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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

ROBERT ESQUER, individually and on  
behalf of all individuals similarly situated,

Plaintiff,

vs.

MEDICAL BREAKTHROUGH  
MASSAGE CHAIRS, LLC, a California  
limited liability company; MAX LUN, an  
individual; and DOES 1 through 100,  
inclusive,

Defendants.

**CASE NO. 21STCV28968**

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

- 1. FAILURE TO COMPENSATE ALL HOURS  
WORKED IN VIOLATION OF INDUSTRIAL  
WELFARE COMMISSION ORDER NO. 4  
AND CAL. LABOR CODE §§ 200, 226, 500,  
510, 1194, 1197, AND 1198;**
- 2. MISSED MEAL BREAKS IN VIOLATION OF  
CAL. LABOR CODE §§ 200, 226.7, 512, AND  
12 CALIFORNIA CODE OF REGULATIONS  
§ 11040;**
- 3. FAILURE TO PAY MINIMUM WAGES IN  
VIOLATION OF LABOR CODE §§ 1182.12,  
1194, 1194.2, 1197;**
- 4. FAILURE TO PAY OVERTIME AND  
DOUBLETIME COMPENSATION IN  
VIOLATION OF CAL. LABOR CODE § 1194,  
ET SEQ.;**
- 5. FAILURE TO PROVIDE PROPER WAGE  
STATEMENTS IN VIOLATION OF CAL.  
LABOR CODE § 226;**
- 6. FAILURE TO PAY COMPENSATION UPON  
TERMINATION OF EMPLOYMENT IN  
VIOLATION OF CAL. LABOR CODE § 201-  
203;**
- 7. VIOLATION OF LABOR CODE §§ 2698, ET**

**SEQ. (“PAGA”);**

**8. MISCLASSIFICATION OF EMPLOYEE AS “INDEPENDENT CONTRACTOR”;**

**9. VIOLATIONS OF CAL. B&P CODE §§ 17200, *ET SEQ.*; AND**

**10. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS IN VIOLATIONS OF CAL. LABOR CODE § 1198.5.**

**11. FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF CAL. LABOR CODE § 2802**

## DEMAND FOR JURY TRIAL

Plaintiff ROBERT ESQUER, an individual and on behalf of all individuals similarly situated (“Plaintiff”), hereby brings this Second Amended Class Action Complaint for Damages against Defendants MEDICAL BREAKTHROUGH MASSAGE CHAIRS, LLC, a California limited liability company; MAX LUN, an individual; and DOES 1 through 100, inclusive, (collectively, “Defendants”) and states and alleges as follows:

## THE PARTIES

1. Plaintiff was, at all times relevant to this Complaint, an adult individual living and working in Los Angeles County, California.

2. At all times relevant to this Complaint, Defendant MEDICAL BREAKTHROUGH MASSAGE CHAIRS, LLC, a California limited liability company (“MEDICAL BREAKTHROUGH”) is and was a California limited liability company, operating as a business in the city of Los Angeles, California, and headquartered in the city of Los Angeles, California.

3. At all times relevant to this Complaint, Defendant MAX LUN, an individual, (“LUN”) is and was an individual living in California and operating as an owner of MEDICAL BREAKTHROUGH.

4. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the fictitious names DOES 1–100 but prays for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure section 474 once their names and

1 capacities become known.

2         5. Plaintiff is informed and believes, and thereon alleges, that DOES 1–100 are the  
3 partners, agents, owners, shareholders, managers, principals or employees of Defendants and/or were  
4 acting on behalf of Defendants.

5         6. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and  
6 omissions alleged herein was performed by or is attributable to Defendants and/or DOES 1–25, each  
7 acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and  
8 all Defendants were in accordance with, and represent the policy of, all Defendants.

9         7. At all times herein mentioned, Defendants, and each of them, ratified each and every  
10 act or omission complained of herein. At all times herein mentioned, Defendants, and each of them,  
11 aided and abetted the acts and omissions of each and all of the other Defendants in proximately  
12 causing the damages herein alleged.

13         8. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is  
14 in some manner intentionally, negligently or otherwise responsible for the acts, omissions,  
15 occurrences and transactions alleged herein.

16  
17                                   **JURISDICTION**

18         9. This action is properly filed in the County of Los Angeles because the acts and  
19 omissions that give rise to Plaintiff’s claims took place in the County of Los Angeles, California, as  
20 Plaintiff was employed by Defendants in the County of Los Angeles, California, and Defendants  
21 transact business in this County.

22         10. This Court has jurisdiction over Defendants because Defendants have sufficient  
23 minimum contacts with and regularly conduct business within the State of California. Moreover,  
24 Defendants’ principal place of business is located in Valencia, California.

25  
26                                   **ALTER EGO, AGENCY AND JOINT EMPLOYER**

27         11. LUN and DOES 1-100 owned and/or controlled the businesses operated by  
28 MEDICAL BREAKTHROUGH, and furthermore, LUN and DOES 1-100 exercised control over the

1 labor practices of each and every one of the employees (inclusive of Plaintiff), of each and every one  
2 of their said interests, and caused the violations at issue in this Complaint.

