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9 Attorneys for Plaintiffs
10 RACHEL VALENZUELA, MELISSA AMEZOLA, and VANESSA CABRERA.
11 on behalf of themselves and all others similarly situated
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

10 RACHEL VALENZUELA, MELISSA
11 AMEZOLA, VANESSA CABRERA,
12 individually, and on behalf of other members
13 of the general public similarly situated,

14 Plaintiffs,

15 vs.

16 EMERZIAN CHIROPRACTIC
17 PROFESSIONAL CORPORATION, a
18 California corporation; TOTAL CARE
19 MEDICAL GROUP, INC., a California
20 corporation, JOHN H. EMERZIAN, an
21 individual, TOTAL CARE MANAGEMENT
22 GROUP, INC., a California corporation, SAN
23 JOAQUIN TOTALCARE, INC., a California
24 corporation, and DOES 1 through 100,
25 inclusive,

26 Defendants.

E-FILED
10/3/2022 11:16 AM
Superior Court of California
County of Fresno
By: Marta Sanchez, Deputy

Case No. 21CECG02138
Assigned: Judge D. Tyler Tharpe
Dept: 501

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of Cal. Labor Code §§ 510 & 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 & 512(a) (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 1194, 1197, & 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201 & 202 (Final Wages Not Timely Paid)
- (6) Violation of Cal. Labor Code § 204 (Wages Not Timely Paid During Employment)
- (7) Violation of Cal. Labor Code § 226(a) (Non-Compliant Wage Statements)
- (8) Violation of Cal. Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records)
- (9) Violation of Cal. Labor Code §§ 2800 & 2802 (Unreimbursed Business Expenses)
- (10) Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.
- (11) Violation of Cal. Labor Code § 2698, et seq. (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

Original Complaint Filed: July 26, 2021

COME NOW Plaintiff RACHEL VALENZUELA (“Plaintiff VALENZUELA”), Plaintiff MELISSA AMEZOLA (“Plaintiff AMEZOLA”), and Plaintiff VANESSA CABRERA (“Plaintiff CABRERA”) (collectively, “Plaintiffs”), individually, on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This pleading invokes all applicable forms of tolling, including the tolling provided by the Judicial Council’s Emergency Rule 9.

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

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employs individuals, and/or transact business in the State of California, County of Fresno. The majority of acts and omissions alleged herein relating to Plaintiffs and the other class members took place in the State of California, including the County of Fresno. At all relevant times, Defendants maintained their headquarters/“nerve center” within the State of California, County of Fresno.

PARTIES

5. Plaintiff RACHEL VALENZUELA is an individual residing in the State of California, County of Fresno.

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1 6. Plaintiff MELISSA AMEZOLA is an individual residing in the State of California,
2 County of Fresno.

3 7. Plaintiff VANESSA CABRERA is an individual residing in the State of California,
4 County of Fresno.

5 8. Defendant EMERZIAN CHIROPRACTIC PROFESSIONAL CORPORATION, at
6 all times herein mentioned, was and is, upon information and belief, a California corporation and,
7 at all times herein mentioned, an employer whose employees are engaged in throughout the State of
8 California, including the County of Fresno.

9 9. Defendant TOTAL CARE MEDICAL GROUP, INC., at all times herein mentioned,
10 was and is, upon information and belief, a California corporation and, at all times herein mentioned,
11 an employer whose employees are engaged in throughout the State of California, including the
12 County of Fresno.

13 10. Defendant JOHN H. EMERZIAN, at all times herein relevant was acting either
14 individually or as an officer, owner, director, agent or employee of Defendants EMERZIAN
15 CHIROPRACTIC PROFESSIONAL CORPORATION and/or TOTAL CARE MEDICAL
16 GROUP, INC., who caused and continue to cause all of the wage and hour violations alleged herein
17 against Plaintiffs the aggrieved employees, including without limitation violations of Labor Code
18 Section 558 and 1197.1.

