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7 on behalf of himself and all others similarly situated

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 21 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10
11 ANTHONY SHAUN COOPER, on behalf of
12 himself and all others similarly situated,

13 Plaintiffs,

14 v.

15 LUCAS HEALTH PARTNERS, LLC, a
California limited liability company doing
16 business as MORNING SIDE ADULT
HEALTH CARE CENTER; LUCAS
17 HEALTH CARE, INC., a suspended
California corporation; VARDAN ASIKIAN,
18 an individual; and DOES 1 through 100,
inclusive,

19 Defendants.
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CASE NO.: 20STCV20050

[Assigned to Hon. Hon. Maren E. Nelson,
Dept. 17]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PAY DUE WAGES AT TERMINATION;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATION OF LABOR CODE § 2802;
8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. CIVIL PENALTIES UNDER LABOR CODE § 558;
12. CIVIL PENALTIES UNDER LABOR CODE § 1197.1; and
13. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff ANTHONY SHAUN COOPER ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure section 382, on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by LUCAS HEALTH PARTNERS, LLC, a California limited liability company doing business as MORNING SIDE ADULT HEALTH CARE CENTER, and any of its respective subsidiaries or affiliated companies within the State of California ("MORNINGSIDE"); LUCAS HEALTH CARE, INC., a suspended California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("LUCAS HEALTH CARE") and VARDAN ASIKIAN, an individual ("ASIKIAN" and collectively with MORNINGSIDE, LUCAS HEALTH CARE, and DOES 1 through 100, as further defined below, "Defendants").

2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Defendants as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein. and on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

3. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a policy or practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated and Aggrieved Employees routinely working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours

1 worked on the seventh consecutive work day in a work week by, among other things, failing to
2 accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
3 employees to work off the clock, including, without limitation, by auto-deducting meal periods not
4 taken and requiring employees to take calls or otherwise communicate with patients and their
5 relatives outside of working hours; editing, and/or manipulation of time entries; paying straight
6 pay instead of overtime; and failing to pay overtime hours at the proper overtime rate of pay by,
7 including without limitation, failing to calculate overtime based on the legal minimum wage
8 pursuant to Los Angeles Municipal Code section 187.01, *et seq.* when applicable, to the detriment
9 of Plaintiff and other similarly situated and Aggrieved Employees.

10 4. For at least four (4) years prior to the filing of this Action and continuing to the
11 present, Defendants have had a policy or practice of failing to pay minimum wages to Plaintiff and
12 other non-exempt employees in the State of California in violation of California state wage and
13 hour laws as a result of, among other things, Defendants failing to accurately track and/or pay for
14 all hours actually worked; engaging, suffering, or permitting employees to work off the clock,
15 including, without limitation, by auto-deducting meal periods not taken and requiring employees
16 to take calls or otherwise communicate with patients and their relatives outside of working hours;
17 and editing and/or manipulation of time entries; paying straight pay instead of overtime; and
18 failing to pay overtime hours at the proper overtime rate of pay by, including without limitation,
19 failing to calculate overtime based on the legal minimum wage pursuant to Los Angeles Municipal
20 Code section 187.01, *et seq.*

21 5. For at least four (4) years prior to the filing of this Action and continuing to the
22 present, Defendants have had a policy or practice of failing to provide Plaintiff and other similarly
23 situated and Aggrieved Employees or former employees within the State of California a thirty (30)
24 minute uninterrupted meal period for days on which the employees worked more than five (5)
25 hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
26 employees worked in excess of ten (10) hours in a work day, and failing to provide compensation
27 for such unprovided meal periods as required by California wage and hour laws.

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1 6. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants have had a policy or practice of failing to provide Plaintiff and similarly
3 situated and Aggrieved Employees or former employees within the State of California rest periods
4 of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to
5 provide compensation for such unprovided rest periods as required by California wage and hour
6 laws.

7 7. For at least three (3) years prior to the filing of this action and continuing to the
8 present, Defendants have failed to pay Plaintiff and other similarly situated and Aggrieved
9 Employees the full amount of their wages owed to them upon termination and/or resignation as
10 required by Labor Code sections 201 and 202 as a result of their failure to pay overtime wages as
11 herein mentioned.

12 8. For at least one (1) year prior to the filing of this Action and continuing to the
13 present, Defendants have had a policy or practice of failing to furnish Plaintiff and similarly
14 situated and Aggrieved Employees within the State of California with itemized wage statements
15 that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate; the name and address of the legal entity that is the employer; and other such
18 information as required by Labor Code section 226, subdivision (a). As a result thereof,
19 Defendants have further failed to furnish employees with an accurate calculation of gross and
20 gross wages earned, as well as gross and net wages paid.

21 9. For at least three (3) years prior to the filing of this Action and continuing to the
22 present, Defendants have had a consistent policy of failing to indemnify Plaintiff and other
23 similarly situated and Aggrieved Employees or former employees within the State of California
24 for expenses incurred by, including without limitation, purchase and maintenance of a cellular
25 phone for GPS navigation while driving and to take calls or otherwise communicate with patients,
26 patients' relatives and Defendants, in furtherance of their work duties, in violation of, among other
27 authorities, Labor Code section 2802.

