor Code §§ 98.2, 200, 202, 216, 218, 218.5, 218.6, 226.7, 229, 510, 1194, 1198; Unfair Competition Law Business & Professions Code § 17200; 8 California Code Regulations Title 8, §§ 11010-11130; and California Wage Orders.

122. At all times herein set forth, the IWC Wage Orders, including without limitation, 4 and 5, applicable to the employment of Plaintiff and other Class Members by Defendants provides as follows:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

123. An employer shall not require an employee to work during a meal period. Labor. Code § 226.7 (a). Failure to provide a meal period in accordance with state law requires the employer to pay "the employee one additional hour of pay at the employee's regular rate of compensation for each workday the meal [...] period is not provided." *Id.* at subd. (b). In order to comply with its meal period obligation, an employer must relieve the employee of all duty, relinquish control over their activities and permit them a reasonable opportunity to take an uninterrupted 30-minute break. However, while the employer is not required to police meal breaks, an employer is required to "offer meal breaks."

124. "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes[.]" 8 CCR § 11050, § 11 (A). An employer that causes an initial violation of Wage Orders, including without limitation, 4 and 5, is subject to a civil penalty of "\$50 for each underpaid employee for each pay period the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code § 558 (a)(1).

125. Further, "an employer shall keep accurate information with respect to each employee including [...] [t]ime records showing when the employee begins and ends each work period. Meal periods [...] shall also be recorded." (Cal. Code Regs., tit. 8, § 11050 (7)(A)(3).) "Where the employer has failed to keep records required by statute, [...] imprecise evidence by the employee can provide a sufficient basis for damages." *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 961 (2005)

126. Plaintiff and other Class Members allege that Defendants are liable for unpaid premium wages for failure to provide 30-minute duty-free meal periods under Labor Code § 226.7 (a).

127. Plaintiff and other Class Members allege that Medestar and MACT failed to authorize and record 30-minute duty-free meal periods for Plaintiff. Therefore, Medestar and MACT are liable for the Labor Code § 558 penalty for violating § 11 (A) of Wage Orders, including without limitation, 4 and 5.

128. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order 4, were, upon information and belief, applicable to the employment of the Plaintiff and other Class Members.

///

130. Plaintiff alleges that Medestar and MACT failed to provide Plaintiff and other Class Members with meal breaks, or even a reasonable opportunity to take them.

131. Plaintiff and other Class Members are entitled to recover all remedies available for violations of Labor Code § 226.7 including waiting time penalties pursuant to Labor Code §§ 203 and 210. *Hall v. W. Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (additional hour is a premium wage, not a penalty)).

132. Plaintiff and other Class Members are also entitled to annual simple interest on all unpaid wages of 10%. *See* Lab. Code §§ 226.7, 1194, Civ. Code § 3289.

133. In bringing this action, Plaintiffs had to retain the services of an attorney and filed suit herein. Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 218.5 and 1194, and other applicable laws, which provide that the Court may award reasonable attorney's fees and costs.

FOURTH CAUSE OF ACTION

(Unpaid Rest Period Premiums -Violation of California Labor Code § 226.7)

(Against All Defendants and DOES 1 through 20)

134. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

135. This is an action at law to recover unpaid earnings while working during rest periods which were denied and/or interrupted. Jurisdiction in this Court is invoked pursuant to California Labor Code §§ 98.2, 200, 202, 216, 218, 218.5, 218.6, 226.7, 229, 510, 1194, 1198; Unfair Competition Law Business & Professions Code § 17200; 8 California Code Regulations Title 8, §§ 11010-11130; and California Wage Orders.

136. At all times herein set forth, the IWC Wage Orders, including without limitation, 4 and 5, applicable to Plaintiff's employment by Defendants, and the employment of and other Class Members,

1 provides as follows: An employer is required to provide its employees with a *paid* 10-minute rest break for
2 every four hours worked. Cal. Code Regs., tit. 8, § 11050 (12)(A) (emphasis added). If an employer fails to
3 provide an employee with a rest period mandated by law, the employer must pay to that employee an hour of
4 pay at that employee's regular rate of pay for each day a rest period was not provided. Labor Code § 226.7.

5 137. Plaintiff alleges that Defendants are liable to Plaintiff and other Class Members for unpaid
6 premium wages for failure to provide 10-minute duty-free rest breaks under Labor Code §§ 226.2 and 226.7.

7 138. Plaintiff alleges that Medestar and MACT failed to provide Plaintiff and other Class Members,
8 with paid 10-minute rest breaks as required by the California Labor Code.

9 139. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order
10 4, were, upon information and belief, applicable to Defendants' employment of the Plaintiff and other Class
11 Members.

12 140. Medestar and MACT are individually, jointly, and severally liable to Plaintiff and other Class
13 Members, pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order violations
14 as alleged herein.

15 141. Because Plaintiff and other Class Members did not receive a compliant rest break for any day
16 that she worked 4 hours or a major fraction thereof, as a matter of law, and she and other Class Members are
17 entitled to a rest break premium equal to one hour of wages at the regular rate of pay for each day they did
18 not receive a rest break.

19 142. Plaintiff and other Class Members are entitled to recover all remedies available for violations
20 of Labor Code § 226.7 including waiting time penalties pursuant to Labor Code §§ 203 and 210. *Hall v. W.*
21 *Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting
22 *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (additional hour is a premium wage,
23 not a penalty).

24 143. Plaintiff and other Class Members are also entitled to annual simple interest on all unpaid
25 wages of 10%. *See* Lab. Code §§ 226.7, 1194, Civ. Code § 3289.

26 144. In bringing this action, Plaintiffs had to retain the services of an attorney and filed suit herein.
27 Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs
28

1 pursuant to Labor Code §§ 218.5 and 1194, and other applicable laws, which provide that the Court may
2 award reasonable attorney's fees and costs.

3 **FIFTH CAUSE OF ACTION**

4 **(Noncompliant Wage Statements- Violation of California Labor Code § 226(a))**

5 **(Against Defendants Medestar, MACT and DOES 1 through 20)**

6 145. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully
7 set forth herein.

8 146. At all material times set forth herein, California Labor Code § 226(a) provides that every
9 employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1)
10 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
11 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
12 deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages
13 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 his or her Social Security number, (8) the name and address of the legal entity that is the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other
17 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of
18 the deductions shall be kept on file by the employer for at least three years at the place of employment or at
19 a central location within the State of California.

20 147. Defendants intentionally and willfully failed to provide Plaintiff and other Class Members with
21 complete and accurate wage statements. The deficiencies include, but are not limited to: total hours worked
22 by the employee, all deductions, provided that all deductions made on written orders of the employee may be
23 aggregated and shown as one item, the inclusive dates of the period for which the employee is paid, the name
24 of the employee and his or her Social Security number, the name and address of the legal entity that is the
25 employer, and all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee.

27 148. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and other
28 Class Members suffered injury and damage to their statutorily protected rights.

150. Plaintiff and other Class Members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with of California Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 per employee.

151. Plaintiff and other Class Members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h).

(Failure to Maintain Payroll Records - Violation of California Labor Code § 1174(d))

(Against Defendants Medestar, MACT and DOES 1 through 20)

152. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

153. Pursuant to California Labor Code §1174(d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

154. Defendants Medestar and MACT have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiff and other Class Members.

155. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiff and other Class Members suffered injury and damage to their statutorily protected rights.