19 11. At all times, Defendants EMERZIAN CHIROPRACTIC PROFESSIONAL
20 CORPORATION and TOTAL CARE MEDICAL GROUP, INC. were the “employer” of Plaintiffs
21 within the meaning of all applicable state laws and statutes.

22 12. At all times relevant herein, EMERZIAN CHIROPRACTIC PROFESSIONAL
23 CORPORATION, TOTAL CARE MEDICAL GROUP, INC., and JOHN H. EMERZIAN, and
24 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
25 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the
26 other, and at all times relevant hereto were acting within the course and scope of their authority as
27 such agents, partners, joint venturers, representatives, servants, employees, successors, co-
28 conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the

1 ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant
2 designated as a DOE herein.

3 13. The true names and capacities, whether corporate, associate, individual or otherwise,
4 of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants
5 by such fictitious names. Plaintiffs are informed and believe, and based on that information and
6 belief alleges, that each of the defendants designated as a DOE is legally responsible for the events
7 and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to
8 Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of
9 court to amend this Complaint to show the true names and capacities when the same have been
10 ascertained.

11 14. Defendants TOTAL CARE MANAGEMENT GROUP, INC. and SAN JOAQUIN
12 TOTALCARE, INC. are affiliates of EMERZIAN CHIROPRACTIC PROFESSIONAL
13 CORPORATION, TOTAL CARE MEDICAL GROUP, INC., and JOHN H. EMERZIAN, and are
14 alleged to be responsible for the wage-and-hour violation asserted herein or any judgment resulting
15 therefrom. Together EMERZIAN CHIROPRACTIC PROFESSIONAL CORPORATION, TOTAL
16 CARE MEDICAL GROUP, INC., JOHN H. EMERZIAN, TOTAL CARE MANAGEMENT
17 GROUP, INC. and SAN JOAQUIN TOTAL CARE, INC. operate medical offices in the Central
18 Valley under the branding “TotalCare Medical Group” at which the employees at issue were
19 employed. In this pleading, EMERZIAN CHIROPRACTIC PROFESSIONAL CORPORATION,
20 TOTAL CARE MEDICAL GROUP, INC., JOHN H. EMERZIAN, TOTAL CARE
21 MANAGEMENT GROUP, INC. and SAN JOAQUIN TOTAL CARE, INC. will be referred to
22 collectively as “TotalCare Medical Group” or “Defendants.”

23 15. Plaintiffs further allege that Defendants including the unknown defendants identified
24 as DOES, directly or indirectly controlled or affected the working conditions, wages, working hours,
25 and conditions of employment of Plaintiffs and the other aggrieved employees so as to make each
26 of said Defendants employers and employers liable under the statutory provisions set forth herein.

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CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

17. The proposed class is defied as follows:

All current and former hourly paid, non-exempt employees of TotalCare Medical Group who have worked at any of its locations in California at any time from January 29, 2017, to July 5, 2022 (collectively “class members”).

18. Plaintiffs reserve the right to establish subclasses as appropriate.

19. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: the class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiffs’ claims are typical of all other class members’ as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other class members. Plaintiffs’ attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys’ fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- 1 d. Superiority: A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because individual joinder of all class
3 members is impractical.
- 4 e. Public Policy Considerations: Certification of this lawsuit as a class
5 f. action will advance public policy objectives. Employers of this great
6 g. state violate employment and labor laws every day. Current employees
7 h. are often afraid to assert their rights out of fear of direct or indirect
8 i. retaliation. However, class actions provide the class members who are
9 j. not named in the complaint anonymity that allows for the vindication of
10 k. their rights

11 20. Common questions of law and fact as to the class members predominate over
12 questions affecting only individual members. The following common questions of law or fact,
13 among others, exist as to the members of the class:

- 14 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
15 accordance with the California Labor Code, was willful;
- 16 b. Whether Defendants had a corporate policy and practice of failing to pay their hourly-
17 paid or non-exempt employees within the state of California for all hours worked and
18 missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks
19 in violation of California law;
- 20 c. Whether Defendants required Plaintiffs and the other class members to work over
21 eight (8) hours per day and/or over forty (40) hours per week and failed to pay the
22 legally-required overtime compensation to Plaintiffs and the other class members;
- 23 d. Whether Defendants deprived Plaintiffs and the other class members of meal and/or
24 rest periods or required Plaintiffs and the other class members to work during meal
25 and/or rest periods without compensation;
- 26 e. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class
27 members for all hours worked;
- 28 f. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other

1 class members during their employment;

2 g. Whether Defendants failed to timely pay all wage due to Plaintiffs and the other class
3 members within the required tie upon their discharge or resignation;

4 h. Whether Defendants complied with wage reporting as required by the California
5 Labor Code; including, *inter alia*, section 226;

6 i. Whether Defendants kept complete and accurate payroll records as require by the
7 California Labor Code, including, *inter alia*, section 1174(d);

8 j. Whether Defendants failed to reimburse Plaintiffs and the other class members for
9 necessary business-related expenses and costs;

10 k. Whether Defendants conduct was willful or reckless;

11 l. Whether Defendants engaged in unfair business practices in violation of California
12 Business & Professions Code section 17200, et seq.;

13 m. The appropriate amount of damages, restitution, and/or monetary penalties resulting
14 from Defendants' violation of California law; and

15 n. Whether Plaintiffs and the other class members are entitled to compensatory
16 damages pursuant to the California Labor Code

17 **PAGA ALLEGATIONS**

18 21. At all times herein set forth, PAGA was applicable to Plaintiffs' employment by
19 Defendants.

20 22. At all times herein set forth, PAGA provides that any provision of law under the
21 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA
22 for violations of the California Labor Code may, as an alternative, be recovered through a civil
23 action brought by an aggrieved employee on behalf of herself and other current or former employees
24 pursuant to procedures outlined in California Labor Code section 2699.3.

25 23. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
26 employee," who is any person that was employed by the alleged violator and against whom one or
27 more of the alleged violations was committed.

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1 24. Plaintiffs AMEZOLA and CABRERA were employed by Defendants and the alleged
2 violation was committed against them during their time of employment and they are, therefore, an
3 aggrieved employee. Plaintiffs AMEZOLA and CABRERA, and the other employees, are
4 “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all
5 current or former employees of Defendants, and one or more of the alleged violations were
6 committed against them.

7 25. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
8 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the following
9 requirements have been met:

- 10 a. The aggrieved employee shall give written notice by online submission (hereinafter
11 “Employee’s Notice”) to the Labor & Workforce Development Agency (hereinafter
12 “LWDA”) and by U.S. Certified Mail to the employer of the specific provisions of
13 the California Labor Code alleged to have been violated, including the facts and
14 theories to support the alleged violations.
- 15 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
16 the aggrieved employee by certified mail that it does not intend to investigate the
17 alleged violation within sixty (60) calendar days of the postmark date of the
18 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is
19 not provided within sixty-five (65) calendar days of the postmark date of the
20 Employee’s Notice, the aggrieved employee may commence a civil action pursuant
21 to California Labor Code section 2699 to recover civil penalties in addition to any
22 other penalties to which the employee may be entitled.

23 26. On July 16, 2021, Plaintiff AMEZOLA provided a written notice, attached hereto as
24 **Exhibit A**, by online submission to the LWDA and by U.S. Certified Mail to Defendants of the
25 specific provisions of the California Labor Code alleged to have been violated, including the facts
26 and theories to support the alleged violations. Plaintiff AMEZOLA has not received an LWDA
27 Notice within sixty-five (65) calendar days of the date of Plaintiff AMEZOLA’s notice.

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27. On July 16, 2021, Plaintiff CABRERA provided a written notice, attached hereto as **Exhibit B**, by online submission to the LWDA and by U.S. Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff CABRERA has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff CABRERA's notice.