28 10. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to

1 California Business and Professions Code sections 17200 through 17208, also seeks (an)
2 injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
3 establishment of appropriate and effective means to prevent further violations, as well as all
4 monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are
5 entitled, as well as restitution of amounts owed.

6 11. At all relevant times mentioned herein, Defendants, at times, failed to provide
7 Plaintiff and other Aggrieved Employees with, or permit them inspection of, records pertaining to
8 their employment, including wage statements and similar payroll documents under Labor Code
9 section 226, documents signed to obtain or hold employment under Labor Code section 432,
10 personnel records under Labor Code section 1198.5, and time records under Labor Code section
11 1174, to the detriment of Plaintiff and all other Aggrieved Employees. As a result of these
12 occasional violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558
13 and 2699.

14 12. At all relevant times mentioned herein, Defendants have had a policy or practice of
15 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
16 that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
17 paid for between the 16th and 26th day of the month during which the labor was performed, and
18 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
19 for between the 1st and 10th day of the following month."

20 13. At all relevant times mentioned herein, Defendants have had a policy or practice of
21 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
22 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved
23 employees with the rates of pay and overtime rates of pay applicable to their employment;
24 allowances claimed as part of the minimum wage; the regular payday designated by Employers;
25 the name, address, and telephone number of the workers' compensation insurance carrier;
26 information regarding paid sick leave; and other pertinent information required to be disclosed by
27 Defendants under Labor Code section 2810.5.

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14. At all relevant times mentioned herein, Defendants occasionally failed to provide Plaintiff and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California law and Los Angeles municipal ordinances, and also did not permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and all other aggrieved employees.

15. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 204, 203, 204, 210, 226, 226.3, 226.7, 246, 432, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 2802, 2810.5, Los Angeles Municipal Code 187.1, *et seq.* and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, reimbursement for expenses incurred in furtherance of work duties, penalties, other such provisions of California law, and reasonable attorneys' fees and costs.

PARTIES

A. Plaintiff

16. Plaintiff, ANTHONY SHAUN COOPER, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, driving a van, picking up and dropping off patients from their homes, assisting them into and out of the van, and serving food to patients. Plaintiff worked for Defendants from approximately August of 2019 through on or about January of 2020.

B. Defendants

17. Plaintiff is informed and believes and based thereon alleges that defendant MORNINGSIDE is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

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1 18. Plaintiff is informed and believes and based thereon alleges that defendant LUCAS
2 HEALTH CARE is, and at all times relevant hereto was, a suspended California corporation
3 organized and existing under and by virtue of the laws of the State of California and doing
4 business in the County of Los Angeles, State of California.

5 19. Plaintiff is informed and believes, and based thereon alleges, that defendant
6 ASIKIAN is, and at all times relevant hereto was, an individual residing in California, as well as
7 an owner or managing agent of MORNINGSIDE, LUCAS HEALTH CARE, and DOES 1 through
8 50, as further defined below. Plaintiff is further informed and believes and based thereon alleges
9 that ASIKIAN violated, or caused to be violated, the above-referenced and below-referenced
10 Labor Code provisions in violation of Labor Code section 558.1.

11 20. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
13 Plaintiffs, who therefore sues defendants by such fictitious names under Code of Civil Procedure
14 section 474. Plaintiffs are informed and believe and based thereon allege that each of the
15 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
16 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true
17 names and capacities of the defendants designated hereinafter as DOES when such identities
18 become known. Plaintiffs are informed and believe, and based thereon allege, that each defendant
19 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
20 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
21 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
22 reference is made to "Defendants," it shall include MORNINGSIDE, LUCAS, VARDAN, and
23 any of their parent, subsidiary, or affiliated companies within the State of California, as well as
24 DOES 1 through 100 identified herein.

25 **JOINT LIABILITY ALLEGATIONS**

26 21. Plaintiff is informed and believes and based thereon alleges that all the times
27 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
28 representative, joint venture or co-conspirator of each of the other defendants, either actually or

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such
2 agency, employment, joint venture, and conspiracy.

3 22. All of the acts and conduct described herein of each and every corporate defendant
4 was duly authorized, ordered, and directed by the respective and collective defendant corporate
5 employers, and the officers and management-level employees of said corporate employers. In
6 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
7 their said employees, agents, and representatives, and each of them; and upon completion of the
8 said employees, agents, and representatives, and each of them; and upon completion of the
9 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
10 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
11 acquiesced, authorized, and approved of each and all of the said acts and conduct of the
12 aforementioned corporate employees, agents and representatives.

13 23. Plaintiff is further informed and believes and based thereon allege that ASIKIAN
14 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
15 provisions in violation of Labor Code section 558.1.

16 24. Plaintiff is informed and believes, and based thereon alleges, that there exists such
17 a unity of interest and ownership between Defendants, and each of them, that their individuality
18 and separateness have ceased to exist.