3 12. Based on the foregoing allegations, even if LUN and DOES 1-100 are not found to be  
4 the “employer” of Plaintiff (by way of direct employment, alter ego, or otherwise), LUN and DOES  
5 1-100, in fact, caused violations at-issue in this Complaint, thereby creating individual liability  
6 under *Labor Code* § 558.1.

7 13. Pursuant to the provisions of *Labor Code* § 558.1, the liability of LUN and DOES 1-  
8 100 (even if they were considered to be a “non-employer”) would include any and all amounts  
9 sufficient to recover any and all “underpaid wages” (inclusive of underpayments of minimum wage,  
10 overtime and doubletime) to Plaintiff.

11 14. As further referenced herein below, the viability of obtaining liability of individuals by  
12 this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th  
13 1075, 1089 where the court noted that individual liability against non-employers could be obtained  
14 through the use of § 558.1.

15 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a  
16 unity of interest and ownership between LUN, MEDICAL BREAKTHROUGH, and DOES 1-100  
17 that the individuality and separateness of defendants have ceased to exist.

18 16. Plaintiff is informed and believes, and based thereon alleges, that despite the  
19 formation of purported corporate existence, LUN, MEDICAL BREAKTHROUGH and DOES 1-100  
20 are, in reality, one and the same, including, but not limited to because:

21 a. MEDICAL BREAKTHROUGH is or was completely dominated and controlled by  
22 LUN and DOES 1-100, who personally committed the frauds and violated the laws as set forth in this  
23 complaint, and who have hidden and currently hide behind MEDICAL BREAKTHROUGH to  
24 perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

25 b. MEDICAL BREAKTHROUGH is or was completely dominated and controlled by  
26 LUN and DOES 1-100, who personally committed the frauds and violated the laws as set forth in this  
27 complaint, and who have hidden and currently hide behind MEDICAL BREAKTHROUGH to  
28 perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

1 c. LUN and DOES 1-100 have acted on behalf of MEDICAL BREAKTHROUGH, who  
2 violate, or cause to be violated, the provisions regulating minimum wages or hours and days of work  
3 in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California  
4 Labor Code Sections 203, 226, 226.7, 1193.6, 1194, or 2802.

5 d. LUN and DOES 1-100 derive actual and significant monetary benefits by and through  
6 MEDICAL BREAKTHROUGH as the funding source for their own personal expenditures.

7 e. Plaintiff is informed and believes that LUN, MEDICAL BREAKTHROUGH, and  
8 DOES 1-100, while really one and the same, were segregated to appear as though separate and  
9 distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other  
10 wrongful or inequitable purpose.

11 f. Plaintiff is informed and believes that MEDICAL BREAKTHROUGH does not or did  
12 not comply with all requisite corporate formalities to maintain a legal and separate corporate  
13 existence.

14 g. Plaintiff is informed and believes, and based thereon alleges, that the business affairs  
15 of LUN, MEDICAL BREAKTHROUGH and DOES 1-100 are, and at all times relevant were, so  
16 mixed and intermingled that the same cannot reasonably be segregated, and the same are in  
17 inextricable confusion.

18 h. MEDICAL BREAKTHROUGH is, and at all times relevant hereto were, used by  
19 LUN and DOES 1-100 as a mere shell and conduit for the conduct of certain of Defendants' affairs,  
20 and is, and was, the alter ego of DOES 1-100. The recognition of the separate existence of  
21 MEDICAL BREAKTHROUGH would not promote justice, in that it would permit Defendants to  
22 insulate themselves from liability to Plaintiff for violations of the Government Code, Civil Code,  
23 Labor Code, and other statutory violations. The corporate existence of LUN, MEDICAL  
24 BREAKTHROUGH, and DOES 1-100 should be disregarded in equity and for the ends of justice  
25 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

26 17. Accordingly, MEDICAL BREAKTHROUGH constitutes the alter ego of LUN and  
27 DOES 1-100, and the fiction of their separate corporate existence must be disregarded.

28 18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that LUN, MEDICAL BREAKTHROUGH, and DOES 1-100 are Plaintiff's joint  
2 employers by virtue of a joint enterprise, and that Plaintiff was an employee of LUN, MEDICAL  
3 BREAKTHROUGH, and DOES 1-100. Plaintiff performed services for each and every one of  
4 Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff  
5 as an employee, either directly or indirectly, and the manner in which Defendants' business was and  
6 is conducted.

### 7 **FACTUAL ALLEGATIONS**

8 19. Plaintiff worked for Defendants from on or around December 4, 2020 until March 26,  
9 2021 making \$18.00/hr.

10 20. As part of his job duties as a non-exempt hourly employee, Plaintiff and other Class  
11 Members were required by Defendants to perform tasks associated with maintaining Defendants'  
12 massage chair business.

13 21. These tasks include, but are not limited to, pulling orders, organizing the warehouse,  
14 unloading incoming stock, addressing customer complaints and concerns, dispatching technicians for  
15 assembly and repairs, and some IT work.

16 22. Plaintiff and the Class Members were scheduled to work Monday through Friday from  
17 7:00 a.m. to 4:00 p.m. However, in reality, Plaintiff and the Class Members regularly worked seven  
18 (7) days per week between 12-15 hours per day. A typical shift would run from 7:00 a.m. to 7:00 p.m.  
19 or 7:00 a.m. to 10:00 p.m.