28. On July 21, 2022, Plaintiffs provided a written Amendment To PAGA Notices, attached hereto as **Exhibit C**, to the LWDA by online submission and sent a copy via certified mail to Defendants. Thereafter, Plaintiffs waited the requisite 65-day exhaustion period before filing this amended complaint. Therefore, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

GENERAL ALLEGATIONS

29. At all relevant times set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid, non-exempt employees within the State of California, including the County of Fresno.

30. Defendants, jointly and severally, employed Plaintiff VALENZUELA as an hourly-paid, non-exempt employee, from approximately April 2018 to approximately June 2019, in the State of California, County of Fresno.

31. Defendants, jointly and severally, employed Plaintiff AMEZOLA as an hourly-paid, non-exempt employee, from approximately October 2019 to approximately July 2020, in the State of California, County of Fresno.

32. Defendants, jointly and severally, employed Plaintiff CABRERA as an hourly-paid, non-exempt employee, from approximately January 2015 to approximately March 2020, in the State of California, County of Fresno.

33. Defendants hired Plaintiffs and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

1 34. Defendants had the authority to hire and terminate Plaintiffs and the other class
2 members, to set work rules and conditions governing Plaintiffs' and the other class members'
3 employment, and to supervise their daily employment activities.

4 35. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs'
5 and the other class members' employment for them to be joint employers of Plaintiffs and the other
6 class members.

7 36. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class
8 members.

9 37. Defendants continue to employ hourly-paid or non-exempt employees within the
10 State of California.

11 38. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or
12 forty (40) hours in a week during their employment with Defendants.

13 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees
15 within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for
16 all regular and/or overtime wages earned and for missed meal periods and rest breaks in violation
17 of California law.

18 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
19 or should have known that Plaintiffs and the other class members were entitled to receive certain
20 wages for overtime compensation and that they were not receiving accurate overtime compensation
21 for all overtime hours worked.

22 41. Plaintiffs are informed and believe, and based thereon allege, that defendants failed
23 to provide Plaintiffs and the other class members all required rest and meal periods during the
24 relevant time period as required under the Industrial Welfare Commission Wage Orders and thus
25 they are entitled to any and all applicable penalties.

26 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
27 or should have known that Plaintiffs and the other class members were entitled to receive all rest
28 periods or payment of one additional hour of pay at Plaintiffs' and the other class member's regular

1 rate of pay when a rest period was missed, and they did not receive all rest periods or payment of
2 one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest
3 period was missed.

4 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
5 or should have known that Plaintiffs and the other class members were entitled to receive all rest
6 periods or payment of one additional hour of pay at Plaintiffs' and the other class member's regular
7 rate of pay when a rest period was missed, and they did not receive all rest periods or payment of
8 one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest
9 period was missed.

10 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
11 or should have known that Plaintiffs and the other class members were entitled to receive at least
12 minimum wages for compensation and that they were not receiving at least minimum wages for all
13 hours worked.

14 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
15 or should have known that Plaintiffs and the other class members were entitled to receive all wages
16 owed to them upon discharge or resignation, including overtime and minimum wages and meal and
17 rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of
18 their discharge or resignation.

19 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
20 or should have known that Plaintiffs and the other class members were entitled to receive all wages
21 owed to them during their employment. Plaintiffs and the other class members did not receive
22 payment of all wages, including overtime and minimum wages and meal and rest period premiums,
23 within any time permissible under California Labor Code section 204.

24 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
25 or should have known that Plaintiffs and the other class members were entitled to receive complete
26 and accurate wage statements in accordance with California law, but, in fact, they did not receive
27 complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the
28 failure to include the total number of hours worked by Plaintiffs and the other class members.

1 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
2 or should have known that Defendants had to keep complete and accurate payroll records for
3 Plaintiffs and the other class members in accordance with California law, but, in fact, did not keep
4 complete and accurate payroll records.

5 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
6 or should have known that Plaintiffs and the other class members were entitled to reimbursement
7 for necessary business-related expenses.