19 25. Plaintiff is informed and believes, and based thereon alleges that despite the
20 formation of the purported corporate existence of MORNINGSIDE, LUCAS HEALTH CARE,
21 and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one
22 and the same with ASIKIAN and DOES 51 through 100 ("Individual Defendants"), and each of
23 them, due to, but not limited to, the following reasons:

24 a. The Alter Ego Defendants are completely dominated and controlled by the
25 Individual Defendants, or some of them, who personally committed the wrongful and illegal acts
26 and violated the laws as set forth in this Complaint, and who has hidden and currently hide behind
27 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some other
28 wrongful or inequitable purpose;

b. The Individual Defendants derive actual and significant monetary benefits by and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as the funding source for the Individual Defendants' own personal expenditures;

c. Plaintiff is informed and believes and thereon alleges that the Individual Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose;

d. Plaintiff is informed and believes and thereon alleges that the business affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned herein were, the alter egos of the Individual Defendants;

e. The recognition of the separate existence of the Individual Defendants and the Alter Ego Defendants would promote injustice insofar that it would permit defendants to insulate themselves from liability to Plaintiff for violations of the California Government Code, Civil Code, Labor Code, and other statutory violations. The corporate existence of these defendants should thus be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff, and all other similarly situated and aggrieved employees, herein;

f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be disregarded;

26. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based thereon alleges that Defendants, and each of them, are joint employers.

JURISDICTION

27. Jurisdiction exists in the Superior Court of the State of California pursuant to Code

1 of Civil Procedure section 410.10.

2 28. Venue is proper in Los Angeles County, California pursuant to Code of Civil
3 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
4 causes of action complained of herein arose; the county in which the employment relationship
5 began; the county in which performance of the employment contract, or part of it, between
6 Plaintiff and Defendants was due to be performed; the county in which the employment contract,
7 or part of it, between Plaintiff and Defendants was actually performed; the unlawful acts alleged
8 herein have a direct effect on Plaintiff and those similarly situated and aggrieved within Los
9 Angeles County and the State of California, and because Defendants employ numerous Class
10 Members in Los Angeles County and the State of California.

11 29. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
12 Defendants during the applicable statutory period and suffered one or more of the Labor Code
13 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term
14 “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor
15 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq.
16 (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current
17 and former employees of Defendants during the Civil Penalty Period.

18 30. Specifically, Plaintiff seeks to recover PAGA civil penalties through a
19 representative action permitted by PAGA and the California Supreme Court in, among other
20 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,
21 class certification of the PAGA allegations described herein is not required.

22 31. During the period beginning one (1) year preceding the provision of notice to the
23 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
24 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3,
25 226.7, 246, et seq., 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5,
26 among others.

27 32. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
28 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees

1 within the statutory period, to bring a civil action to recover civil penalties pursuant to the
2 procedures specified in Labor Code section 2699.3.

3 33. On or around May 22, 2020, Plaintiff provided written notice pursuant to Labor
4 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
5 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
6 as well as by certified mail, with return receipt requested to Defendants, and each of them.

7 34. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A). the LWDA did not
8 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
9 calendar days of the May 22, 2020 postmarked date of the herein-described notice sent by Plaintiff
10 to the LWDA and Defendants.

11 35. Plaintiff also seeks to recover the PAGA civil penalties through a representative
12 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
13 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
14 PAGA allegations described herein is not required.

15 **FACTUAL BACKGROUND**

16 36. Plaintiff and other similarly situated and Aggrieved Employees have not been paid,
17 during the relevant liability periods, wages for all time worked, including overtime wages, as a
18 result of, including but not limited to, failing to pay overtime wages to Plaintiff and other non-
19 exempt employees in the State of California in violation of California state wage and hour laws as
20 a result of, without limitation, Plaintiff, others similarly situated and Aggrieved Employees
21 working over eight (8) hours per day, forty (40) hours per week or seven (7) consecutive work
22 days in a work week without being properly compensated for the hours worked in excess of (8)
23 hours per day, forty (40) hours per week, or seven (7) consecutive work days in a workweek at the
24 proper overtime rate of pay. Specifically, among other things, Defendants had a policy or practice
25 of failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or
26 permitting employees to work off the clock, including, without limitation, by auto-deducting meal
27 periods not taken and requiring employees to take calls or otherwise communicate with patients
28 and their relatives outside of working hours; editing and/or manipulation of time entries; paying

1 straight pay instead of overtime; and failing to pay overtime hours at the proper overtime rate of
2 pay by, including, without limitation, failing to calculate overtime based on the legal minimum
3 wage pursuant to Los Angeles Municipal Code section 187.01, *et seq.* when applicable.

4 37. Plaintiff, others similarly situated and Aggrieved Employees have not been paid
5 during the relevant liability periods, minimum wages for all regular hours worked, as a result of,
6 among other things, Defendants failing to accurately track and/or pay for all hours actually
7 worked; engaging, suffering, or permitting employees to work off the clock, including, without
8 limitation, by auto-deducting meal periods not taken and requiring employees to take calls or
9 otherwise communicate with patients and their relatives outside of working hours; editing, and/or
10 manipulation of time entries; paying straight pay instead of overtime; and failing to pay overtime
11 hours at the proper overtime rate of pay by, including without limitation, failing to calculate
12 overtime based on the legal minimum wage pursuant to Los Angeles Municipal Code section
13 187.01, *et seq.* when applicable, to the detriment of Plaintiff and other similarly situated and
14 aggrieved.