20 23. Although Defendants utilized a computerized clock-in system called  
21 DoctorRecommendation.com, their system was programed to allow Plaintiff and the Class Members  
22 to clock-in but not out. The system would then register only eight (8) hours of work per day for each  
23 employee, thus not reflecting their true hours worked.

24 24. Plaintiff and the Class Members were not paid for all hours worked. Defendants would  
25 pay Plaintiff and the Class Members for either only eight (8) hours of work at their flat rate, or only  
26 for their overtime and double-time hours at their flat rate.

27 25. There were only one or two rare occasions that Plaintiff and the Class Members were  
28 paid at their overtime and double-time rates.

1           26. Plaintiff and the Class Members were not given their legally mandated 30-minute  
2 meal break before the 5<sup>th</sup> hour of their shift. Plaintiff and the Class Members worked shifts of more  
3 than six (6) hours.

4           27. While Defendants would allow Plaintiff and other similarly aggrieved employees to  
5 take their rest breaks, meal breaks were specifically prohibited by Defendants.

6           28. Plaintiff and the Class Members were not reimbursed for their business expenses.  
7 Specifically, Plaintiff and the Class Members were required to use their personal cell phones to  
8 communicate with Defendants and Defendants' customers.

9           29. Defendants would provide customers with employees' personal cell phone numbers  
10 and customers would call employees directly.

11           30. Further, Plaintiff's manager Mark (last name unknown), owner LUN, and Plaintiff's  
12 direct manager Matthew Nicolai would contact Plaintiff and the Class Members on their personal cell  
13 phones for work-related purposes through Defendants' Google Voice account.

14           31. Plaintiff made at least one request to Defendants for a work phone, however, this  
15 request was ignored.

16           32. As a result of Defendants' failure to pay Plaintiff and other Class Members for their  
17 owed hourly wages, overtime wages, doubletime wages, and failing to note deductions on wage  
18 statements, Defendants maintained inaccurate payroll records, issued inaccurate wage statements to  
19 Plaintiff and other Class Members, and failed to pay all final wages owed to Plaintiff and other Class  
20 Members upon their separation of employment from Defendants.

21           33. As a result of Defendants' failure to pay all hours worked, and meal break premium  
22 wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to  
23 Plaintiff and Class Members. As a result of these issues, Defendants committed violations of the  
24 Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4").

25           34. Defendants completely controlled the work schedule of Plaintiff, the Class Members  
26 and Sub-Class 1, by mandating their shift, assigning them to specific projects such as unloading  
27 trucks, organizing stock within the warehouse, and all other tasks associated with maintaining  
28 Defendants' warehouse.

1           35. Despite this level of control, Defendants willfully misclassified Sub-Class 1 as  
2 independent contractors, in an attempt to avoid their obligations under the Labor Code. Specifically,  
3 Defendants treated Sub-Class 1 as independent contractors to avoid paying them their entitled  
4 minimum wage, overtime wages, doubletime wages, providing meal breaks, and providing accurate  
5 wage statements. Accordingly, by misclassifying Sub-Class 1 as independent contractors, Defendants  
6 have violated Labor Code § 226.8.

7           36. Throughout the course of Sub-Class 1s' employment, through and including the last  
8 day that they worked, Defendants completely controlled their performance, including the manner in  
9 which they were to perform their required duties as follows:

10               a. Defendants provided Sub-Class 1 with a majority of supplies and costs as  
11 required to perform their duties such as machinery used to unload and load stock, transport the  
12 stock from loading docks to the warehouse, and move stock to different locations within the  
13 warehouse;

14               b. Sub-Class 1 was told what days and hours they were required to work, where  
15 to go and what to do;

16               c. Sub-Class 1 had no ability to turn down jobs assigned to them by  
17 Defendants; and

18               d. Defendants had the right to discipline Sub-Class 1 and fire them at will.

19           37. Additional factors confirming Sub-Class 1's status as employees include:

20               a. Sub-Class 1 was not engaged in a distinct occupation or business;

21               b. Sub-Class 1 was not required to make any major investments in equipment  
22 or materials to provide the services;

23               c. Sub-Class 1's occupation and work is usually done under the direction of the  
24 principal or a supervisor; and

25               d. Sub-Class 1 believed by going to work for Defendants they were creating an  
26 employer-employee -relationship.

27           38. Defendants have engaged in, and continue to engage in, unfair business practices in  
28 California by practicing, employing and utilizing the employment practices and policies outlined

1 above.

2 39. Defendants' utilization of such unfair business practices constitutes unfair competition  
3 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such  
4 unfair business practices deprives Plaintiff, the Class Members and Sub-Class 1 of the general  
5 minimum working standards and entitlements due them under California law and the Industrial  
6 Welfare Commission wage orders as described herein.

7 40. As a direct result of the wage and hour violations herein alleged, Plaintiff, the Class  
8 Members and Sub-Class 1 have suffered, and continue to suffer, substantial losses related to the use  
9 and enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in seeking to  
10 compel Defendants to fully perform their obligations under state law, all to their respective damage in  
11 amounts according to proof at the time of trial.

12 **CLASS ACTION ALLEGATIONS**

13 41. Plaintiff brings this action as a class action on behalves of the following defined Class:  
14 The Class: All individuals who have been, or currently are, employed by Defendants as "non-  
15 exempt employees" during the Class Period. Excluded from the Class are employees who work only  
16 administrative and/or managerial functions only as exempt employees.