156. More specifically, Plaintiff and other Class Members have been injured by Defendants' intentional and willful violation of Labor Code § 1174(d) because they were denied both their legal right and

protected interest, in having available, accurate, and complete payroll records pursuant to Labor Code § 1174(d).

SEVENTH CAUSE OF ACTION

(Deficient Pay Penalties - California Labor Code § 210)

(Against All Defendants and DOES 1 through 20)

157. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

158. At all times herein set forth, Labor Code § 210 provides that in addition to and entirely independent from any other penalty provided in the Labor Code, every person who fails to pay the wages of the employee shall be subject to an initial penalty of \$100.00 for each failure to pay each employee, and a penalty of \$200.00 for each willful or intentional violation, plus 25 percent of the amount unlawfully held.

159. As set forth herein, Defendants caused violations of Labor Code § 210.

160. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order 4, were, upon information and belief, applicable to Defendants' employment of Plaintiff and other Class Members.

161. Medestar and MACT are individually, jointly, and severally liable to Plaintiff and other Class Members, pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

162. Plaintiff and other Class Members are entitled to recover all remedies available for violations of Labor Code §§ 201.3, 203, 204, and 226.7, as provided by Labor Code § 210 and interpretive case law.

163. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 210(c) and other applicable laws.

EIGHTH CAUSE OF ACTION

(Unreimbursed Business Expenses - California Labor Code § 2802)

(Against All Defendants and DOES 1 through 50)

164. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

1 165. Pursuant to California Labor Code § 2802, an employer must reimburse its employee for all
2 necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job
3 duties in direct consequence of his or her obedience at the directions of the employer.

4 166. Medestar and MACT are Plaintiff's and other Class Members' joint employers, and each is
5 required to ensure that the employers comply with Labor Code § 2802.

6 167. Plaintiff and other Class Members incurred necessary and reasonable business-related
7 expenses and costs that were not reimbursed by Defendants. This includes, but is not limited to, a pneumonia
8 shot, and travel and moving expenses.

9 168. Defendants actually knew Plaintiff and other Class Members incurred these business expenses
10 when they were incurred and that they were reasonable and necessary for Plaintiff and other Class Members
11 to perform their job duties for Defendants. Defendants are strictly obligated to indemnify Plaintiff and other
12 Class Members for these incurred business expenses.

13 169. Plaintiff and other Class Members are also entitled to simple annual interest on all unpaid
14 business expenses of 10% from the date each expense was incurred until judgment is entered in this action.
15 Labor Code §§ 226.7, 1194; Civil Code § 3289.

16 170. Defendants have knowingly and willfully refused to indemnify Plaintiff and other Class
17 Members. As a proximate cause of the violations, Defendants have damaged Plaintiff and other Class
18 Members in amounts to be determined according to proof at trial, but in an amount in excess of the
19 jurisdictional requirements of this Court.

20 171. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order
21 4, were, upon information and belief, applicable to Defendants' employment of Plaintiff and other Class
22 Members.

23 172. Medestar and MACT are individually, jointly, and severally liable to Plaintiff and other Class
24 Members, pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order violations
25 as alleged herein.

26 173. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat.
27 Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs
28 pursuant to Labor Code §§ 218.5, 1194, and 2802(c), and other applicable laws.

NINTH CAUSE OF ACTION

(Waiting Time Penalties-Labor Code § 201, 201.3, 203)

(Against All Defendants and Does 1 through 50)

174. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

175. Labor Code § 201 provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” If an employee quits their employment, “his or her wages shall become due and payable not later than 72 hours thereafter.” Labor Code § 202.

176. Labor Code § 201.3 provides that temporary workers who are discharged are to be paid all wages pursuant to Labor Code § 201.

177. If an employer fails to pay all the wages due upon separation of employment, “the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid ... but the wage shall not continue for more than 30 days.” Labor Code § 203.

178. Medestar and MACT are Plaintiff and other Class Members’ joint employers, and each is required to ensure that the employers comply with Labor Code §§ 201, 201.3, and 203.

179. Medestar and MACT are each individually liable to Plaintiff and other Class Members pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

180. Defendants terminated Plaintiff’s employment on or about April 1, 2020. However, the Defendants willfully failed to pay all wages due as of the date of her termination or within 72 hours thereof. Therefore, Plaintiff is entitled to recovery of the Labor Code § 203 waiting time penalties against these Defendants.

181. Other class members who were former employees are similarly entitled to waiting time penalties as a result of deficient pay due to being, *inter alia*, misclassified. Therefore, Defendants willfully failed to pay all wages due as of the date of termination or within 72 hours thereof. Therefore, other Class Members are entitled to recovery of the Labor Code § 203 waiting time penalties against these Defendants.

182. In bringing this action, Plaintiffs had to retain the services of an attorney and filed suit herein. Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney’s fees and costs

pursuant to Labor Code §§ 218.5 and 1194, and other applicable laws, which provide that the Court may award reasonable attorney's fees and costs.

TENTH CAUSE OF ACTION

(Unfair Competition –Bus. & Prof. Code § 17200, et seq.)

(Against Defendants Medestar, MACT and DOES 1 through 50)

183. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

184. Medestar and MACT are the joint employers of Plaintiff and other Class Members, and each is required to ensure that Plaintiff and other Class Members employers comply with California Business and Professions Code § 17200.

185. California Business and Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

186. Plaintiff is informed and believes, and based thereon alleges, Defendants Medestar and MACT have engaged in unfair or illegal business acts and practices within the meaning of Business and Professions Code § 17200.

187. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and other Class Members, the general public, and Defendants' competitors. Accordingly, Plaintiff and other Class Members seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.

188. Defendants' activities as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

189. A violation of California Business & Professions Code § 17200, et seq., may be predicated on any illegal, unfair, or fraudulent business act or practice.

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1 190. In this instant case, Defendants' policies and practices of misclassifying employees, failing to
2 pay overtime and other proper compensation, failing to reimburse business expenses, and failing to timely pay
3 wages, are both unfair and unlawful.

4 191. As a result of the herein described violations of California law, Defendants unlawfully gained
5 an unfair advantage over other businesses and retained money that rightfully belonged to their employees.

6 192. Plaintiff has been personally and directly injured by Defendants' unlawful business acts and
7 practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

8 193. For the avoidance of doubt, this cause of action does not seek to recover any statutory fees or
9 penalties, but merely seeks restitution of the illegal windfall Defendants gained by refusing to pay Plaintiff and
10 other Class Members' unpaid wages and interest thereon.

11 194. Medestar and MACT are individually, jointly, and severally liable to Plaintiff and other Class
12 Members, because they caused the unfair, illegal, or fraudulent violations as alleged herein and they benefited
13 from them.

14 195. Pursuant to California Business & Professions Code § 17200, et seq., Plaintiff and other Class
15 Members are entitled to restitution of the wages withheld and retained by Defendants during a period that
16 commences four years prior to the filing of this Complaint; interest thereon, an award of attorney's fees
17 pursuant to Code of Civil Procedure § 1021.5, and other applicable laws; and an award of costs.

18 **ELEVENTH CAUSE OF ACTION**

19 **(Breach of Written Contract)**

20 **(Against Defendants Medestar, MACT and DOES 1 through 20)**

21 196. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully
22 set forth herein.

23 197. On or about January 4, 2020, Plaintiff and Medestar entered a written contract for Plaintiff
24 to provide temporary health care services to MACT.

25 198. MACT was an intended third-party beneficiary of the contract between Plaintiff and
26 Medestar.