15 38. Defendants have had a consistent policy or practice of failing during the relevant
16 liability periods, Plaintiff, similarly situated current or former employees and Aggrieved
17 Employees within the State of California a thirty (30) minute, uninterrupted, and timely meal
18 period for days on which the employees worked more than five (5) hours in a workday; a second
19 thirty (30) minute, uninterrupted, and timely meal period for days on which employees worked in
20 excess of ten (10) hours in a workday; and/or compensation for such unprovided meal periods as
21 required by California wage and hour laws.

22 39. Defendants have had a consistent policy or practice of failing to provide Plaintiff,
23 similarly situated current or former employees and Aggrieved Employees within the State of
24 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
25 thereof and failing to provide compensation for such unprovided rest periods as required by
26 California wage and hour laws.

27 40. At the time Plaintiff's employment and the employment of other former employees
28 of Defendants ended, Defendants willfully failed to pay overtime and minimum wages at the

proper rate and failed to pay one hour of wages in lieu of each non-compliant meal and/or rest period, among other things.

41. Defendants have failed to comply with Labor Code section 226, subdivision (a) by not providing itemized wage statements accurately showing, including but not limited to, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name and address of the employer; and other such information as required by Labor Code section 226, subdivision (a).

42. Defendants have failed to reimburse Plaintiff, similarly situated employees and Aggrieved Employees, during the relevant liability periods, as required under Labor Code section 2802 for the costs incurred by, including but not limited to, purchase and maintenance of a cellular phone for GPS navigation while driving and to take calls or otherwise communicate with patients, patients' relatives, and Defendants, in furtherance of their work duties, in violation of, among other authorities, Labor Code section 2802.

43. Plaintiff, on behalf of himself and on behalf of Class Members, brings this action, pursuant to California Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

44. At all relevant times mentioned herein, Defendants, at times, failed to provide Plaintiff and Aggrieved Employees with, or permit them inspection of, records pertaining to their employment, including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of these occasional violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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1 45. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
3 that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
4 paid for between the 16th and 26th day of the month during which the labor was performed, and
5 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
6 for between the 1st and 10th day of the following month.”

7 46. At all relevant times mentioned herein, Defendants have had a policy or practice of
8 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
9 Protection Act of 2011) by, among other things, failing to provide Plaintiff and Aggrieved
10 Employees with the rates of pay and overtime rates of pay applicable to their employment;
11 allowances claimed as part of the minimum wage; the regular payday designated by Employers;
12 the name, address, and telephone number of the workers’ compensation insurance carrier;
13 information regarding paid sick leave; and other pertinent information required to be disclosed by
14 Defendants under Labor Code section 2810.5.

15 47. At all relevant times mentioned herein, Defendants occasionally failed to provide
16 Plaintiff and Aggrieved Employees with the amount of paid sick leave required to be provided
17 pursuant to California law and Los Angeles municipal ordinances, and also did not permit its use
18 upon request as contemplated under California laws, to the detriment of Plaintiff and Aggrieved
19 Employees.

20 48. Plaintiff, on behalf of himself and on behalf of Class Members, brings this action
21 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 246, 432, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 2802, 2810.5, and
23 California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages,
24 payment of premium wages for missed meal and rest periods, reimbursement for expenses
25 incurred in furtherance of work duties, penalties, other such provisions of California law, and
26 reasonable attorneys’ fees and costs.

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1 49. Plaintiff and other similarly situated and aggrieved employees or former employees
2 at all times pertinent hereto were not exempt from the payment of overtime wages, minimum
3 wages, payment of premium wages for missed rest periods, waiting time penalties, wage statement
4 penalties, reimbursement for expenses incurred in furtherance of job duties, and other such
5 provisions of California law, and the implementing rules and regulations of the IWC California
6 Wage Orders.

7 **CLASS ACTION ALLEGATIONS**

8 50. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
9 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of
10 all current and former non-exempt employees of Defendants within the State of California at any
11 time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that
12 notice of the class action is provided to the class (collectively referred to as "Class Members").

13 51. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
14 (b) to amend or modify the class description with greater specificity or further division into
15 subclasses or limitation to particular issues.

16 52. This action has been brought and may properly be maintained as a class action
17 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
18 community of interest in the litigation and the proposed Class is easily ascertainable.

19 **A. Numerosity**

20 53. The potential Class Members as defined are so numerous that joinder of all the
21 members of the Class is impracticable. While the precise number of Class Members has not been
22 determined yet, Plaintiff is informed and believes that there are over twenty-six (26) Class
23 Members employed by Defendants within the State of California.

24 54. Accounting for employee turnover during the relevant periods necessarily increases
25 this number substantially. Plaintiff alleges Defendants' employment records would provide
26 information as to the number and location of all Class Members. Joinder of all members of the
27 proposed Class is not practicable.

