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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO**

12 ABIODUN ADEBAYO, on behalf of himself and
13 all others similarly situated,

14 Plaintiff,

15 v.

16 CALIFORNIA FORENSIC MEDICAL GROUP,
INC., a California Corporation; and DOES 1-50,
17 inclusive.

18 Defendants.
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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/27/2021 at 02:10:00 PM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

CASE NO.: 37-2021-00032758-CU-OE-CTL

**FIRST AMENDED CLASS & PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Abiodun Adebayo (“Plaintiff”) on behalf of himself, and all other similarly situated
2 employees, alleges and complains of defendants California Forensic Medical Group, Inc. and DOES
3 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant California Forensic Medical Group, Inc. is one of the largest providers of
6 correctional healthcare services in California.

7 2. Plaintiff brings this class and PAGA representative action against Defendants for
8 alleged violations of the California Labor Code and Business and Professions Code. As set forth
9 below, Plaintiff alleges that Defendants have a uniform payroll practice and policy that unlawfully
10 and unevenly rounded and continues to round Plaintiff and other non-exempt employees’ time entries
11 and failed to account for time spent lining up for and going through security and COVID-19 screening
12 checkpoints prior to clocking in for shifts. As a result, Plaintiff and other similarly situated employees
13 were not paid for all hours worked.

14 3. Plaintiff further alleges that Defendants failed to pay all overtime compensation, sick
15 pay and vacation wages at the legal rate, and that Defendants’ meal and rest period policies and
16 practices failed to provide him and all other similarly situated employees with compliant/timely meal
17 and rest periods, or premium wages at the appropriate legal rate in lieu thereof. Additionally, Plaintiff
18 alleges that Defendants failed to provide non-exempt employees with accurate written itemized wage
19 statements and failed to timely pay all final wages upon separation of employment. Finally, Plaintiff
20 alleges that Defendants failed to reimburse him and other non-exempt employees for necessary
21 business expenditures.

22 4. Based on these alleged Labor Code violations, Plaintiff now brings this class action to
23 recover unpaid wages, restitution, penalties, and other related relief on behalf of himself and all others
24 similarly situated.

25 **JURISDICTION AND VENUE**

26 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
27 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
28 203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802 and applicable

1 Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory
2 relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq.* This class
3 action is brought pursuant to California Code of Civil Procedure § 382.

4 6. This Court has jurisdiction over Defendants’ violations of the California Labor Code
5 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
6 minimum.

7 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
9 Dublin, County of San Diego. Defendants own, maintain offices, transact business, have an agent or
10 agents within the County of San Diego, and/or otherwise are found within the County of San Diego,
11 and Defendants are within the jurisdiction of this Court for purposes of service of process.

12 **PARTIES**

13 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
14 California resident residing in the State of California and was employed by Defendants as a non-
15 exempt employee.

16 9. Plaintiff is informed and believes and thereon alleges that defendant California
17 Forensic Medical Group, Inc. is a California corporation authorized to and doing business in San
18 Diego County, California, and is and/or was the legal employer of Plaintiff and the Class Members
19 during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants’ policies and/or
20 practices complained of herein and has been deprived of the rights guaranteed to him by California
21 Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199,
22 2802, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

23 10. Plaintiff is informed and believes, and based thereon alleges, that during the four years
24 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
25 do) business in the State of California, County of San Diego. Defendants operate within the Santa
26 Rita Jail in Dublin, California.

27 11. Plaintiff does not know the true names or capacities, whether individual, partner, or
28 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
3 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
4 corporate, were responsible in some manner for the acts and omissions alleged herein, and
5 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
6 alleged herein.

7 12. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
8 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
9 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
10 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
11 them, were the agents, servants, and employees of each and every one of the other Defendants, as
12 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
13 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
14 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

15 13. At all times mentioned herein, Defendants, and each of them, were members of and
16 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
17 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
18 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
19 Classes.

20 **COMMON FACTUAL ALLEGATIONS**

21 14. Defendants are providers of healthcare services to correctional facilities throughout
22 California. Defendants employed Plaintiff as a non-exempt registered nurse employee from
23 approximately June 2017, until his termination on or about October 28, 2020, to work out of the Santa
24 Rita California Jail.