27 199. Upon information and belief, during the statutory class period Medestar entered written
28 contracts with the Medestar Class Members for them to perform temporary work in California.

1 200. Upon information and belief, during the statutory class period MACT was the intended
2 third-party beneficiary of temporary service contracts with Labor Contractors such as Medestar.

3 201. Upon information and belief, Class Members provided temporary work to MACT.

4 202. Plaintiff performed all her obligations required of her to be performed in accordance with
5 the contract.

6 203. Upon information and belief, the Medestar Class Members performed all their obligations
7 required to be performed in accordance with their contracts.

8 204. Upon information and belief, the MACT Class Members performed all their obligations
9 required to be performed in accordance with their contracts.

10 205. Medestar and MACT breached their contractual obligations, which has injured Plaintiff.
11 Defendants' breach of contract includes but are not limited to: (i) misclassifying Plaintiff as an independent
12 contractor, (ii) failing to pay Plaintiff all wages for all shifts agreed upon, (iii) terminating the contract
13 without providing written notice to Plaintiff 30-days prior to the termination date, (iv) failing to provide
14 Plaintiff with the benefits of the California Labor Code and Wage Orders to which Plaintiff was entitled to
15 receive, (v) failing to indemnify Plaintiff for all reasonably incurred business expenses.

16 206. Upon information and belief, Medestar and MACT breached their contractual obligations to
17 the Class Members, which has injured them. Defendants' breach of contract includes but are not limited to:
18 (i) misclassifying Class Members as an independent contractor, (ii) failing to pay Class Members all wages
19 for all shifts agreed upon, (iii) terminating Class Members' contract without providing written notice 30-days
20 prior to the termination date, (iv) failing to provide Class Members with the benefits of the California Labor
21 Code and Wage Orders to which the Class Members were entitled to receive, (v) failing to indemnify Class
22 Members for all reasonably incurred business expenses.

23 207. As a result of Defendants' various breaches of contract, Plaintiff and other Class Members
24 suffered actual monetary damages in an amount to be proven at trial and other Class Members will continue
25 to incur damages in an amount to be proven trial, in addition to incidental and consequential damages and
26 attorney fees and costs.

27 208. Plaintiff and other Class Members are entitled to prejudgment interest of 10% for all
28 contractual breaches where an interest rate is unstated.

TWELFTH CAUSE OF ACTION

(Retaliation - Labor Code §§ 98.6, 1102.5)

(Against Defendants Medestar and MACT and DOES 1 through 20)

209. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

210. Labor Code § 98.6 prohibits retaliation by any person against any employee who has exercised any right protected under the Labor Code or Orders of the Industrial Welfare Commission.

211. Labor Code § 1102.5(b) prohibits retaliation against any employee whom the employer believes may reveal the employer's "violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

212. Labor Code § 1102.5 (c) prohibits retaliation "against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

213. Medestar and MACT are Plaintiff's joint employers, and each is required to ensure that the employers comply with Labor Code §§ 98.6 and 1102.5.

214. Medestar and MACT are individually, jointly, and severally liable to Plaintiff pursuant to Labor Code § 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

215. "In addition to other remedies available, an employer who violates this Section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this Section, to be awarded to the employee or employees who suffered the violation." Labor Code § 98.6.

216. "In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section." Labor Code § 1102.5.

217. Here, Medestar and MACT retaliated against Plaintiff after she had exercised her right, and engaged in protected activity, by questioning MACT's refusal to reimburse necessary business expenses.

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219. This is an action at law to recover damages for violation of statutes and unlawful employment practices. Plaintiff alleges she is a person protected by California laws, which protect employees from retaliation for exercising their fundamental rights protected by the Labor Code in connection with the right to reimbursed business expenses.

220. In bringing this action, Plaintiff had to retain the services of an attorney and filed suit herein. Therefore, Plaintiff intends to seek to recover reasonable attorney's fees and costs pursuant to Labor Code §§ 226(g) and 1102.5(j), and other applicable laws, which provide that the Court may award reasonable attorney's fees and costs.

(PAGA - Labor Code § 2698, et. seq.)

(Against Defendants Medestar, MACT and DOES 1 through 20)

221. Plaintiff realleges and incorporates each preceding paragraph of this Complaint as though fully set forth herein.

222. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employers for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

223. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employers has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

224. Plaintiff and other “independent contractor” medical professionals are “aggrieved employees” as defined by California Labor Code §2699(c) insofar as they are all current or former employees of Defendants Medestar and MACT, and one or more of the alleged violations was committed against them.

a. Failure to pay all minimum and regular wages;

- b. Failure to pay all overtime wages;
- c. Failure to provide accurate wage statements;
- d. Failure to provide uninterrupted duty-free meal and rest periods;
- e. Failure to reimburse business expenses; and
- f. Willfully misclassifying workers as independent contractors.

225. Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants Medestar and MACT, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 218.5, as well as all statutory penalties against Defendants Medestar and MACT, including but not limited to:

- a. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 § 11010, et seq., in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Penalties under California Labor Code § 210 amounting to 25% of the withheld wages;
- e. Waiting time penalties pursuant to Cal. Labor Code § 203 equal to 30 days of Plaintiff's wages calculated by her daily wage rate;
- f. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

226. Pursuant to California Labor Code § 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and

responsibilities, and twenty-five percent (25%) to the aggrieved employees. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff intends to seek to recover reasonable attorney's fees and costs pursuant to Labor Code §§ 210, 218.5, and 2699, and other applicable laws, which provide that the court may award reasonable attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Suzonne Windham on behalf of herself, the Class Members, and on behalf of other aggrieved current and former employees pursuant to the California Private Attorneys General Act, prays for judgment against Defendants, jointly and severally as follows:

As to the First Cause of Action – Wages Not Timely Paid

1. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

a. violated Labor Code §§ 201.3 and 204, by willfully refusing to timely pay Plaintiff and other Class Members all wages they earned;

b. are jointly and severally liable to Plaintiff and the other Class Members because Defendants caused Labor Code and IWC Wage Order violations as alleged in the First Cause of Action;

c. shall pay Plaintiff and the Class Members' compensatory damages pertaining to the balance of wages owed along with all civil or statutory penalties pursuant to Labor Code §§ 201.3, 203, 204, 210; and 1194;

2. Award Plaintiff and the Class Members simple interest on all unpaid wages of 10%. *See* Lab. Code §§ 226.7, 1194, Civ. Code § 3289;

3. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code §§ 98.2, 218.5, 510, and 1194; and

4. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action – Unpaid Overtime Wages

5. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

a. violated Labor Code §§ 510 and 1198, by willfully refusing to timely pay Plaintiff and other Class Members all overtime wages they earned;

b. are jointly and severally liable to Plaintiff and the Class Members because they caused Labor Code and IWC Wage Order violations as alleged in the Second Cause of Action;

c. shall pay Plaintiff and other Class Members' compensatory damages pertaining to the balance of wages owed along with all civil or statutory penalties pursuant to Labor Code §§ 201.3, 203, 204, and 210, 510 and 1194;

6. Award Plaintiff and the Class Members simple interest on all unpaid wages of 10%. *See* Lab. Code §§ 226.7, 1194, Civ. Code § 3289;

7. Award Plaintiff and the Class Members attorney fees and costs pursuant to Labor Code §§ 98.2, 218.5, 510, and 1194; and

8. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action – Unpaid Meal Period Premium Wages

9. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

a. violated Labor Code § 226.7, by willfully refusing to provide Plaintiff and the Class Members with uninterrupted meal periods;

b. are jointly and severally liable to Plaintiff and the other Class Members because they caused Labor Code and IWC Wage Order violations as alleged in the Third Cause of Action;

c. shall pay Plaintiff and the Class Members' statutory damages pertaining Labor Code § 226.7;

d. shall pay Plaintiff and the Class Members' damages pertaining Labor Code § 203 and 210;

10. Award Plaintiff and the Class Members simple interest on all unpaid wages of 10%. *See* Lab. Code §§ 226.7, 1194, Civ. Code § 3289;

11. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code §§ 203, 218.5; and 1194; and

12. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action – Unpaid Rest Period Premium Wages

13. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

1 a. violated Labor Code § 226.7, by willfully refusing to provide Plaintiff and other Class
2 Members with paid rest periods;

3 b. are jointly and severally liable to Plaintiff and the other Class Members because they
4 caused Labor Code and IWC Wage Order violations as alleged in the Fourth Cause of Action;

5 c. shall pay Plaintiff and the Class Members' statutory damages pertaining Labor Code §
6 226.7;

7 d. shall pay Plaintiff and the Class Members' damages pertaining Labor Code § 203 and
8 210;

9 14. Award Plaintiff and the Class Members simple interest on all unpaid wages of 10%. *See* Lab.
10 Code §§ 226.7, 1194, Civ. Code § 3289;

11 15. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code
12 §§ 203, 218.5; and 1194; and

13 16. For such other and further relief as the Court may deem just and proper.

14 **As to the Fifth Cause of Action – Noncompliant Wage Statements**

15 17. That the Court declare, adjudge and decree that Defendants Medestar and MACT:

16 a. violated Plaintiff and the other Class Members' rights pursuant to Labor Code § 226(a);

17 b. shall pay Plaintiff and the Class Members statutory damages pursuant to Labor Code
18 § 226(e)(1), as follows: "the greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not to exceed an aggregate penalty of \$4,000;

21 18. For injunctive relief to halt Defendants' discriminatory wage practices pursuant to Labor Code
22 § 226 (h);

23 19. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code
24 § 226(e)(1); and

25 20. For such other and further relief as the Court may deem just and proper.

26 **As to the Sixth Cause of Action -Failure Maintain Payroll Records**

27 21. That the Court declare, adjudge and decree that Defendants Medestar and MACT:
28

1 a. violated Plaintiff and the other Class Members' rights pursuant to Labor Code §
2 1174(d);

3 b. shall pay Plaintiff and the Class Members statutory damages pursuant to Labor Code
4 § 1174; and

5 22. For such other and further relief as the Court may deem just and proper.

6 **As to the Seventh Cause of Action – Deficient Pay Penalties**

7 23. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

8 a. violated the Labor Code § 210 as alleged in this Complaint;

9 b. shall pay Plaintiff and the Class Members statutory damages pursuant to Labor Code
10 § 210 (a)(1) and (2), as follows: pay to Plaintiff and each Class Member an initial pay period penalty of
11 \$100.00 for violating Labor Code § 210, and pay to Plaintiff and each Class Member a penalty of
12 \$200.00 for each subsequent pay period violation of Labor Code § 210;

13 c. shall pay Plaintiff and the Class Members statutory damages pursuant to Labor Code
14 § 210 (a) (2) of 25% of the amount unlawfully withheld wages due to violations of the Labor Code as
15 alleged in this Complaint;

16 d. are jointly and severally liable to Plaintiff and the other Class Members because they
17 caused Labor Code and IWC Wage Order violations as alleged in the Seventh Cause of Action; and

18 24. For such other and further relief as the Court may deem just and proper.

19 **As to the Eighth Cause of Action – Unreimbursed Business Expenses**

20 25. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

21 a. violated the Labor Code § 2802 as alleged in this Complaint;

22 b. are jointly and severally liable to Plaintiff and the other Class Members because they
23 caused Labor Code and IWC Wage Order violations as alleged in the Eighth Cause of Action;

24 c. shall indemnify Plaintiff and each Class Member all unreimbursed business expenses
25 plus simple annual interest on all unpaid business expenses of 10% from the date each expense was
26 incurred until judgment is entered in this action pursuant to Labor Code §§ 2802, 1194; Civil Code §
27 3289;

26. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code §§ 218.5, and 2802(c); and

27. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action – Waiting Time Penalties

28. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

- a. violated the Labor Code §§ 201, 201.3 and 203 as alleged in this Complaint;
- b. are jointly and severally liable to Plaintiff and the other Class Members because they caused Labor Code and IWC Wage Order violations as alleged in the Ninth Cause of Action;
- c. shall pay Plaintiff and each Class Member waiting time penalties as provided for in Labor Code § 203; and

29. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action – Unfair Competition

30. That the Court declare, adjudge and decree that Defendants Medestar and MACT:

- a. violated California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200 et seq., as alleged in this Complaint;
- b. shall disgorge to Plaintiff and the Class Members all wages Defendants unlawfully withheld and retained by Defendants during a period that commences four years (plus 178 days of COVID tolling) prior to the filing of this Complaint;
- c. are jointly and severally liable to Plaintiff and the other Class Members because they caused the unfair or illegal labor practices as alleged in the Tenth Cause of Action;
- d. are enjoined from continuing to engage in the unlawful practices alleged in this Complaint and that Defendants shall pay all fees associated with retaining a Special Master to ensure Defendants remain in compliance with the Court’s injunction;

31. Award Plaintiff and the Class Members attorney fees pursuant to Code of Civil Procedure § 1021.5, and other applicable laws;

32. Award Plaintiff and the Class Members their costs of this action; and

33. For such other and further relief as the Court may deem just and proper.

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As to the Eleventh Cause of Action – Breach of Written Contract

34. That the Court declare, adjudge and decree that:

a. Defendants Medestar and MACT breached their contract with Plaintiff and injured her;

b. Defendant Medestar breached its contracts with the Medestar Class Members and injured the Medestar Class Members;

c. Defendant MACT breached its contracts with the MACT Class Members and injured the MACT Class Members;

d. Defendant Medestar shall pay compensatory damages to Plaintiff and the Medestar Class Members in an amount to be determined at trial;

e. Defendant MACT shall pay compensatory damages to Plaintiff and the MACT Class Members in an amount to be determined at trial;

f. Defendant Medestar shall pay special damages to Plaintiff and the Medestar Class Members in an amount to be determined at trial;

g. Defendant MACT shall pay special damages to Plaintiff and the MACT Class Members in an amount to be determined at trial;

h. Defendants shall pay Plaintiff and Class Members prejudgment interest Civil Code § 3289;

35. An award of Plaintiff and the Class Members' costs of this action; and

36. For such other and further relief as the Court may deem just and proper.

As to the Twelfth Cause of Action – Retaliation

37. That the Court declare, adjudge, and decree that Defendants Medestar and MACT:

a. violated the Labor Code §§ 998.6 and 1102.5 as alleged in the Twelfth Cause of Action;

b. are jointly and severally liable to Plaintiff and the other Class Members because they caused Labor Code and IWC Wage Order violations as alleged in the Twelfth Cause of Action;

c. shall pay to Plaintiff a civil penalty not exceeding ten thousand dollars (\$10,000) per employee pursuant to Labor Code § 98.6;

d. shall pay to Plaintiff a civil penalty not exceeding ten thousand dollars (\$10,000) per employee pursuant to Labor Code § 1102.5;

e. shall pay to Plaintiff compensatory damages for emotional distress in an amount to be determined at trial;

f. shall pay to Plaintiff punitive damages in an amount to be determined at trial;