28 / / /

1 **B. Commonality**

2 55. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
5 to adequately track, and therefore adequately pay, wages for time worked
6 by Class Members?
- 7 (b) Did Defendants violate Labor Code sections 510, 1194, and 1197 by editing
8 and/or manipulating Class Members' time entries to their detriment?
- 9 (c) Did Defendants violate Labor Code sections 510, 1194, and 1197 by
10 engaging, suffering or permitting Class Members to work off the clock,
11 including, without limitation, by auto-deducting meal periods not taken?
- 12 (d) Did Defendants violate Labor Code sections 510, 1194, and 1197 by
13 engaging, suffering or permitting Class Members to work off the clock,
14 including, without limitation, by requiring Class Members' to take calls or
15 otherwise communicate with patients and their relatives outside of working
16 hours?
- 17 (e) Did Defendants violate Labor Code sections 510 and 1194 by paying Class
18 Members straight pay instead overtime pay?
- 19 (f) Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
20 Class Members overtime at the proper rate of pay?
- 21 (g) Did Defendants violate Labor Code section 1197 by paying Class Members
22 an hourly rate less than the legal minimum wage in the City of Los
23 Angeles?
- 24 (h) Are Class Members entitled to liquidated damages under Labor Code
25 section 1194.2 for Defendants' failure to pay minimum wages for all hours
26 worked?
- 27 (i) Did Defendants violate Labor Code section 512 by not providing Class
28 Members with compliant meal periods?

- 1 (j) Did Defendants violate Labor Code section 226.7 by not providing Class
2 Members with additional wages for missed or interrupted meal periods?
- 3 (k) Did Defendants violate Labor Code section 512 by not providing Class
4 Members with rest periods?
- 5 (l) Did Defendants violate Labor Code section 226.7 by not providing Class
6 Members with additional wages for missed rest periods?
- 7 (m) Did Defendants violate Labor Code sections 201 and 202 by failing to pay
8 Class Members upon termination or resignation all wages earned?
- 9 (n) Are Defendants liable to Class Members for penalty wages under Labor
10 Code section 203?
- 11 (o) Did Defendants violate Labor Code section 226, subdivision (a) by not
12 furnishing Class Members with accurate wage statements?
- 13 (p) Did Defendants violate Labor Code section 2802 by not reimbursing Class
14 Members for work-related expenses, including without limitation, purchase
15 and maintenance of a cellular phone, in furtherance of work duties?
- 16 (q) Did Defendants violate the Unfair Competition Law, Business and
17 Professions Code section 17200, *et seq.*, by their unlawful practices as
18 alleged herein?
- 19 (r) Are Class Members entitled to restitution of wages under Business and
20 Professions Code section 17203?
- 21 (s) Are Class Members entitled to costs and attorneys' fees?
- 22 (t) Are Class Members entitled to interest?

23 **C. Typicality**

24 56. The claims of Plaintiff herein alleged are typical of those claims which could be
25 alleged by any Class members, and the relief sought is typical of the relief which would be sought
26 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
27 damages arising out of and caused by Defendants' common course of conduct in violation of laws
28 and regulations that have the force and effect of law and statutes as alleged herein.

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1 62. At all times relevant to this Complaint, Labor Code section 510 further provided
2 that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than
3 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
4 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
5 rate of pay."

6 63. At all times mentioned, Plaintiff and Class Members, worked for Defendants
7 during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours
8 in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
9 overtime wages for all hours worked as a result of, including but not limited to, Defendants failing
10 to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
11 employees to work off the clock, including, without limitation, by auto-deducting meal periods not
12 taken and requiring employees to take calls or otherwise communicate with patients and their
13 relatives outside of working hours; editing and/or manipulation of time entries; paying straight pay
14 instead of overtime; and failing to pay overtime hours at the proper overtime rate of pay by,
15 including without limitation, failing to calculate overtime based on the legal minimum wage
16 pursuant to Los Angeles Municipal Code section 187.01, *et seq.* when applicable, to Plaintiff and
17 other similarly situated employees in the State of California.

18 64. Accordingly, by requiring Plaintiff and Class Members to work greater than eight
19 (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without
20 properly compensating overtime wages at the proper overtime rate of pay, Defendants willfully
21 violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC
22 Wage Orders, and California law.

23 65. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
24 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery
25 of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
26 Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code
27 section 3287.

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1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 66. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

5 67. At all relevant times, Plaintiff and Class Members were employees of Defendants
6 covered by Labor Code section 1197 and applicable Wage Orders.

7 68. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 69. Defendants failed to pay Plaintiff and Class Members minimum wages for all hours
11 worked as a result of, including but not limited to, Defendants failing to accurately track and/or
12 pay for all hours actually worked; engaging, suffering, or permitting employees to work off the
13 clock, including, without limitation, by auto-deducting meal periods not taken and requiring
14 employees to take calls or otherwise communicate with patients and their relatives outside of
15 working hours; editing and/or manipulation of time entries; and paying a rate less than the legal
16 minimum wage pursuant to Los Angeles Municipal Code section 187.01, *et seq.*, when applicable.

17 70. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
19 for all minutes worked or otherwise due.