17 The Sub-Class 1: All Class members who were intentionally and willfully misclassified by  
18 Defendants as Independent Contractors during the Class Period.

19 42. "Class Period" is defined as the time from August 3, 2017 through the date that  
20 judgment is entered, based upon information and belief that the violations, as described more fully  
21 hereinafter, began long before August 3, 2017 and are continuing. Plaintiff and members of Class  
22 herein reserve the right to amend this Complaint to reflect a different Class Period as discovery in this  
23 matter proceeds.

24 43. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during  
25 the Class Period, hundreds of Class members have been employed by Defendants as non-exempt  
26 employees in the State of California. Because so many persons have been employed by Defendants  
27 in this capacity, the members of the Plaintiffs' Class are so numerous that joinder of all members is  
28 impossible and/or impracticable.

1           44.    Commonality: Common questions of law, in fact, exist as to all members of the  
2 Plaintiff's Class *and predominate over any questions affecting solely individual members of the*  
3 *Plaintiff's Class. Among the questions of law and fact, that are relevant to the adjudication of Class*  
4 *members claims are as follows:*

5           (a)    Whether Defendants had/have policies and/or practices that result in hours worked not  
6 being properly compensated;

7           (b)    Whether Defendants unlawfully failed to properly calculate and pay overtime and  
8 double time compensation due and owing to the Plaintiff and members of the Class in violation of  
9 Labor Code § 1194;

10          (c)    Whether Defendants' policy and/or practice of failing to accurately pay overtime to  
11 Plaintiff and members of the Class violates applicable provisions of California Law, including Labor  
12 Code sections, applicable Industrial Welfare Commission Orders, and applicable State Regulations;

13          (d)    Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class members  
14 of meal breaks and pay for missed breaks pursuant to Labor Code §§ 200, 226.7, 512, and 12 CCR §  
15 11040;

16          (e)    Whether Defendants had/have a policy and/or practice that results in the presentation  
17 of inaccurate wage statements to Plaintiff and the Class;

18          (f)    Whether Defendants unlawfully and/or willfully failed to furnish Plaintiff and Class  
19 members with accurate, itemized wage statements upon payment of wages in violation of Labor Code  
20 § 226;

21          (g)    Whether Defendants had/have policies and/or practices that result in hours worked not  
22 being properly compensated;

23          (h)    Whether Defendants had/have a policy and/or practice of not paying Class members  
24 all final wages owed upon termination of employment;

25          (i)    Whether Defendants unlawfully and/or willfully failed to promptly pay compensation  
26 owing to Plaintiff and Class members upon termination of their employment in violation of Labor  
27 Code §§ 201-203;

28          (j)    Whether Plaintiff and Class members sustained damages, and if so, the proper

1 measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;

2 (k) Whether Defendants violated Labor Code 226.8 by their willful misclassification of  
3 Sub-Class 1 as "Independent Contractors"; and,

4 (l) Whether Defendants violated the Unfair Competition Law of California, §17200, *et*  
5 *seq.*, by violating the above-cited provisions, and treating Plaintiff and Class members unfairly by  
6 failing to pay all wages due and for all hours worked, depriving them of meal and rest breaks and  
7 failing to provide and pay for missed breaks, failing to pay wages upon termination, failing to furnish  
8 an accurate, itemized wage statement upon payment of wages and failing to pay all compensation due  
9 upon discharge.

10 45. Typicality: Plaintiff's claims are typical of the members of the Plaintiff's Class.  
11 Plaintiff, like other members of the Class working for Defendant in California, were subjected to  
12 Defendant's policies and/or practices set forth above. Plaintiff's job duties were, and are, typical of  
13 those of other Class members.

14 46. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests  
15 of the members of the Class and have retained counsel competent and experienced in both class  
16 action and employment litigation.

17 47. Questions of law or fact common to Class members predominate over any questions  
18 solely affecting individual Class members and class action is superior to other available methods for  
19 the fair and efficient adjudication of this controversy.

20 48. Class action treatment will allow a large number of similarly situated Class members  
21 to simultaneously and efficiently prosecute his common claims in a single forum without the needless  
22 duplication of effort and expense that numerous individual actions would entail.

23 49. In addition, a class action will serve the important public interest of permitting Class  
24 members harmed by Defendant's unlawful policies and/or practices to effectively pursue recovery of  
25 the sums owed to them.

26 50. Plaintiff knows of no difficulty which will be encountered in the management of this  
27 litigation which would preclude its maintenance as a class action.

28 **FIRST CAUSE OF ACTION**

**FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF INDUSTRIAL  
WELFARE COMMISSION ORDER NO. 4 AND CAL. LABOR CODE §§ 200, 226, 500, 510,  
1194, 1197, AND 1198**

51. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

52. At all times relevant herein, Defendants were required to compensate its non-exempt employees for all hours worked, pursuant to Industrial Welfare Commission Order 4, and Labor Code §§ 200, 226, 500, 510, 1197, 1194 and 1198.

53. For the four (4) years preceding the filing of this action, Defendants failed to compensate Plaintiff and the Class for all hours worked by not compensating them for work performed as discussed herein.