38. Award Plaintiff attorney fees and costs of suit pursuant to pursuant to Labor Code §§ 226(g) and 1102.5(j); and

39. For such other and further relief as the Court may deem just and proper.

As to the Thirteenth Cause of Action – PAGA

40. That the Court declare, adjudge and decree that:

a. Plaintiff and the Class Members are Defendants Medestar and MACT's aggrieved employees pursuant to Labor Code § 2699(c);

b. Defendants Medestar and MACT committed one or more labor violations as alleged in the Complaint;

c. Plaintiff and the Class Members are entitled to recover from Defendants Medestar and MACT their business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorney fees and costs pursuant to Labor Code § 218.5, as well as all statutory penalties against Defendants Medestar and MACT, including but not limited to:

i. penalties pursuant to Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

ii. penalties pursuant to California Code of Regulations Title 8 § 11010, et seq., in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

iii. penalties pursuant to Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,

and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

iv. penalties pursuant to Labor Code § 210 amounting to 25% of the withheld wages;

v. waiting time penalties pursuant to Labor Code § 203 of 30-days of Plaintiff's and each aggrieved employee's wages calculated by his/her daily wage rate; and

vi. any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

41. Award Plaintiff and the Class Members attorney fees and costs of suit pursuant to Labor Code §§ pursuant to Labor Code §§ 210, 218.5, and 2699; and

42. For leave to amend this Complaint to perfect Plaintiff's PAGA cause of action;

43. For such other and further relief as the Court may deem just and proper.

As to All Causes of Action.

44. An award of statutory pre- and post-judgment interest as allowed by law;

45. For leave to amend the Complaint according to proof or as discovery reveals;

46. For costs of suit, as allowed by law; and

47. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury.

Respectfully submitted,

Dated: March 1, 2021

LAW OFFICE OF KAREN J. SLOAT, APC

By: 
Karen J. Sloat, Esq.
Sarah Y. Sorensen, Esq.

HELLMICH LAW GROUP, PC

Christopher W. Hellmich, Esq.

Attorneys for Plaintiff Suzonne Windham

EXHIBIT 1

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February 18, 2021

By E-mail and U.S. Certified Mail:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Kara D. Keister
Gordan Rees Scully Mansukhani, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
[kkeister@grsm.com]

Derek S. Sachs
George J. Theofanis
Lewis Brisbois Bisgaard & Smith
2020 West El Camino Avenue, Suite 700
Sacramento, CA 95833
[derek.sachs@lewisbrisbois.com]
[george.theofanis@lewisbrisbois.com]

Re: Notice Pursuant to California Labor Code Section 2699.3

Dear Sir or Madam:

This firm represents Ms. Suzonne Windham, who was formerly jointly employed by both Medestar Locum Tenens ("Medestar") and MACT Health Board ("MACT").

Pursuant to Labor Code § 2699.3, Ms. Windham, individually and on behalf of Medestar and MACT's current and former employees, gives notice to Medestar and MACT that they have violated specific provisions of the California Labor Code.

Factual Background

Ms. Windham alleges that during her employment Medestar and MACT violated numerous provisions of the California Labor Code. Ms. Windham is a nurse practitioner and since 2019, Medestar had been recruiting her for temporary nursing positions throughout the southwest. We understand that Medestar and MACT have a contract through which Medestar recruits medical professionals to work temporarily at one or more MACT facilities.

On or about January 4, 2020, Medestar entered a written contract with Ms. Windham for her to provide nursing services to MACT at one or more of MACT's health care facilities from January 28, 2020 through May 29, 2020. As described herein, Medestar acted as a Temporary Services Employer. Labor Code § 201.3. Additionally, Medestar and MACT's conduct reveals that Medestar is also classified as a Labor Contractor and MACT as a Client Employer. Labor Code § 2810.3(a).

Medestar's contract improperly classified Ms. Windham as its independent contractor. We understand that MACT knew or should have known that Medestar intended to unlawfully misclassify Ms. Windham as an independent contractor. Further, it appears that MACT knowingly advised, permitted, encouraged, or counselled Medestar to treat Ms. Windham as an independent contractor to avoid employee status in violation of Labor Code § 2753. As such, MACT is jointly and severally liable with Medestar for Ms. Windham's misclassification.

Further, the contract provided that Medestar would pay Ms. Windham \$95.00/hour, and specified the nine-hour shifts she was to work Monday through Friday with no breaks or meal periods. Moreover, the contract provided that Medestar cannot terminate Ms. Windham's services without providing her written notice of the termination thirty (30) days before the termination date. In sum, the contract guaranteed that Medestar and MACT will employ Ms. Windham at a specific hourly rate of pay, for specific shifts listed by day and hour through May 29, 2020.

Throughout Ms. Windham's assignment at the MACT clinic, Medestar and MACT committed multiple wage and hour violations and breached several aspects of the employment contract. During her employment, Ms. Windham worked nine (9) hours per day as specified in the contract; however, she was only paid for eight (8) hours of work per day. Neither Medestar nor MACT issued a written policy to Ms. Windham regarding her right to take statutorily required meal and rest periods. The failure to provide a written policy on meal and rest breaks presumptively establishes a violation of the Labor Code, every day she worked. Ms. Windham was not provided with an uninterrupted off-duty 30-minute meal period for each shift of five hours she worked. Instead, Ms. Windham updated her charts or performed other tasks while eating lunch. She rarely was permitted uninterrupted meal or rest breaks.

Midway through the contracted assignment, Medestar told Ms. Windham that in light of AB 5 it had improperly classified her as an independent contractor, and it attempted to convert her to being an employee. However, in the process Medestar unilaterally and unlawfully decreased Ms. Windham's rate of pay to \$87.73/hour, over \$7.00 less than the contracted rate. Labor Code § 223. Ms. Windham was improperly paid at this lower rate from March 21, 2020 through April 1, 2020.

As a condition of her continued employment, Ms. Windham was required to take an inoculation against pneumonia, presumably as a prophylactic measure against contracting COVID. Ms. Windham was unlawfully required to submit to the injection as a condition of her continued employment.

On April 1, 2020, after her shift, Medestar informed Ms. Windham that her work at the MACT clinic was immediately terminated. Upon Ms. Windham's termination neither Medestar nor MACT made any effort to remedy the wage and hour violations Ms. Windham suffered from the breach of contract or being misclassified as an independent contractor. Those violations included, but are not limited to, a failure to pay wages owed to Ms. Windham (Labor Code §§201.3, 204), failure to pay overtime (Labor Code § 510), failure to provide meal and rest period premium wages(Labor Code § 226.7), failure to pay reimbursed business expenses(Labor Code § 2802), and the payment of numerous penalties including waiting time penalties(Labor Code § 203), inaccurate wage statement penalties (Labor Code § 226(a)), and deficient pay penalties(Labor Code § 210).

Upon her termination, Medestar verbally and in writing told Ms. Windham that it would reimburse her for moving expenses. Ms. Windham requested Medestar confirm it would reimburse her for the cost of a moving truck but Medestar remained silent. Ms. Windham was worried that she would not be reimbursed for the truck, so she did not rent one and had to abandon several household items so that she could immediately return to her home in Palm Desert, Riverside County, CA. Medestar also failed to reimburse her for gas on her return trip despite multiple requests and promises from Medestar to do so in violation of Labor Code § 2802.