8 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
9 or should have known that they had a duty to compensate Plaintiffs and the other class members
10 pursuant to California law, and that Defendants had the financial ability to pay such compensation,
11 but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and
12 the other class members that they were properly denied wages, all in order to increase Defendants'
13 profits.

14 51. During the relevant time period, Defendants failed to pay overtime wages to
15 Plaintiffs and the other class members for all overtime hours worked. Plaintiffs and the other class
16 members were required to work more than eight (8) hours per day and/or forty (40) hours per week
17 without overtime compensation for all overtime hours worked.

18 52. During the relevant time period, Defendants failed to provide all requisite
19 uninterrupted meal and rest periods to Plaintiffs and the other class members.

20 53. During the relevant time period, Defendants failed to pay Plaintiffs and the other
21 class members at least minimum wages for all hours worked.

22 54. During the relevant time period, Defendants failed to pay Plaintiffs and the other
23 class members all wages owed to them upon discharge or resignation.

24 55. During the relevant time period, Defendants failed to pay Plaintiffs and the other
25 class members all wages within any time permissible under California law, including, *inter alia*,
26 California Labor Code section 204.

27 56. During the relevant time period, Defendants failed to provide complete or accurate
28 wage statements to Plaintiffs and the other class members.

1 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
2 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
3 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

4 66. During the relevant time period, Plaintiffs and the other class members worked in
5 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

6 67. During the relevant time period, Defendants intentionally and willfully failed to pay
7 overtime wages owed to Plaintiffs and the other class members. In order to meet the demands and
8 expectations of Defendants, employees routinely worked off-the-clock, including during meal
9 periods, before their shift start time and after their shift end time, all with Defendants' knowledge.
10 Moreover, Defendants periodically applied time-rounding to employee time-punches, which was
11 not neutral on its face and/or in practice, and resulted in wage loss.

12 68. Defendants' failure to pay Plaintiffs and the other class members the unpaid balance
13 of overtime compensation, as required by California laws, violates the provisions of California
14 Labor Code sections 510 and 1198, and is therefore unlawful.

15 69. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
16 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
17 attorneys' fees.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 226.7 and 512(a))**

20 **(Against all Defendants and DOES 1 through 100)**

21 70. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
22 69, and each and every part thereof with the same force and effect as though fully set forth herein.

23 71. At all relevant times, the IWC Order and California Labor Code sections 226.7 and
24 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

25 72. At all relevant times, California Labor Code section 226.7 provides that no employer
26 shall require an employee to work during any meal or rest period mandated by an applicable order
27 of the California IWC.

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1 73. At all relevant times, the applicable IWC Wage Order and California Labor Code
2 section 512(a) provide that an employer may not require, cause or permit an employee to work for
3 a work period of more than five (5) hours per day without providing the employee with a meal
4 period of not less than thirty (30) minutes, except that if the total work period per day of the
5 employee is no more than six (6) hours, the meal period may be waived by mutual consent of both
6 the employer and employee.

7 74. At all relevant times, the applicable IWC Wage Order and California Labor Code
8 section 512(a) further provide that an employer may not require, cause or permit an employee to
9 work for a work period of more than ten (10) hours per day without providing the employee with a
10 second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours
11 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent
12 of the employer and the employee only if the first meal period was not waived. During the relevant
13 time period, employees were routinely required to work during their meal period time, and thus their
14 meal periods were not duty-free. Moreover, employees were routinely required to work more than
15 five (5) hours without taking a meal period (if one was even provided). Finally, Defendants had an
16 auto-deduct policy pursuant to which Defendants would automatically deduct one-hour from
17 employee shift time on the assumption that were provided a legally-compliant meal period when, in
18 fact, they were not. For all these reasons, employees routinely experienced missed, late, and short
19 meal periods, all of which are illegal under California law.

20 75. During the relevant time period, Plaintiffs and the other class members who were
21 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
22 legally-mandated meal periods by mutual consent, were required to work for periods longer than
23 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest
24 period.