25 15. Plaintiff and other similarly situated non-exempt employees were responsible for all
26 aspects of healthcare and other services provided by Defendants in all California prisons they serve.

27 16. At all relevant times, Defendants have had a uniform payroll policy/practice of
28 rounding Plaintiff and other non-exempt employees' time entries to the nearest 15-minute interval.

1 As a result of this rounding policy/practice, Plaintiff and other non-exempt employees were and are
2 not compensated for all the hours that they work and all the overtime hours they work in violation of
3 Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. *See* *'s Candy Shops*
4 *v. Superior Court* (2012) 210 Cal. App. 4th 889, 907 [rounding time policies can be lawful, “if the
5 rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result,
6 over a period of time, in failure to compensate the employees properly for all the time they have
7 actually worked,’ See 29 C.F.R. § 785.48; see DLSE Manual, *supra*, §§ 47.1, 47.2.)”].

8 17. Here, Defendants’ rounding policy/practice is not neutral and non-exempt employees
9 were subject to discipline, including termination, for being tardy in reporting to work. Moreover,
10 because Defendants can track the time worked by non-exempt employees to the minute, the rounding
11 policy/practice itself exists not for the convenience or benefit of the employees who are trying to
12 report their time on timecards or computer log, but for Defendants’ benefit.

13 18. As a result of the rounding policy, Plaintiff and other non-exempt employees were
14 uniformly underpaid for all hours worked, including all minimum and overtime wages, in violation
15 of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage Orders. Accordingly, Plaintiff
16 and other non-exempt employees are entitled to recover liquidated damages for violations of Labor
17 Code § 1197.1 and penalties under Labor Code § 1199.

18 19. Further, at all relevant times, Defendants have had a uniform payroll policy/practice of
19 not crediting Plaintiff and other non-exempt employees’ time entries with the time spent going
20 through security and screening checkpoints. As a result of Defendants’ security checkpoint and
21 COVID-19 temperature checks, Plaintiff and other non-exempt employees were not fully
22 compensated for all hours worked, including minimum and overtime wages as required by the
23 California Labor Code and applicable Wage Orders. Defendants have no valid defense to this claim
24 given the California Supreme Court’s recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8
25 Cal.5th 1038, which held that employees “must be paid” during security checks since “it is clear that
26 [employees] are subject to [the employer’s] control while awaiting, and during, [the] exit searches.”

27 20. Consequently, Plaintiff and other non-exempt employees were not properly paid for all
28 hours worked, including overtime hours, in violation of Cal. Labor Code §§ 204, 510, 1194, 1197.1,

1 1199, and applicable Wage Orders. Additionally, Plaintiff and other non-exempt employees similarly
2 situated were not properly paid at the correct overtime rate for hours worked in excess of eight hours
3 per shift.

4 21. As a result of the security and COVID-19 screening policy, Plaintiff and other non-
5 exempt employees were uniformly underpaid for all hours worked, including all minimum and
6 overtime wages, in violation of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage
7 Orders. Accordingly, Plaintiff and other non-exempt employees are entitled to recover liquidated
8 damages for violations of Labor Code § 1197.1 and penalties under Labor Code § 1199.

9 22. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
10 properly paid at the correct overtime rate for all hours worked in excess of eight hours per workday
11 or 40 hours per workweek. When Plaintiff and the other non-exempt employees worked overtime
12 hours, Defendants failed to include all forms of compensation, including, but not limited to non-
13 discretionary bonus payments and shift differentials when calculating the regular rate of pay used in
14 overtime calculations. For instance, although Defendants consistently and regularly paid non-exempt
15 employees non-discretionary shift differentials, Defendants omitted the bonus payments when
16 calculating the regular rate of pay used in overtime calculations and when paying overtime to Plaintiff
17 and the other non-exempt employees.

18 23. Under the California Labor Code (as well as the FLSA), courts have held that regularly
19 paid non-discretionary incentive pay/bonuses must be included in determining an employee's
20 "regular rate of pay" for purposes of calculating overtime. See *Haber v. The Americana Corp.* 378 F.
21 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in
22 calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057
23 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the
24 grounds, that defendant improperly calculated overtime by excluding annual bonuses paid to
25 employees from the "regular rate of compensation"].