54. As alleged above, Plaintiff and the Class were not paid the correct minimum wage, overtime wage or double time rate for all the hours worked.

55. Under the aforementioned wage orders and regulations, Plaintiff and the Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this Complaint, plus reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5, 1194, and penalties pursuant to Labor Code §§ 203 and 226.

56. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial.

57. Plaintiff and the Class are thus entitled to recover nominal, actual and compensatory damages in amount according to proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

58. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial.

59. Defendants' conduct described herein violates Industrial Welfare Commission Order 4, and Labor Code §§ 200, 203, 218.5, 226, 558, 1194, and 1198. Therefore, pursuant to 12 CCR § 11040 and Labor Code §§ 203, 218.5, 226, 558, 1194 and 1198, Plaintiff and the Class are entitled to recover damages for the nonpayment of wages of all hours worked that were improperly deducted and/or not counted as a result of Defendants' policies, liquidated damages for underpayment of minimum wages, penalties, reasonable attorneys' fees, expenses, and costs of suit.

60. WHEREFORE, Plaintiff requests relief as hereinafter provided.

## SECOND CAUSE OF ACTION

**MISSED MEAL AND REST BREAKS IN VIOLATION OF CAL. LABOR CODE §§ 200,  
226.7, 512, AND 12 CALIFORNIA CODE OF REGULATIONS § 11040**

61. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained in all preceding paragraphs.

62. Throughout the employment of Plaintiff and the Class, Defendants failed to provide meal breaks as required by law.

63. In addition, Defendants failed to pay Plaintiff and the Class the full statutory penalty for all missed meal periods.

64. Plaintiff and the Class are entitled to recover additional compensation for all meal and periods that were missed, but not paid for during their employment, plus penalties pursuant to Labor Code §§ 226.7, and 558

65. Defendants' conduct described herein violates the Industrial Welfare Commission Order 4-2001 sections 10 and 11, and Labor Code §§ 200, 226, 226.7, 512, 558, and 1198, and California Code of Regulations § 11040.

66. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial and has suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, and lost interest on such monies in seeking to compel Defendants to fully perform their obligation under state law. Plaintiff and the Class are thus entitled to recover nominal, actual, and compensatory damages in an amount according to proof at time of trial.



74. Pursuant to Labor Code § 1194, Plaintiff requests that the court award reasonable attorneys' fees and costs incurred by Plaintiff in this action.

75. In addition, pursuant to Labor Code §1194.2, Plaintiff and the Class are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

**FOURTH CAUSE OF ACTION**

**FAILURE TO PAY OVERTIME AND DOUBLE TIME COMPENSATIONIN VIOLATION**

**OF CAL. LABOR CODE SECTION 1194, *et seq.***

76. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, all preceding paragraphs.

77. Pursuant to the applicable Industrial Welfare Commission Order and Labor Code §§ 200, 226, 500, 510, 1194, and 1198, Defendants were required to compensate Plaintiff and the Class for all overtime work performed for the benefit of Defendants, which is calculated at one and one-half (1-1/2) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day; with double time after eight (8) hours on the seventh day of any work week, or after 12 hours in any work day.

78. Plaintiff and the Class were non-exempt employees entitled to the protections of the Industrial Welfare Commission and Labor Code §§ 200, 226, 500, 510, 1194, and 1198. During the course of Plaintiff's and the Class' employment, Defendants failed to compensate Plaintiff and the Class for all overtime and double-time hours worked as required under the aforementioned labor codes and regulations.

79. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all overtime and double time wages earned and all hours worked.

80. As a direct result, Plaintiff and the Class have suffered, and continues to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under

1 state law, all to his damage in amounts according to proof at time of trial, but in amounts in excess of  
2 the minimum jurisdiction of this Court.

3 81. Defendants have committed the acts alleged herein knowingly and willfully, with the  
4 wrongful and deliberate intention of injuring Plaintiff, from improper motives amounting to malice,  
5 and in conscious disregard of Plaintiff's and the Class' rights. Plaintiff and the Class are thus entitled  
6 to recover nominal, actual and compensatory damages in amounts according to proof at time of trial,  
7 but in amounts in excess of the minimum jurisdiction of this Court.

8 82. Defendants' conduct described herein violates the Industrial Welfare Commission  
9 Orders and Labor Code §§ 200, 226, 500, 510, and 1198. Therefore, pursuant to Labor Code §§ 200,  
10 203, 226, 226.7, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balance of  
11 overtime compensation Defendants owe Plaintiff and the Class plus interest, penalties, attorneys'  
12 fees, expenses, and costs of suit.

13 83. WHEREFORE, Plaintiff requests relief as hereinafter provided.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE PROPER WAGE STATEMENTS IN VIOLATION OF CAL.**

16 **LABOR CODE § 226**

17 84. Plaintiff re-alleges and incorporates herein by reference all preceding paragraphs as  
18 though each such Paragraph were fully set forth herein.

19 85. Labor Code §226(a) sets forth reporting requirements for employers when they pay  
20 wages, as follows:

21 "Every employer shall . . . at the time of each payment of wages, furnish his or her employees  
22 . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the  
23 employee . . . (8) the name and address of the legal entity that is the employer..."