20 71. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
21 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
22 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
23 damages, reasonable attorneys' fees and costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **(Failure to Provide Meal Periods – Against All Defendants)**

26 72. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

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1 73. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
2 shall employ an employee for a work period of more than five (5) hours without a timely meal
3 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
4 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
5 (10) hours per day without providing the employee with a second timely meal period of not less
6 than thirty (30) minutes in which the employee is relieved of all of his or her duties.

7 74. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
8 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
9 Commission, the employer shall pay the employee one (1) additional hour of pay at the
10 employee's regular rate of compensation for each workday that the meal period is not provided.

11 75. Plaintiff and Class Members were during the relevant time period, not provided
12 with requisite uninterrupted meal periods as contemplated under the law.

13 76. By their failure to provide Plaintiff and Class Members with the meal periods
14 contemplated by Labor Code section 512, among other California authorities, and failing to
15 provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
16 violated the provisions of Labor Code section 512 and applicable Wage Orders.

17 77. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
19 owed for missed, untimely, interrupted and/or incomplete meal periods.

20 78. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
21 additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to
22 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
23 Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil
24 Code section 3287.

25 **FOURTH CAUSE OF ACTION**

26 **(Failure to Provide Rest Periods – Against All Defendants)**

27 79. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

1 80. California law and applicable Wage Orders require that employers “authorize and
2 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
3 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
4 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
5 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
6 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
7 provided thirty (30) minutes of paid rest period.

8 81. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
9 with a meal period or rest period as provided in the applicable Wage Order of the Industrial
10 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
11 employee’s regular rate of compensation for each work day that the rest period is not provided.

12 82. By their failure to provide Plaintiff and Class Members with the rest periods
13 contemplated by California law, and failure to provide compensation for such unprovided rest
14 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section
15 226.7 and applicable Wage Orders.

16 83. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
17 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
18 owed for missed rest periods.

19 84. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and
20 Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of
21 their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

22 **FIFTH CAUSE OF ACTION**

23 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

24 85. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

26 86. At all relevant times, Plaintiff and Class Members were employees of Defendants
27 covered by Labor Code sections 201 and 202.

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1 87. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
2 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
3 Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge
4 immediately upon termination. Employees who resigned were entitled to payment of all wages
5 earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
6 gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at
7 the time of resignation.

8 88. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due
9 to the failure to provide overtime and minimum wages mentioned above, failed to pay Plaintiff
10 and Class Members all wages earned and unpaid, including overtime wages and minimum wages,
11 prior to resignation or termination in accordance with Labor Code sections 201 or 202.

12 89. Defendants' failure to pay Plaintiff and Class Members all wages earned prior to
13 termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the
14 ability to pay all wages earned by Plaintiff and Class Members at the time of termination in
15 accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices
16 incompatible with the requirements of Labor Code sections 201 and 202.

17 90. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members are
18 entitled to all wages earned prior to termination that Defendants failed to pay them.

19 91. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
20 penalty wages from the date their earned and unpaid wages were due, upon termination, until paid,
21 up to a maximum of thirty (30) days.

22 92. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
23 suffered damages in an amount subject to proof, to the extent they were not paid for all wages
24 earned prior to termination.

25 93. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
26 suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages
27 owed under Labor Code section 203.

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1 94. Pursuant to Labor Code sections 203, 218 and 218.5, Code of Civil Procedure
2 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
3 to recover the full amount of their unpaid wages, and penalty wages under Labor Code section
4 203, reasonable attorneys' fees on their unpaid wages, and costs of suit.

5 95. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

8 **SIXTH CAUSE OF ACTION**

9 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

10 96. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

12 97. At all relevant times, Plaintiff and Class Members were employees of Defendants
13 covered by Labor Code section 226.

14 98. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
15 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate
16 itemized statement that accurately reflects, among other things, gross wages earned; total hours
17 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate; and the name and address of the legal
19 entity that is the employer.

20 99. Plaintiff is informed and believe, and based thereon alleges. that at all relevant
21 times, Defendants, due to the failure to pay due wages for the reasons described herein, also
22 failed to issue wage statements that accurately set out amounts due to, among other things, gross
23 wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate; and the
25 name and address of the legal entity that is the employer.

26 100. Thus, Defendants failed to provide Plaintiff and Class Members accurate itemized
27 wage statements in accordance with Labor Code section 226, subdivision (a).

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1 101. Defendants' failure to provide Plaintiff and Class Members with accurate wage
2 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
3 and Class Members with accurate wage statements, but willfully provided wage statements that
4 Defendants knew were not accurate.

5 102. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
6 suffered injury. The absence of accurate information on their wage statements has delayed timely
7 challenge to Defendants' unlawful pay practices; requires discovery and mathematical
8 computations to determine the amount of wages owed; causes difficulty and expense in
9 attempting to reconstruct time and pay records; and led to submission of inaccurate information
10 about wages and amounts deducted from wages to state and federal governmental agencies.

11 103. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
12 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
13 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a
14 subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

15 104. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
16 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
17 recover the full amount of penalties due under Labor Code section 226, subdivision (e),
18 reasonable attorneys' fees, and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

20 **(Violation of Labor Code § 2802 – Against All Defendants)**

21 105. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this First Amended Complaint as though full set forth hereat.