26 24. Labor Code § 510 requires an employer to compensate an employee who works more
27 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
28 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for

1 an employee. In addition, Labor Code § 510 obligates employers to compensate employees at no less
2 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
3 more than eight (8) hours on the seventh consecutive day of work.

4 25. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
6 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
7 40 hours in the workweek. By their policy of requiring Plaintiff and the other non-exempt employees
8 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
9 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
10 violated the provisions of Labor Code §§ 510 and applicable Wage Orders.

11 26. As a result of Defendants' failure to include all forms of compensation in calculating
12 the regular rate as set forth above, Defendants failed to compensate Plaintiff and other non-exempt
13 employees for all overtime wages at the proper rates. Accordingly, Plaintiff and other non-exempt
14 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

15 27. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
16 legally compliant and timely off-duty meal periods of at least thirty (30) minutes due to Defendants'
17 unlawful policies/practices (including, but not limited to, rough demands of the job and staffing
18 shortages) that often prevented Plaintiff and other non-exempt employees from taking compliant 30-
19 minute first meal periods before the end of the fifth hour of work, and second meal periods before the
20 end of the tenth hour of work as required by California law.

21 28. Additionally, Defendants failed to adequately pay Plaintiff and other non-exempt
22 employees' payment for meal period premiums for non-compliant meal periods in compliance with
23 *Ferra v. Loews Hollywood Hotel, LLC* (2021) No. S259172. In *Ferra*, the California Supreme Court
24 made clear that payment of meal and rest period premiums must include more than just the
25 employee's base hourly rate. The California Supreme Court held that the amount to be paid for
26 meal/rest premiums is not the employees' base hourly rate but their "regular rate of pay," which is
27 used to calculate overtime pay, which includes other forms of compensation, including, but not
28 limited to, non-discretionary bonuses and shift pay, and is often higher than the base hourly rate.

1 Throughout Plaintiff's employment, Defendants failed to adequately pay missed meal and rest period
2 premiums at the appropriate regular rate of pay.

3 29. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other non-
4 exempt employees' meal period premiums and penalties. Consequently, Defendants has violated
5 Labor Code §§ 226.7, 512, 516 and applicable Wage Orders.

6 30. Additionally, at all relevant times, Defendants failed and continue to fail to authorize
7 and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods as a
8 result of its unlawful rest period policy/practices that requires non-exempt employees to remain on
9 premises during rest periods. Further, Plaintiff and other non-exempt employees were also often
10 unable to take legally compliant rest periods due to the demands of the job, staffing shortages and job
11 responsibilities. As a result, Plaintiff and other non-exempt employees were and are routinely unable
12 to take (10) minute duty free rest periods for every major fraction of four hours worked. This includes
13 a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10
14 hours in a workday.

15 31. By requiring non-exempt employees to remain on the Company premises during
16 breaks, non-exempt employees are not relieved of all duties during rest periods. See *Augustus v. ABM*
17 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers
18 must relieve employees of all duties and relinquish control over how employees spend their time."].
19 In *Augustus*, the court expressly rejected the employers' assertion that it could provide an on-duty
20 rest period to employees who worked as security guards and further explained "that employers [must]
21 relinquish any control over how employees spend their break time and relieve their employees of all
22 duties." *Id.* at 273.

23 32. Each time Plaintiff and other non-exempt employees were unable to take a compliant
24 rest period, Defendants failed and continues to fail to adequately pay rest period premium payments
25 at the "regular rate of pay" as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel,*
26 *LLC* as detailed above.

27 33. As a result of Defendants' unlawful rest period policies and practices, Plaintiff seeks
28 to recover on behalf of himself and all non-exempt employees rest period premiums and penalties.