After Ms. Windham's termination, MACT's CEO, John Alexander, demanded that she reimburse MACT the \$240.00 it paid for her inoculation. Understandably, Ms. Windham refused since the cost of the injection was a necessary and authorized business expense the employer is required to pay. Labor Code § 2802. We understand that Alexander was undeterred by Ms.

February 18, 2021

Page 3 of 3

Windham's refusal to pay for the shot and he caused MACT to retain a collection agency to pursue Ms. Windham for the recovery of the injection's cost. MACT unlawfully retaliated against Ms. Windham simply because she attempted to vindicate her rights pursuant to Labor Code § 2802. In so doing, MACT violated Labor Code § 98.6 and 1102.5.

Prior to filing this notice, on December 3, 2020, I served a written demand on Medestar and MACT for payment of Ms. Windham's unpaid wages, penalties, and other damages. Medestar or MACT refused to comply with Ms. Windham's demand for payment of her wages in violation Labor Code § 216.

An action to enforce Ms. Windham's wage and hour claims entitles her to an award of reasonable attorneys' fees and costs. Labor Code §§ 218.5, 226.7(e), 1194, 1102.5, 2802. Since Ms. Windham has retained my office in this matter, my staff and I have already expended fees in researching and evaluating her claims and drafting this letter.

PAGA

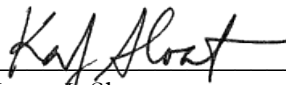
Under PAGA, an aggrieved employee may bring a civil action to recover civil penalties for violations of the California Labor Code on behalf of themselves and other employees. Labor Code § 2699, *et seq.* For all Labor Code provisions that do not specify a civil penalty, an aggrieved employee may recover a "gap filler" penalty of "one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Labor Code § 2699 (f).

Ms. Windham alleges her former joint employers, Medestar and MACT, engaged in numerous Labor Code violations including, but are not limited to: Labor Code §§ 201.3, 203, 204, 210, 216, 218.5, 223, 225.5, 226(a), 226(f), 226.7, 226.8, 510, 512, 1102.5, 1198, 2753, 2802; Industrial Welfare Commission Order No. 4-2001 ("Wage Order 4").

Conclusion

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through discovery and/or expert review Ms. Windham becomes aware of additional compensation owed to her or other former or current employees of Medestar or MACT, Ms. Windham reserves the right to revise these facts and/or add any new claims by further amending this LWDA claim letter.

Very truly yours,



Karen J. Sloat

cc:

Suzonne Windham (via email)

Chris Hellmich, Esq. (via email)

EXHIBIT 2

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Agreement for Medestar Contracted Providers

This agreement ("**Agreement**") between THMED, LLC d/b/a Medestar ("**Medestar**"), a Delaware Limited Liability Company and Suzonne M. Windham ("**Provider**") shall be effective as of 1/4/2020 ("**Effective Date**").

WHEREAS; Medestar contracts with third party healthcare facilities ("**Client**") to arrange for medical services to be provided on a Locum Tenens basis; and,
WHEREAS; Provider desires to provide medical services to Medestar's Clients on a Locum Tenens basis ("**Assignment**"); therefore,

In exchanged for good and valuable consideration, the sufficiency of which is acknowledged by Medestar and the Provider ("**Party**" or "**Parties**") the parties agree as follows:

Payments and Expenses:

- 1.1 Provider Rates:** Medestar will act as a staffing agency to facilitate the negotiation of hourly rates between Provider and Client and for each. Rates may include any of the following, but none are guaranteed on any given assignment, Daily Rate, Hourly Rate, Overtime, Call Back, Pager, Holiday, or others as agreed. Medestar shall confirm all Rates in a confirmation letter sent to the Provider prior to an assignment beginning. Provider shall notify Medestar, according to the timeline stated in the confirmation letter, of any perceived error in the rates in the confirmation letter. If no such notice is given by the Provider, the rate in the confirmation letter will be deemed accepted when the Provider starts the assignment.
- 1.2 Timesheets:** Provider will submit a timesheet, which has been signed by the Client, to Medestar by the deadline stated in the confirmation letter. If the Provider submits a timesheet after the deadline for submission, Medestar will issue the payment during the next regularly scheduled payroll cycle.
- 1.3 Transportation:** Medestar will use its best efforts to ensure the Client provides round trip travel for each assignment, including local transportation for the duration of assignment. Medestar shall not be obligated to reimburse for travel expenses which are not approved by Client prior to the Provider's purchase, or that the Provider arranges other than through Medestar.
- 1.4 Housing:** When required, and when not included in an all-inclusive rate, Medestar will provide reasonable housing accommodations on behalf of Client while Provider is either on, or en route to an assignment, in accordance with the terms stated in the confirmation letter. Provider will be responsible for all personal expenses including but not limited to meals and incidental expenses. If an all-inclusive rate has been negotiated by Provider and Client, Provider and not Medestar shall pay for housing.
- 1.5 Release and Authorization:** Provider shall review and sign Medestar's Release and Authorization which permits Medestar to release any information required for privileges relating to an assignment, including potentially confidential and protected information. Medestar will use good faith efforts to prevent any errors in reproduction, presentation, and disclosure of all such information. Provider shall release and hold Medestar harmless from all liability for any such errors made without willful misconduct on the part of Medestar, its Agents, Employees, or Clients.
- 1.6 Hospital Privileges and Licensure:** Provider agrees to provide accurate information in a timely manner to Medestar and Client to complete required privileging and/or state licensure applications. Medestar shall assist Provider in obtaining necessary documentation. As a part of hospital privileges, Provider may be required to submit to drug screening. Provider will not be required to pay for any costs relating to obtaining necessary privileges relating to an assignment.

Provider Duties:

Provider Initials DS
SMW

- 2.1 Insurance:** During the Term of this agreement, Medestar shall facilitate at its expense, professional liability insurance for professional services rendered by the Provider under this agreement in the amount of at least \$1,000,000 for each occurrence with a per annum aggregate limitation of \$3,000,000 unless Provider is eligible and enrolled in a State Compensation fund that mandates lower limits of liability. Medestar has secured and will continue to secure claims-made coverage and prior acts coverage. Medestar will purchase tail coverage in the event of any lapse or cancellation of the policy. The insurance facilitated by Medestar applies only to agreed-upon services provided by Provider during an Assignment. Medestar will not facilitate liability insurance for these limits unless and until Provider has signed and returned this Agreement to Medestar. Provider further acknowledges that Medestar will not provide malpractice insurance coverage for any assignment that is not preapproved and arranged by Medestar, including dates at a Client where the Provider has previously provided services for Medestar.
- 2.2 Standard of Care:** Provider shall provide medical services to patients of Client according to the bylaws and standards of practice among members of the same health care profession with similar training and experience in the community in which Provider performs services.
- 2.3 Billings:** Provider shall assign all billings for services rendered by Provider to the Client for which Provider performs services, and agrees that all billings for services rendered shall be processed, handled, and remain the property of any such Client. Provider agrees to assist Client in billing and collection procedures including but not limited to furnishing all information requested by Client. Provider agrees to grant the Client authority to endorse and deposit all checks and other items related to billing that may be made payable to Provider with respect to services rendered by Provider. Provider agrees to deliver to any bank or other financial institution designated by any such Client written evidence of the endorsement authority granted herein.
- 2.4 Records:** Provider shall maintain appropriate medical records in accordance with the standards and the time period set by the medical facility for which Provider renders services under this agreement and agrees that such records shall remain the property of such facility. Provider agrees to complete all dictation for all progress notes, histories, physicals, and chart documentation prior to leaving the assignment as required by Client, and to comply with all other applicable policies and procedures of Client. Provider understands and agrees that the Client has, at its discretion, the right to hold payment if such documentation is not completed upon assignment's end.
- 2.5 Services:** Provider agrees to devote full professional efforts while on assignment to provide medical services for Client. Provider shall not compete with Medestar's interests while on assignment. If Provider is requested to perform additional responsibilities for Client, affiliate of Client, or worksite of Client not covered under specific assignment, or Client refers Provider to any other facility for the benefit of the Client, Provider will not accept such additional dates or responsibilities without prior authorization from Medestar. If Provider accepts such assignment without prior approval from Medestar, Provider agrees that the assignment will be deemed to have been arranged by Medestar, and that Medestar shall be entitled to collect the recruitment fee as stated in Section 3.4 herein.
- 2.6 Limitations:** Neither party shall be liable for damages or default in performing its respective obligations under this agreement if such is out of either parties control, including government restrictions, flood, fire, strikes, or acts of thirds parties. Each party shall keep the other informed at all times concerning matters causing the delay or work stoppage.
- 2.7 Confidentiality:** Provider agrees that the terms of this agreement are confidential and shall not be disclosed to third parties.
- 2.8 Notification of Disciplinary Action:** Provider agrees to notify Client and Medestar immediately of any disciplinary or quality assurance proceedings involving Provider, including but not limited to: licensing boards, quality assurance committees, hospitals or other medical entities, medical societies, or claims of suits. Provider shall immediately notify Client and Medestar in the event any such proceedings are pending or are instituted, regardless of whether Client or Medestar may be identified as parties to the suit at any point.
- 2.9 Notification of Litigation:** Provider shall immediately notify Client and Medestar in writing of any potential or actual malpractice claims involving Provider, whether such claim took place before or during this agreement or related to services in connection with this agreement. Provider shall notify Client and Medestar immediately and in writing of any situation relating to services provided under this agreement that Provider has any reason to believe may lead to a malpractice claim. Provider understands and accepts that failure to comply with these

terms may invalidate the malpractice liability insurance provided under this agreement. Such failure to notify could lead to Provider being eliminated from Medestar's eligible roster.

2.10 Notifications: All notices by Provider shall be in writing to Medestar via certified mail, or by another method mutually agreed to by each party for the specific communication contemplated.

General Terms

3.1 Term: This agreement shall begin on the effective date and shall continue until terminated as set forth in this agreement or until a new agreement is entered into between Provider and Medestar.

3.2 Termination: Either party may terminate this agreement and Provider or Client may terminate any assignment with or without cause by providing at least a 30 day written notice prior to the cancellation of assignment. Provider agrees to provide Locum Tenens services at the location designated by Client during the entire notice period. Neither Medestar nor Client shall be obligated to pay Provider for any scheduled period for services not actually performed by Provider during such period.

3.2.1 This agreement may be terminated by Medestar, at its discretion, without prior notice to Provider upon the occurrence any of the following events:

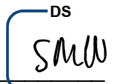
- a) Provider becomes disqualified to practice medicine in any state or Provider's license or hospital privileges are revoked, suspended, or restricted, whether voluntarily or involuntarily.
- b) Client in which Provider provides services requests that provider be removed for reasons alleged or actual, relating to competence or professional conduct.
- c) Provider fails to qualify or becomes ineligible for coverage under the terms of Medestar's malpractice insurance policy.
- d) Provider fails to perform the duties required by this agreement, violates its terms, or refuses to cooperate with Medestar.
- e) Medestar determines that Provider provided false or misleading information, or omits relevant information on Provider application materials.

3.2.2 If Client fails to meet financial obligations to Medestar for services performed by Provider, Provider understands that assignments may be canceled. Under no circumstances will Medestar be obligated to pay for services for which Medestar has not received payment from Client. Provider will not be entitled to payment for any scheduled services not actually performed; however, Medestar will use its best efforts to collect amounts due to Provider for up to thirty days of a canceled assignment when a Client does not provide a minimum thirty day notice of cancellation, other than for cause.

3.3 Non-Solicitation: During the term of this agreement and for a period of 2 years after this agreement is terminated for any reason, Provider shall not solicit or make any offer to become employed by, involved or affiliated with, directly or indirectly, any Client of Medestar whose need for coverage was disclosed to Provider by Medestar or to facility Provider provided services pursuant to this agreement unless otherwise agreed to in writing by Medestar.

3.4 Recruitment: If during the 2 year period after the later of the date that Medestar presents an opportunity with a Client to Provider; or, Provider ceases to provide services to Client under this agreement, Provider shall notify Medestar within ten days if Provider accepts a permanent position or locum tenens assignment with Client, Client affiliate, or Facility where Provider's service was performed, or to whom Client refers Provider for the Client's benefit, Provider agrees that the Client shall be responsible for paying a reassignment fee and in the event the Client or another responsible third party refuses to pay such reassignment fee, Provider will either refuse the offer, or pay a reassignment fee of \$30,000 to Medestar plus any attorneys fees incurred in the collection of such amounts.

3.5 Independent Contractor Status: Medestar acts as a staffing agency for Client and Provider and is not an agent or employee of either party. Medestar is not licensed to practice medicine and shall not influence or direct Provider's professional medical judgment. Provider is an Independent Contractor of Medestar and shall exercise independent professional judgment within the scope of their abilities and shall notify Medestar and the Client if at any time they are being requested to work beyond the scope of their professional skills. Medestar and the Client will cooperate to have the Provider reassigned to an area that is appropriate for their skills, but if such reassignment is not available, the assignment may be cancelled without requiring a thirty day notice or additional compensation to the Provider. Providers can report any concerns with the scope of their practice, or reassignment to Medestar according to the Medestar's Complaint Reporting Policy.

Provider Initials 

- 3.6 Taxes and Benefits:** As an Independent Contractor, Provider shall not have any claim against Medestar or a Client, and neither Medestar nor a client shall provide health insurance, worker's compensation or unemployment benefits to Provider. Additionally, Medestar shall not make or withhold state or federal tax payments unless required to do so by law. Medestar shall deliver Form 1099 to Provider annually within the time required by law.
- 3.7 Indemnification:** Provider hereby indemnifies Medestar, and shall hold Medestar harmless from any losses, damages, liabilities, and claims not covered, paid, or reimbursed by Medestar's medical malpractice policy that are incurred by Medestar arising out of, or as a result of, Provider rendering or failing to render medical services during the term of this agreement.
- 3.8 Governing Law:** This agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Exclusive jurisdiction and venue of any dispute or legal action relating to this agreement shall lie in the state or federal courts of Dallas County, Texas.
- 3.9 Amendments:** Any and all changes to agreement shall be agreed to, approved, and signed by both parties including both party's signatures.
- 3.10 Severability:** Each party acknowledges and agrees that each provision of this agreement shall be enforceable independently of the other. In the event, any provision is determined to be unenforceable for any reason, the parties agree to substitute a comparable provision dealing with the same subject matter that mimics the effect and intent of the unenforceable provision to the maximum extent of permissible law.
- 3.11 General Policies:** Provider agrees that performance under this agreement shall be performed in accordance with Medestar's Code of Conduct and applicable HIPPA regulations and guidelines. These are available from Medestar on request.

In witness whereof, the parties have executed this agreement as of the effective date.