23 106. At all relevant times, Plaintiff and Class Members were employees of Defendants
24 covered by Labor Code section 2802.

25 107. California Labor Code section 2802, subdivision (a) provides that "an employer
26 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
27 employee in direct consequence of the discharge of his or her duties . . ."

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1 108. At all relevant times, Defendants failed and refused, and still fail and refuse, to
2 reimburse Plaintiff and Class Members for the costs incurred, including but not limited to, cellular
3 phone use for GPS navigation while driving and to take calls or otherwise communicate with
4 patients, patients' relatives and Defendants.

5 109. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
6 suffered damages in an amount subject to proof, to the extent they were not reimbursed for costs
7 incurred in purchase and maintenance of a cellular phone use for GPS navigation while driving
8 and to take calls or otherwise communicate with patients, patients' relatives and Defendants, in
9 furtherance of their work duties for Defendants.

10 110. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
11 Civil Code section 3287, Plaintiff and Class Members are entitled to recover actual costs incurred
12 for their cellular phone use, reasonable attorney's fees and costs of suit.

13 **EIGHTH CAUSE OF ACTION**

14 **(Unfair Competition – Against All Defendants)**

15 111. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

17 112. The unlawful conduct of Defendants alleged herein constitutes unfair competition
18 within the meaning of Business and Professions Code section 17200. Due to their unlawful
19 business practices in violation of the Labor Code, Defendants have gained a competitive
20 advantage over other comparable companies doing business in the State of California that comply
21 with their obligations to compensate employees in accordance with the Labor Code.

22 113. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
23 Members have suffered injury in fact and lost money or property. Plaintiff and Class Members
24 have been deprived of overtime compensation; minimum wage compensation; provision of meal
25 breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof;
26 provision of all wages upon termination or resignation; from being provided with accurate wage
27 statements; and reimbursement for costs incurred in furtherance of job duties, among other things.

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1 114. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
2 Members are entitled to restitution of all wages and other monies owed to them under the Labor
3 Code, including interest thereon, in which they had a property interest and which Defendants
4 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of
5 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
6 becoming unjustly enriched by their failure to comply with the Labor Code.

7 115. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
8 Procedure section 1032 and interest under Civil Code section 3287.

9 **NINETH CAUSE OF ACTION**

10 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

11 116. Plaintiff realleges and incorporates by reference all the allegations contained in the
12 preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

13 117. At all relevant times herein, Labor Code section 204, requires and required that:
14 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
15 for between the 16th and 26th day of the month during which the labor was performed, and labor
16 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
17 between the 1st and 10th day of the following month.”

18 118. At all relevant times herein, Labor Code section 210, subdivision (a) states and
19 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
20 this article, every person who fails to pay the wages of each employee as provided in Sections
21 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
22 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
23 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
24 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

25 119. At all relevant times herein, Defendants have had a consistent policy or practice of,
26 failing to pay Plaintiff and Aggrieved Employees during their employment on a timely basis as per
27 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
28 Aggrieved Employees or former employees he seeks to represent are entitled to recover civil

1 penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred
2 dollars (\$100) for each aggrieved employee or former employee for each initial violation per
3 employee, and two hundred dollars (\$200) for each aggrieved employee or former employee for
4 each subsequent violation in connection with each payment that was made in violation of Labor
5 Code section 204.

6 **TENTH CAUSE OF ACTION**

7 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

8 120. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

10 121. Defendants have had a consistent policy or practice of failing to comply with Labor
11 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
12 statements that accurately reflect gross wages earned; total hours worked by the employee; all
13 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee; and other such information as required by Labor
16 Code section 226, subdivision (a).

17 122. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
20 for each violation in a subsequent citation, for which the employer fails to provide the employee a
21 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

22 123. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
23 this section are in addition to any other penalty provided by law.”

24 124. Plaintiff is informed and believes and based thereon alleges that Defendants failed
25 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
26 itemized wage statements that accurately reflect gross wages earned; total hours worked by the
27 employee; all deductions; net wages earned; the inclusive dates of the period for which the
28 employee is paid; all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee; and other such information, as required by Labor Code section 226, subdivision (a).

125. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees or former employees Plaintiff seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved employee or former employee per pay period for the initial violation, and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay period for each subsequent violation.

ELEVENTH CAUSE OF ACTION

(Violation of Labor Code § 558 – Against All Defendants)

126. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

127. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any order of the Industrial Welfare Commission" shall be subject to a civil penalty as follows:

a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

b. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

c. Wages recovered pursuant to this section shall be paid to the affected employee."

128. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely

1 wages during their employment and after their employment separation; receive accurate, itemized
2 wage statements; be reimbursed for work expenses; be provided with the opportunity to inspect
3 employment records; be provided the accrual and use of paid sick leave; and be provided with
4 notice as required under Labor Code section 2810.5.

5 129. As a direct and proximate result of Defendants' conduct, Plaintiff and other
6 Aggrieved Employees are entitled to recover directly from Defendants civil penalties pursuant to
7 Labor Code section 558 in amounts to be determined at trial.