1 Consequently, Defendants has violated Labor Code §§ 204, 210, 226.7, 510, 512 and applicable Wage
2 Orders.

3 34. Moreover, at all relevant times, Plaintiff and other non-exempt employees, at the
4 direction of Defendants and/or with Defendant's knowledge and acquiescence, have used their
5 personal cell phones to communicate with their supervisors, managers, and co-workers in the
6 discharge of their duties for Defendants. Defendants require that Plaintiff and other non-exempt
7 employees respond to phone calls and text messages and expect these employees to initiate calls and
8 texts to meet business needs. Defendants required Plaintiff and all other non-exempt employees to
9 incur the costs associated with business use of their personal cell phones and did not provide any
10 reimbursement of these costs.

11 35. Defendants do not maintain an expense reimbursement policy and/or practice stating
12 that Defendants will affirmatively reimburse Plaintiff and the other non-exempt employees for a
13 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
14 their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
15 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-
16 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
17 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
18 is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell
19 phone reimbursement class action and setting forth the applicable law for these claims).

20 36. Although Plaintiff and the other non-exempt employees used their personal cell phones
21 in the discharge of their job duties with the knowledge and/or acquiescence of Defendants, they were
22 not reimbursed in any amount for expenses incurred throughout the relevant liability period.
23 Defendants' failure to reimburse Plaintiff and the other non-exempt employees for their on-going cell
24 phone business expenses incurred in their discharge of their duties continues through the present day.
25 Indeed, any reimbursement is absent from Plaintiff's wage statements during his employment.

26 37. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees all
27 minimum and overtime wages, and failure to provide all statutorily-mandated meal and rest periods,
28 or proper compensation in lieu thereof, Defendants also intentionally failed and continues to fail to

1 furnish Plaintiff and other non-exempt employees with accurate itemized wage statements that reflect
2 the correct amount of gross wages earned, net wages earned and premium wages due for missed meal
3 and rest periods as required by Labor Code § 226(a)(1),(5),(9).

4 38. As a further result of Defendants' Labor Code violations stated herein above,
5 Defendants also failed to pay Plaintiff and other non-exempt employees all wages owed at their time
6 of separation from employment in violation of Labor Code §§ 201-203. Pursuant to Labor Code §§
7 201-202, an employer must provide a non-exempt employee wages due and owed at the time or
8 discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if
9 an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the
10 wages of the employee shall continue as a penalty ..." for up to 30 days.

11 CLASS ACTION ALLEGATIONS

12 39. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
13 § 382 of the Code of Civil Procedure:

- 14 (1) All non-exempt employees who work or worked for Defendants in California, during
15 the four years immediately preceding the filing of the Complaint through the date of
16 trial. ("Class")
- 17 (2) All non-exempt employees who worked for Defendants in California and who earned
18 a non-discretionary bonus payment or shift differential pay, during the four years
19 immediately preceding the filing of the Complaint through the date of trial. ("Regular
20 Rate Subclass")
- 21 (3) All non-exempt employees who worked for Defendants in California, and who
22 separated their employment with Defendants during three year immediately preceding
23 the filing of the Complaint through the date of trial. ("Waiting Time Subclass")
(collectively "the Classes")

24 40. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
25 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
26 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
27 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
28 Defendants' employment and payroll records.

1 41. **Common Questions of Law and Fact Predominate/Well Defined Community of**

2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 employees, which predominate over questions affecting only individual members including, without
4 limitation to:

5 1. Whether Defendants’ rounding timekeeping policies/practices resulted in a failure to
6 pay for all hours worked to the members of the Classes;

7 2. Whether Defendants’ payroll policies/practices resulted in a failure to pay overtime at
8 the appropriate premium rate resulted to members of the Overtime Subclass;

9 3. Whether Defendants provided legally compliant meal and rest periods or proper
10 compensation in lieu thereof to members of the Classes;

11 4. Whether Defendants furnished legally compliant wage statements to members of the
12 Classes pursuant to Labor Code § 226(a); and

13 5. Whether the timing and amount of payment of final wages to members of the Waiting
14 Time Subclass at the time of separation from employment were unlawful; and

15 6. Whether Defendants properly reimbursed members of the Class for all necessary
16 business expenditures.