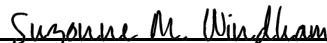
Medestar

By: _____
Medestar
1603 Lyndon B. Johnson Freeway
Suite 700
Dallas, TX 75234

Provider

Suzonne M. Windham

Name

DocuSigned by:


Signature

426254599

SSN or Tax ID

EXHIBIT 3

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From: Louis Salutare <louis.salutare@medestar.com>
Sent: Tuesday, July 21, 2020 9:06 AM
To: Sophie Kolb
Subject: FW: Revised Medestar Candidate Confirmation Letter - MACT Health Board, Inc. - Suzonne Windham, FNP

From: Garrett Youngblood <garrett.youngblood@medestar.com>
Sent: Friday, February 28, 2020 10:49 AM
To: windhamsuzonne@yahoo.com
Cc: Louis Salutare <louis.salutare@medestar.com>
Subject: Revised Medestar Candidate Confirmation Letter - MACT Health Board, Inc. - Suzonne Windham, FNP

February 27, 2020

Dear Suzonne,

This letter is to confirm your acceptance to provide locum tenens coverage at MACT Health Board, Inc.. The assignment set forth herein and payment for professional services rendered are contingent upon your completing the Medestar quality assurance process, approval of malpractice coverage, and completion of MACT Health Board, Inc.'s credentialing process. To ensure proper reporting enrollment under State Patient Compensation Fund rules and regulations, Medestar must be notified 24 hours prior to your providing professional services on any dates not listed below.

Medestar will be assisting you with your travel and lodging arrangements, if applicable. Under no circumstances is Medestar liable to reimburse travel expenses that are not arranged through Medestar or approved by MACT Health Board, Inc.. Personal expenses such as long distance phone calls, meals, gasoline, entertainment, laundry, etc. will be your responsibility.

We ask that you complete paperwork required for hospital privileges in a timely manner to ensure adequate time for processing.

Medestar agrees to pay you the following rates for the specific location and dates listed below. If holiday premium rates are applicable, please refer to the holiday call and work clause in your provider services agreement.

CLIENT: MACT Health Board, Inc.

SPECIALTY: Family Practice

PAY RATES:

- Regular Hourly Rate: \$95.00 Per hour, applied for all scheduled hours

TRAVEL / LODGING:

- Mileage Reimbursement: Not Provided (\$0.58)/mile
- Lodging: Provided
- Rental Car: Provided

- Airfare: Not Provided

ASSIGNMENT DATES:

Status	Start Time	End Time	Location	Address
Confirmed	Feb 28, 8:00 AM	Feb 28, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 2, 8:00 AM	Mar 2, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 3, 8:00 AM	Mar 3, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 4, 8:00 AM	Mar 4, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 5, 8:00 AM	Mar 5, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 6, 8:00 AM	Mar 6, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 9, 8:00 AM	Mar 9, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 10, 8:00 AM	Mar 10, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 11, 8:00 AM	Mar 11, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 12, 8:00 AM	Mar 12, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 13, 8:00 AM	Mar 13, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 16, 8:00 AM	Mar 16, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 17, 8:00 AM	Mar 17, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 18, 8:00 AM	Mar 18, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 19, 8:00 AM	Mar 19, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 20, 8:00 AM	Mar 20, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 23, 8:00 AM	Mar 23, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 24, 8:00 AM	Mar 24, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 25, 8:00 AM	Mar 25, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 26, 8:00 AM	Mar 26, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 27, 8:00 AM	Mar 27, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370

Status	Start Time	End Time	Location	Address
Confirmed	Mar 30, 8:00 AM	Mar 30, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Mar 31, 8:00 AM	Mar 31, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 1, 8:00 AM	Apr 1, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 2, 8:00 AM	Apr 2, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 3, 8:00 AM	Apr 3, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 6, 8:00 AM	Apr 6, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 7, 8:00 AM	Apr 7, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 8, 8:00 AM	Apr 8, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 9, 8:00 AM	Apr 9, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 10, 8:00 AM	Apr 10, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 13, 8:00 AM	Apr 13, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 14, 8:00 AM	Apr 14, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 15, 8:00 AM	Apr 15, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 16, 8:00 AM	Apr 16, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 17, 8:00 AM	Apr 17, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 20, 8:00 AM	Apr 20, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 21, 8:00 AM	Apr 21, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 22, 8:00 AM	Apr 22, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 23, 8:00 AM	Apr 23, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 24, 8:00 AM	Apr 24, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 27, 8:00 AM	Apr 27, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 28, 8:00 AM	Apr 28, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	Apr 29, 8:00 AM	Apr 29, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370

Status	Start Time	End Time	Location	Address
Confirmed	Apr 30, 8:00 AM	Apr 30, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 1, 8:00 AM	May 1, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 4, 8:00 AM	May 4, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 5, 8:00 AM	May 5, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 6, 8:00 AM	May 6, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 7, 8:00 AM	May 7, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 8, 8:00 AM	May 8, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 11, 8:00 AM	May 11, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 12, 8:00 AM	May 12, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 13, 8:00 AM	May 13, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 14, 8:00 AM	May 14, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 15, 8:00 AM	May 15, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 18, 8:00 AM	May 18, 5:00 PM	MACT Medical, Mariposa	5192 Hospital Road, Mariposa, CA, USA, 95338
Confirmed	May 19, 8:00 AM	May 19, 5:00 PM	MACT Medical, Mariposa	5192 Hospital Road, Mariposa, CA, USA, 95338
Confirmed	May 20, 8:00 AM	May 20, 5:00 PM	MACT Medical, Mariposa	5192 Hospital Road, Mariposa, CA, USA, 95338
Confirmed	May 21, 8:00 AM	May 21, 5:00 PM	MACT Medical, Mariposa	5192 Hospital Road, Mariposa, CA, USA, 95338
Confirmed	May 22, 8:00 AM	May 22, 5:00 PM	MACT Medical, Mariposa	5192 Hospital Road, Mariposa, CA, USA, 95338
Confirmed	May 25, 8:00 AM	May 25, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 26, 8:00 AM	May 26, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 27, 8:00 AM	May 27, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 28, 8:00 AM	May 28, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370
Confirmed	May 29, 8:00 AM	May 29, 5:00 PM	MACT Medical, Sonora	13975 Mono Way, Ste G, Sonora, CA, USA, 95370

CANCELLATION:

Should you decide to cancel any portion of this assignment, Medestar requires a 30-day written notification. You also must notify your recruiter or account manager 30 days in advance of taking any unscheduled time off during this assignment. You may be held responsible for the payment of any travel and lodging expenses incurred in relation to this assignment if you fail to give the required notice. These expenses may be deducted from any payment due to you under your provider services agreement.

If any concerns arise during your assignment, you should contact your Account Manager or Recruiter.

ASSIGNMENT ACCEPTANCE:

You agree that the terms set forth herein are confidential and shall not be disclosed to third parties. If for any reason you cannot accept this assignment or do not agree with the terms set forth herein, you must notify Medestar within 24 hours of receipt of this confirmation letter. This confirmation letter is part of your provider services agreement. By accepting this assignment, you acknowledge that you are not an employee of Medestar and that Medestar is acting as a staffing agency for MACT Health Board, Inc.

Best Regards,

Garrett Youngblood

Senior Account Manager

Medestar Locum Tenens

garrett.youngblood@medestar.com

www.medestar.com

Direct Line: (469) 480-8237 | Fax: (214) 614-5161

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