24 Section (e) provides: "An employee suffering injury as a result of a knowing and intentional  
25 failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all  
26 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
27 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
28 aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and

1 reasonable attorneys' fees."

2 86. Defendants failed to accurately record the regular and overtime hours worked by  
3 Plaintiff and the Class, and total wages due.

4 87. Plaintiff and the Class were damaged by this failure to provide accurate wage  
5 statements because, among other things, Plaintiff was unable to determine the proper amount of  
6 wages actually owed to him, and whether he had received full compensation therefore.

7 88. Plaintiff requests recovery of Labor Code § 226(e) penalties according to proof, as  
8 well as interest, attorneys' fees and costs pursuant to Labor Code §226(e), and all other damages,  
9 attorneys' fees, costs, expenses and interest permitted by statute.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PAY COMPENSATION UPON TERMINATION OF EMPLOYMENT IN**  
12 **VIOLATION OF CAL. LABOR CODE § 201-203**

13 89. Plaintiff hereby re-alleges and incorporates by reference all preceding paragraphs.  
14 This cause of action is pled against all Defendants.

15 90. Labor Code § 201 provides, in relevant part, "[i]f an employer discharges an  
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

17 91. Labor Code § 202 provides, in relevant part, "[i]f an employee not having a written  
18 contract for a definite period quits his or her employment, his or her wages shall become due and  
19 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of  
20 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
21 quitting."

22 92. Pursuant to Labor Code § 201, upon Plaintiff's and Class members' terminations,  
23 Defendants were required to pay all earned wages.

24 93. Defendants failed to compensate Plaintiff and Class members their entitled wages by  
25 unlawfully misclassifying them, failing to compensate them for all hours worked including overtime,  
26 and failing to provide wage statements reflecting the accurate number of hours worked per pay  
27 period. Plaintiff and the Class members' wages remained unpaid even after their separation from  
28 employment.

1 **SEVENTH CAUSE OF ACTION**

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

3 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and  
4 every allegation set forth above.

5 95. On May 28, 2021, Plaintiff filed a notice with the Labor Workforce and Development  
6 Agency (“LWDA”) at their website pursuant to the Private Attorney General Act, California Labor  
7 Code §§ 2698, *et seq.* (“PAGA”) regarding Defendants. This notice was also sent to the Defendants  
8 that same day via certified mail.

9 96. PAGA permits Plaintiffs to recover civil penalties for the violation(s) of the Labor  
10 Code sections enumerated in Labor Code section 2699.5.

11 97. PAGA provides as follows: “[n]otwithstanding any other provision of law, a Plaintiff  
12 may as a matter of right amend an existing complaint to add a cause of action arising under this part  
13 at any time within 60 days of the time periods specified in this part.”

14 98. Defendants’ conduct, as alleged herein, violates numerous sections of the California  
15 Labor Code including, but not limited to, the following:

16 a. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code  
17 §§ 226.7 and 512, 516, 558 and 1198 by failing to provide all legally required meal period  
18 premiums to Plaintiff and Class Members;

19 b. Defendants violated Labor Code §§ 510, 1194, 1194.2, 1197, 1198 by failing to  
20 pay all worked overtime hours to Plaintiff and other Class Members;

21 c. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code  
22 §§ 200, 226, 226.7, 500, 510, 1197, 1194, and 1198 by failing to Pay Plaintiff and Class  
23 Members for all hours actually worked;

24 d. Defendants violated Labor Code § 226 by failing to provide Plaintiff and Class  
25 Members with accurate and compliant itemized wage statements; and

26 e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final  
27 wages due, including, but not limited to meal and rest period premium wages to Plaintiff and  
28 Class Members upon their separation of employment.

1 f. Defendants violated Labor Code § 226.8 via their willful misclassification of  
2 Plaintiff and similarly aggrieved employees as independent contractors.

3 99. California Labor Code section 1174 provides that “[e]very person employing labor in  
4 this state shall ... [k]eep a record showing the names and addresses of all employees employed and  
5 the ages of all minors” and “[keep, at a central location in the state or at the plants or establishments  
6 at which employees are employed, payroll records showing the hours worked daily by and the wages  
7 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
8 employed at the respective plants or establishments...”

9 100. California Labor Code section 210 provides: “In addition to, and entirely independent  
10 and apart from, any other penalty provided in this article, every person who fails to pay the wages of  
11 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall  
12 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for  
13 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional  
14 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the  
15 amount unlawfully withheld.”

16 101. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf  
17 of an employer who violates, or causes to be violated, a section of this chapter or any provision  
18 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject  
19 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid  
20 employee for each pay period for which the employee was underpaid in addition to an amount  
21 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)  
22 for each underpaid employee for each pay period for which the employee was underpaid in addition  
23 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section  
24 shall be paid to the affected employee.” Labor Code section 558(c) provides “[t]he civil penalties  
25 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

26 102. Defendants, at all times relevant to this complaint, were employers or persons acting  
27 on behalf of an employer(s) who violated Plaintiffs’ rights by violating various sections of the  
28 California Labor Code as set forth above.

103. As set forth above, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable order of the IWC. Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees.

104. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the State of California against Defendant, in addition to other remedies, for violations of California Labor Code sections 200, 201, 202, 203, 204, 210, 226(a), 226.8, 510, 558, 1174, 1194, 1197, 1197.1, and 1198.