17 42. **Predominance of Common Questions:** Common questions of law and fact
18 predominate over questions that affect only individual members of the Classes. The common
19 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
20 and/or practices applicable to each individual class member, such as Defendants’ policy/practice of
21 failing to pay for time spent pre-shift undergoing Covid-19 screening and security procedures under
22 the control of Defendants, Defendants’ policy/practice of failing to account for non-discretionary
23 bonus and/or shift differential payments in calculating employees’ regular rate for overtime purposes,
24 Defendants’ uniform policy of failing to provide compliant meal and rest periods or adequate
25 compensation in lieu thereof, Defendants’ uniform policy of failing to compensate non-exempt
26 employees for their cell phone expenses incurred at the behest of Defendant, and Defendants’
27 resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon
28 separation of employment. As such, the common questions predominate over individual questions

1 concerning each individual class member's showing as to his or her eligibility for recovery or as to
2 the amount of his or her damages.

3 43. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
4 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
5 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
6 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
7 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
8 period policies/practices, was not reimbursed for required work expenses, was not provided accurate
9 itemized wage statements, and was not paid all wages owed at the time of her separation of
10 employment.

11 44. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
13 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
14 Plaintiff's attorneys have prosecuted and are actively litigating numerous wage-and-hour class
15 actions in state and federal courts and are committed to vigorously prosecuting this action on behalf
16 of the members of the Classes.

17 45. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
18 important public interest in establishing minimum working conditions and standards in California.
19 These laws and labor standards protect the average working employee from exploitation by
20 employers who have the responsibility to follow the laws and who may seek to take advantage of
21 superior economic and bargaining power in setting onerous terms and conditions of employment. The
22 nature of this action and the format of laws available to Plaintiff and members of the Classes make
23 the class action format a particularly efficient and appropriate procedure to redress the violations
24 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
25 necessarily gain an unfair advantage since they would be able to exploit and overwhelm the limited
26 resources of each individual plaintiff with their superior financial and legal resources.

27 46. Moreover, requiring each member of the Classes to pursue an individual remedy would
28 also discourage the assertion of lawful claims by employees who would be disinclined to file an action

1 against their former and/or current employer for real and justifiable fear of retaliation and permanent
2 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
3 the individual class members, even if possible, would create a substantial risk of inconsistent or
4 varying verdicts or adjudications with respect to the individual class members against Defendants
5 herein; and which would establish potentially incompatible standards of conduct for Defendants;
6 and/or legal determinations with respect to individual class members which would, as a practical
7 matter, be dispositive of the interest of the other class members not parties to adjudications or which
8 would substantially impair or impede the ability of the class members to protect their interests.
9 Further, the claims of the individual members of the class are not sufficiently large to warrant
10 vigorous individual prosecution considering all of the concomitant costs and expenses attending
11 thereto. As such, the Classes identified in Paragraph 36 are maintainable as Classes under § 382 of
12 the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **MINIMUM WAGE VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 48. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
18 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
19 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
20 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
21 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
22 the unpaid wages and interest accrued thereon.

23 49. At all relevant times herein, Defendants failed to conform their pay practices to the
24 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
25 and unlawful practice of failing to pay for all off-the clock work and rounding of time entries, which
26 resulted in these individuals not being paid for all hours actually worked. Accordingly, Plaintiff and
27 members of the Classes were not compensated for all hours worked including, but not limited to, all
28 hours they were subject to the control of Defendants and/or suffered or permitted to work under the

1 California Labor Code and applicable Wage Orders.

2 50. Labor Code § 1198 makes unlawful the employment of an employee under conditions
3 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
4 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
5 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
6 due and interest thereon.

7 51. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
8 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
9 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
10 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
11 the California Labor Code and applicable Wage Orders.

12 52. Defendants' practice and uniform administration of corporate policy regarding illegal
13 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
14 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
15 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
16 Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY ALL OVERTIME WAGES**

19 **(AGAINST ALL DEFENDANTS)**

20 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 54. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
22 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
23 worked and provide a private right of action for the failure to pay all overtime compensation for
24 overtime work performed.

25 55. At all times relevant herein, Defendants were required to properly pay Plaintiff and
26 members of the Classes and Overtime Subclass for all overtime hours worked pursuant to California
27 Labor Code § 1194 and the applicable Wage Orders.

56. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

57. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of (1) unlawful rounding of time entries, (2) failing to pay for all pre-shift time spent on temperature screening and security checks, and (3) failing to account for non-discretionary bonuses and shift differential pay in calculating the regular rate for calculating members of the Classes and Overtime Subclass overtime rate which resulted in these individuals not being paid all overtime wages owed.

58. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Classes and Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all non-exempt employees, including Plaintiff and members of the Classes, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

1 61. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
3 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 63. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
9 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
10 each four (4) hour period worked, or major fraction thereof.

11 64. Due to their unlawful rest period policy and practices, Defendants did not authorize
12 and permit Plaintiff and members of the Classes to take any rest periods to which they were legally
13 entitled, including failing to allow non-exempt employees to leave the premises during rest periods.
14 Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular
15 rate of pay" to Plaintiff and members of the Classes at their respective regular rates of pay for each
16 violation, in accordance with California Labor Code § 226.7.

17 65. The foregoing violations create an entitlement to recovery by Plaintiff and members of
18 the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
19 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
20 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENDITURES**

23 **(AGAINST ALL DEFENDANTS)**

24 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 67. Labor Code 2208(a) states in pertinent part the following: "(a) An employer shall
26 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
27 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
28 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,

1 believed them to be unlawful.”

2 68. As set forth above, Plaintiff and members of the Classes must be compensated for a
3 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
4 their discharge of their duties, as required by *Cochran v. Schwan’s Home Service, Inc.* (2014) 228
5 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-
6 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
7 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
8 is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification in cell
9 phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v.*
10 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary
11 judgment on the Mr. Toys’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*,
12 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and
13 adopting the logic of *Cochran*).

14 69. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
15 Class Members for all necessary business-related expenses and costs. Plaintiff and the Class
16 Members are entitled to recover from Defendants their business- related expenses and costs incurred
17 during the course and scope of their employment, plus interest accrued from the date on which the
18 employee incurred the necessary expenditures at the same rate as judgments in civil actions in the
19 State of California as well as penalties, reasonable attorneys’ fees and costs of suit.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **(AGAINST ALL DEFENDANTS)**

23 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 71. Labor Code 226(a) states in pertinent part the following:

25 “(a) An employer, semimonthly or at the time of each payment of wages, shall
26 furnish to his or her employee, either as a detachable part of the check, draft, or
27 voucher paying the employee’s wages, or separately if wages are paid by personal
28 check or cash, an accurate itemized statement in writing showing (1) gross wages
earned, (2) total hours worked by the employee... (4) all deductions, provided that

1 all deductions made on written orders of the employee may be aggregated and shown
2 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
3 employee is paid, (7) the name of the employee and only the last four digits of his
4 or her social security number or an employee identification number other than a
5 social security number, (8) the name and address of the legal entity that is the
6 employer, and (9) all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee.”

8 72. As set forth above, during the Class Period, Defendants issued and continues to issue
9 wage statements to its employees including Plaintiff and members of the Wage Statement Penalty
10 Subclass, which are inadequate under Labor Code Section 226(a).

11 73. As a result of Defendants failure to pay Plaintiff and the Classes for all overtime wages
12 at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include
13 required information on Plaintiff and the Classes’ wage statements, including, but not limited to, the
14 gross wages earned, the net wages earned in violation of Labor Code section 226a. Additionally,
15 Defendants’ wage statements issued failed to state the name and address of the legal entity that is the
16 employer in violation Labor Code Section 226(a)(8).

17 74. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
18 intentional.

19 75. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
20 and members of the Classes in violation of section 226(a) of the California Labor Code, Plaintiff and
21 members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties
22 of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
23 member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs, and
24 reasonable attorneys’ fees.

25 **SEVENTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

28 76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

77. The actionable period for this cause of action is three years prior to the filing of this
Complaint through the present, and on-going until the violation is corrected, or the class is certified.

78. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Class during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

79. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

80. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all hours worked, including all minimum and overtime wages, and their meal and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

81. As a result, Defendants are liable to Plaintiff and the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

82. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

83. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all minimum and overtime wages at the legal rate, by failing to provide all legally required meal and rest periods or pay premium payments at the regular rate of pay in lieu thereof, by failing to provide accurate wage statements, and by failing to pay all earned wages at the time of separation from employment.

84. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to

1 do so in honest compliance with applicable wage and hour laws.

2 85. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
3 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
4 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
5 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

6 86. The acts complained of herein occurred within the last four years immediately
7 preceding the filing of the Complaint in this action.

8 87. Plaintiff was compelled to retain the services of counsel to file this court action to
9 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
10 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
11 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
12 he is entitled to recover under Code of Civil Procedure § 1021.5.

13 **NINTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 88. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 89. Defendants have committed several Labor Code violations against Plaintiff and other
18 similarly non-exempt employees.

19 90. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*,
20 acting on behalf of himself and other non-exempt employees, brings this representative action against
21 Defendants to recover the civil penalties due to Plaintiff, other non-exempt employees, and the State
22 of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited
23 to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay
24 period for those violations of the Labor Code for which no civil penalty is specifically provided based
25 on the following Labor Code violations:

26 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
27 including all minimum and overtime wages in violation of Labor Code §§ 204, 210, 510, 1194, 1197,
28 1198, and 1182.12;

1 b. Failing to pay Plaintiff and other non-exempt employees overtime wages at the “regular
2 rate of pay”, including all forms of non-hourly compensation, in violation of Labor Code §§ 204,
3 510, 558, 1194, and 1198;

4 c. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily
5 mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in violation of
6 Labor Code §§ 204, 510, 558, 1194 and 1198;

7 d. Failing to authorize and permit Plaintiff and other non-exempt employees with all of
8 their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in
9 violation of Labor Code §§ 226.7, and 516;

10 e. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
11 business expenses in violation of Labor Code § 2208;

12 f. Failing to furnish Plaintiff and other similarly situated employees with complete,
13 accurate, itemized wage statements in violations of Labor Code § 226(a)(1), (5), and (9); and

14 g. Failing to timely compensate Plaintiff and similarly non-exempt employees with all
15 earnings at their separation of employment in violation of Labor Code §§ 201-203.

16 90. On or about July 28, 2021, Plaintiff Abiodun Adebayo (“Plaintiff”) notified Defendant
17 California Forensic Medical Group, Inc. (“Defendant”) via certified mail, and the California Labor
18 and Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the
19 California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code
20 identified in Paragraph 89 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying
21 Defendant of these violations, Plaintiff will have exhausted his administrative requirements for
22 bringing a claim under the Private Attorneys General Act with respect to these violations.

23 91. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interests and the interests of similarly non-exempt employees, and to assess and collect
25 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which
26 he is entitled to receive under California Labor Code § 2699.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose
3 behalf this suit is brought against Defendants, as follows:

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and special
8 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 9 5. Upon the Second Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 11 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
12 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 13 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 15 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 2208, and
16 reasonable costs and attorneys' fees;
- 17 8. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
18 reasonable costs and attorneys' fees;
- 19 9. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
20 Labor Code §§ 201-203;
- 21 10. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 24 11. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
25 non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699
26 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
27 subsequent violation per employee per pay period for those violations of the Labor Code for which
28 no civil penalty is specifically provided;

1 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
2 § 218.6 and Civil Code §§ 3287 and 3289;

3 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
4 218.5, 226, and Code of Civil Procedure § 1021.5; and

5 14. For such other relief that the Court may deem just and proper.

6 Dated: October 25, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

7
8
9 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

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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 business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On October 27, 2021, I served the following document(s) described as **FIRST AMENDED CLASS & PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

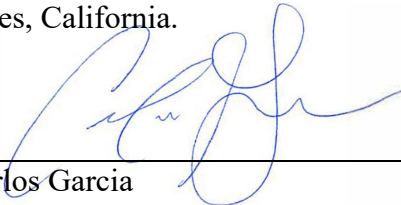
Elizabeth Staggs-Wilson, Esq.
James Payer, Esq.
Jyoti Mittal, Esq.
LITTLER MENDELSON, P.C.
633 W. 5th Street, 63rd Floor
Los Angeles, California 90071

**Counsel for defendant California
Forensic Medical Group, Inc.**

BY MAIL: I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

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

Executed on October 27, 2021, at Los Angeles, California.



Carlos Garcia