8 **TWELFTH CAUSE OF ACTION**

9 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

10 130. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

12 131. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
13 person acting either individually or as an officer, agent, or employee of another person, who pays
14 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
15 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
16 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
17 Section 203 as follows: For any initial violation that is intentionally committed, one hundred
18 dollars (\$100) for each underpaid employee for each pay period for which the employee is
19 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages,
20 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
21 Section 203.

22 i. For each subsequent violation for the same specific offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation is intentionally
25 committed. This amount shall be in addition to an amount sufficient to recover
26 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
27 applicable penalties imposed pursuant to Section 203.

28 ii. For each subsequent violation for the same specific offense, two hundred fifty

1 dollars (\$250) for each underpaid employee for each pay period for which the
2 employee is underpaid regardless of whether the initial violation is intentionally
3 committed. This amount shall be in addition to an amount sufficient to recover
4 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
5 applicable penalties imposed pursuant to Section 203.

6 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to
7 Section 203, recovered pursuant to this section shall be paid to the affected
8 employee.”

9 132. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
10 the decision that Plaintiff would not be paid their due minimum wages as required due to, among
11 other things, Defendants, on occasion, to accurately track and/or pay for all hours actually worked;
12 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
13 by auto-deducting meal periods not taken and requiring employees to take calls or otherwise
14 communicate with patients and their relatives outside of working hours; editing, and/or
15 manipulation of time entries; paying straight pay instead of overtime; and failing to pay overtime
16 hours at the proper overtime rate of pay by, including without limitation, failing to calculate
17 overtime based on the legal minimum wage pursuant to Los Angeles Municipal Code section
18 187.01, *et seq.* when applicable, to the detriment of Plaintiff and Aggrieved Employees.

19 133. As a direct and proximate result of Defendants’ conduct, Plaintiff and Aggrieved
20 Employees are entitled to recover directly from Defendants, civil penalties. as set forth above,
21 pursuant to Labor Code section 1197.1.

22 **THIRTEENTH CAUSE OF ACTION**

23 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

24 134. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

26 135. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
27 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
28 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or

1 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or himself and other current or
3 former employees pursuant to the procedures specified in Labor Code section 2699.3.

4 136. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
5 Labor Code except those for which a civil penalty is specifically provided, the established civil
6 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
7 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
8 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
9 each aggrieved employee per pay period for each subsequent violation.

10 137. Plaintiff is informed and believes and based thereon alleges that Defendants, and
11 each of them, violated the Labor Code sections described herein, including, without limitation, for
12 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
13 compensation in lieu thereof; provide accurate, itemized wage statements; provide reimbursement
14 for work-related expenses; pay timely wages during employment and after employment
15 separation; provide employees the opportunity to inspect employment records: provide and pay for
16 sick leave; and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and
17 Aggrieved Employees to civil penalties for each of these Labor Code violations in the amounts set
18 forth in Labor Code section 2699, subdivision (f).

19 138. Moreover, Plaintiff and Aggrieved Employees within the State of California whom
20 he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection
21 with their herein-described claims for civil penalties.

22 **DEMAND FOR JURY TRIAL**

23 139. Plaintiff demands a trial by jury on all causes of action contained herein.

24 **PRAYER**

25 WHEREFORE, on behalf of himself, all others similarly situated and Aggrieved
26 Employees, Plaintiff prays for judgment against Defendants as follows:

27 A. An order certifying this case as a Class Action;

28 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's

- 1 counsel as class counsel;
- 2 C. Damages for all wages earned and owed, including minimum and overtime wages
- 3 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 4 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 5 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 6 among other Labor Code sections, 512, 558.1, and 226.7;
- 7 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 8 subdivision (e) and 558.1;
- 9 G. Damages for unpaid penalty wages under Labor Code sections 203 and 558.1;
- 10 H. Waiting time penalties under Labor Code sections 203 and 558.1;
- 11 I. Reimbursement for costs incurred in furtherance of work duties under Labor Code
- 12 sections 558.1 and 2802;
- 13 J. Preliminary and permanent injunctions prohibiting Defendants from further
- 14 violating the California Labor Code and requiring the establishment of appropriate
- 15 and effective means to prevent future violations;
- 16 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 17 business practice, according to proof;
- 18 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 19 1197.1, and 2699;
- 20 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 21 210, 226.3, 558, 1197.1, and 2699;
- 22 O. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 23 P. For attorneys' fees in prosecuting this action;
- 24 Q. For costs of suit incurred herein;
- 25 R. For such other and further relief as the Court deems just and proper;
- 26 S. Preliminary and permanent injunctions prohibiting Defendants from further
- 27 violating the California Labor Code and requiring the establishment of appropriate
- 28 and effective means to prevent future violations; and

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T. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof.

Dated: October 20, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
SARA EHSANI-NIA
Attorneys for Plaintiff ANTHONY SHAUN
COOPER, on behalf of himself and all others
similarly situated.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On October 20, 2020, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

Steve R. Belilove
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Counsel for Defendants LUCAS HEALTH PARTNERS, LLC, LUCAS HEALTH CARE, INC. and VARDAN ASIKIAN

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

Executed on October 20, 2020 at Beverly Hills, California.



Rosemary Martir