### EIGHTH CAUSE OF ACTION

**FOR MISCLASSIFICATION AS “INDEPENDENT CONTRACTOR**

105. Plaintiff realleges and incorporates by reference all of the allegations in the preceding paragraphs, as though set forth in full herein.

106. Throughout Sub-Class 1's employment with Defendants Sub-Class 1 were employees of Defendants, and each of them based upon their alter ego relationship, as defined by California Labor Code § 350(b). However, Defendants purposefully misclassified Sub-Class 1 as "Independent Contractors" because, by so doing, Defendants lowered their cost of doing business by means of, but not limited to, the following:

a. Defendants did not report or pay the employer's share of federal or state payroll taxes with respect to any of the funds paid to Sub-Class 1, as required by required by federal and state law;

b. Defendants did not provide or pay for Workers Compensation insurance for

Sub-Class 1;

c. Defendants did not provide or pay for State Disability insurance for Sub-Class  
1; and

d. Defendants did not provide or pay for benefits to Sub-Class 1 that other of Defendants' employees received.

107. As a direct and proximate result of the aforementioned violations of California law committed by Defendants, Sub-Class 1 has suffered, and continues to suffer, substantial losses related to the loss of the employer's share of payroll taxes, the use and enjoyment of such employee benefits, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their damage in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court. Sub-Class 1 is thus entitled to recover nominal, actual and compensatory damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

108. Defendants' failure to classify Sub-Class 1 as employees, in violation of California law, was knowing and intentional. Defendants have refused to classify Sub-Class 1 as employees for false and fraudulent reasons. The decision to misclassify Sub-Class 1 as "independent contractors" was made, maintained, and enforced by Defendants, by and through their officers, directors and/or managing agents, and was done willfully, maliciously, oppressively, and fraudulently, with the wrongful and deliberate intention of injuring Sub-Class 1, and with a conscious disregard for Sub-Class 1's rights and Defendants' obligations under California laws, all of which has deprived Sub-Class 1 of their property and legal rights. Therefore, in addition to all other types of relief requested herein, Sub-Class 1 is entitled to recover punitive and exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

109. Pursuant to Labor Code 226.8, Defendants' willful misclassification entitles Sub-Class 1 to civil penalties of between \$5,000 to \$25,000.

110. Pursuant to Labor Code 226.8(e)(1), Defendants should be ordered to prominently display a notice on its company’s website that states: a court “has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.”

WHEREFORE, Plaintiff is therefore entitled to relief as set forth herein.

## NINTH CAUSE OF ACTION

**VIOLATIONS OF CAL. B&P CODE §§ 17200, *et seq.***

111. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 39

1 above, as though each such Paragraph were fully set forth herein

2 112. Section 17200 of the California Business and Professions Code prohibits any  
3 unlawful, unfair or fraudulent business act or practice.

4 113. Plaintiff and the Class have suffered and continues to suffer injury in fact and  
5 monetary damages as a result of Defendants' actions. The actions by Defendants as herein alleged  
6 amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair  
7 business practices in violation of Business and Professions Code § 17200, *et seq.*

8 114. Defendants' conduct as herein alleged has damaged Plaintiff by denying him wages  
9 due and payable, and by failing to provide proper wage statements. Defendants' actions are thus  
10 substantially injurious to Plaintiff causing him injury in fact and loss of money.

11 115. As a result of such conduct, Defendants have unlawfully and unfairly obtained monies  
12 due to Plaintiff.

13 116. The amount of wages due Plaintiff can be readily determined from Defendants'  
14 records. Plaintiff is entitled to restitution of monies due and obtained by Defendants during the  
15 period of last 4 years as a result of Defendants' unlawful and unfair conduct.

16 117. Defendants course of conduct, acts, and practices in violation of the California law as  
17 mentioned in each paragraph above constitutes a separate and independent violation of §17200 etc. of  
18 the Business and Professions Code.

19 118. The harm to Plaintiff of being wrongfully denied lawfully earned and unpaid wages  
20 outweighs the utility, if any, of Defendants' policies and practices and, therefore, Defendants' actions  
21 described herein constitute an unfair business practice or act within the meaning of Business and  
22 Professions Code § 17200.

23 119. Defendants' conduct described herein threatens an incipient violation of California's  
24 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly  
25 threatens or harms competition.

26 120. Defendants' course of conduct described herein further violates Business and  
27 Professions Code 17200 in that it is fraudulent, improper, and unfair.

28 121. The unlawful, unfair, and fraudulent business practices and acts of Defendants as

described herein above have injured Plaintiff in that he was wrongfully denied the timely and full payment of wages due to him.

### **TENTH CAUSE OF ACTION**

#### **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS IN VIOLATION OF CAL. LABOR CODE § 1198.5**

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

123. California Labor Code section 432 requires employers to give an employee, upon request, a copy of any instrument that the employee or applicant has signed relating to the obtaining or holding of employment.

124. California Labor Code section 1198.5 requires employers to allow current and former employees' access to their personnel files and record that relate to the employee's performance or to any grievance concerning the employee.

125. An employer who receives a written or oral request to inspect or copy records pertaining to a current or former employee's wage information shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request pursuant to Labor Code §226.

126. Defendants demonstrated a consistent policy of discouraging and ultimately preventing Plaintiff from accessing his employment records and reviewing their personnel files. Plaintiff sent a letter demanding their wage records via USPS certified mail on April 1, 2021, but Defendants failed to respond to this request to date. Defendants thereby violated Labor Code §§ 226, 432 and 1198.5.

127. Failure to properly comply with a request for inspection of employment records is a criminal infraction which subjects the employer to monetary penalties of \$750. Therefore, Plaintiff seeks an order to compel compliance and is entitled to costs and attorneys' fees.

128. WHEREFORE, Plaintiff requests relief as hereinafter provided.

### **ELEVENTH CAUSE OF ACTION**

1                   **FAILURE TO REIMBURSE REQUIRED BUSINESS EXPENSES**  
2                   **IN VIOLATION OF CAL. LABOR CODE § 2802**

3           129. Plaintiff hereby re-alleges and incorporate by reference all preceding paragraphs as  
4 though set fully forth herein.

5           130. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee  
6 for all necessary expenditures or losses incurred by the employee in direct consequences of the  
7 discharge of his or her duties.”

8           131. Plaintiff and members of the Class have incurred reasonable and necessary business  
9 expenses in the course of completing their job duties, which were not reimbursed by Defendants.  
10 More specifically, these expenses include personal cell phone monthly expenses Plaintiff and  
11 members of the Class incurred as a result of their use of personal cell phones to communicate with  
12 Defendants and Defendants’ customers.

13           132. An employer that knows or has reason to know that an employee has incurred work-  
14 related expenses must reimburse the employee, even if the employee does not request reimbursement.

15           133. Plaintiff and members of the Class are entitled to reimbursement for these necessary  
16 expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802.

17           134. WHEREFORE, Plaintiff requests relief as hereinafter provided.  
18  
19

20                   **PRAYER FOR RELIEF**

21           WHEREFORE, Plaintiff prays for judgment as follows:

- 22           1. For nominal damages;
- 23           2. For compensatory damages;
- 24           3. For equitable relief in the nature of declaratory relief, restitution of all monies due to  
25 Plaintiffs, and disgorgement of profits from the unlawful business practices of Defendants, and  
26 accounting;
- 27           4. For penalties permitted by Labor Code §§ 201, 202, 203, 204, 210, 225.5, 223, 226,  
28 226.3, 226, 226.3, 226.7, 227.3, 226.8, 432, 510, 512, 558, 1171, 1173, 1173.1, 1194, 1194.2, 1198.5,

1 2698 et seq., and all other applicable sections;

2 5. For interest accrued to date;

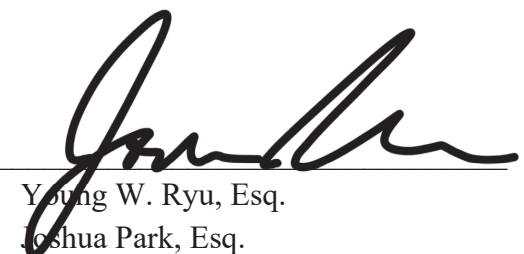
3 6. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 226 and  
4 1194;

5 7. For reasonable attorneys' fees pursuant to Labor Code §§ 226 and 1194; and

6 8. For all such other and further relief that the Court may deem just and proper.

7  
8  
9 DATED: January 27, 2023

LOYR, APC

10  
11 By: 

12 Young W. Ryu, Esq.

13 Joshua Park, Esq.

14 Henna H. Choi, Esq.

15 Attorneys for Plaintiff ROBERT ESQUER  
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DATED: January 27, 2023

By:   
YOUNG W. RYU, Esq.  
JOSHUA PARK, Esq.  
HENNA H. CHOI, Esq.  
Attorneys for Plaintiff ROBERT ESQUER

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**PROOF OF SERVICE**

I am over 18 years old and not a party to this action. My business address is 1055 West 7<sup>th</sup> Street, Suite 2290, Los Angeles, CA 90017.

On February 7, 2023, I served the following **SECOND AMENDED CLASS ACTION COMPLAINT** on the interested parties as follows:

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

MELISSA T. DAUGHERTY, SB# 227451

E-Mail: Melissa.Daugherty@lewisbrisbois.com

ANDREW J. SOKOLOWSKI, SB# 226685

E-Mail: Andrew.Sokolowski@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendants MEDICAL BREAKTHROUGH MASSAGE CHAIRS, LLC and  
MAX LUN

**[X] BY ELECTRONIC SERVICE:**

My electronic service address is joshua.park@loywr.com. I served the foregoing documents on the interested party at the electronic service addresses (e-mail addresses) listed above.

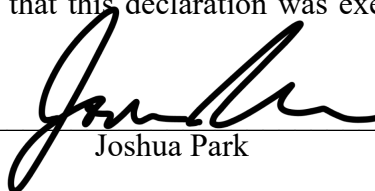
**STATE OF CALIFORNIA**

LABOR AND WORKFORCE DEVELOPMENT AGENCY (LWDA)

**[X] BY ELECTRONIC SERVICE:**

I served the foregoing document to the LWDA by uploading the foregoing documents on the LWDA Website (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 7, 2023, in Los Angeles, California.

  
Joshua Park