25 76. During the relevant time period, Plaintiffs and the other class members who were
26 scheduled to work for a period of time in excess of six (6) hours were required to work for periods
27 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes
28 and/or rest period.

1 77. During the relevant time period, Defendants intentionally and willfully required
2 Plaintiffs and the other class members to work during meal periods and failed to compensate
3 Plaintiffs and the other class members the full meal period premium for work performed during
4 meal periods.

5 78. During the relevant time period, Defendants failed to pay Plaintiffs and the other
6 class members the full meal period premium due pursuant to California Labor Code section 226.7.

7 79. Defendants' conduct violates applicable IWC Wage Order and California Labor
8 Code sections 226.7 and 512(a).

9 80. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(c),
10 Plaintiffs and the other class members are entitled to recover from Defendants one additional hour
11 of pay at the employee's regular rate of compensation for each work day that the meal or rest period
12 is not provided.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of California Labor Code § 226.7)**

15 **(Against all Defendants and DOES 1 through 100)**

16 81. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
17 80, and each and every part thereof with the same force and effect as though fully set forth herein.

18 82. At all times herein set forth, the applicable IWC Wage Order and California Labor
19 Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by
20 Defendants.

21 83. At all relevant times, California Labor Code section 226.7 provides that no employer
22 shall require an employee to work during any rest period mandated by an applicable order of the
23 California IWC.

24 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
25 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
26 shall be in the middle of each work period" and that the "rest period time shall be based on the total
27 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
28 thereof" unless the total daily work time is less than three and one-half (3 ½) hours,

85. During the relevant time period, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked. Defendants simply did not provide rest breaks to their employees. Rest breaks were not written into the daily patient schedules of TotalCare Medical Group or otherwise woven into the daily operations. Moreover, the Practice's written policy on rest breaks (which is empty lip service), is unlawful on its face because it did not provide for a *net* ten (10) minutes of rest.

86. During the relevant time period, Defendants willfully required Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

87. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

88. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

89. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against All Defendants and DOES 1 through 100)

90. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 89, and each and every part thereof with the same force and effect as though fully set forth herein.

91. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

92. During the relevant time period, Defendants failed to pay minimum wage to Plaintiffs and the other class members as required, pursuant to California Labor Code sections 1194,

1 1197, and 1197.1. In order to meet the demands and expectations of Defendants, employees
2 routinely worked off-the-clock, including during meal periods, before their shift start time and after
3 their shift end time, all with Defendants' knowledge. Moreover, Defendants periodically applied
4 time-rounding to employee time-punches, which was not neutral on its face and/or in practice, and
5 resulted in wage loss.

6 93. Defendants' failure to pay Plaintiffs and the other class members the minimum wage
7 as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those
8 sections Plaintiffs and the other class members are entitled to recover the unpaid balance of their
9 minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages
10 in an amount equal to the wages unlawfully unpaid and interest thereon.

11 94. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
12 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
13 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum
14 wages.

15 95. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
16 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
17 unpaid and interest thereon.

18 **FIFTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 201 and 202)**

20 **(Against all Defendants and DOES 1 through 100)**

21 96. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
22 95, and each and every part thereof with the same force and effect as though fully set forth herein.

23 97. At all relevant times herein set forth, California Labor Code sections 201 and 202
24 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
25 discharge are due and payable immediately, and if an employee quits his or her employment, his or
26 her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
27 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
28 employee is entitled to his or her wages at the time of quitting.

98. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

99. Defendants' failure to pay Plaintiffs and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

100. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days. As a result of the off-the-clock, and unpaid meal and rest period premiums, the final pay of separated employees was deficient, in violation of Labor Code § 203.

101. Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against all Defendants and DOES 1 through 100)

102. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 101, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

1 105. At all times herein set forth, California Labor Code section 204 provides that all
2 wages earned for labor in excess of the normal work period shall be paid no later than the payday
3 for the next regular payroll period.

4 106. During the relevant time period, Defendants intentionally and willfully failed to pay
5 Plaintiffs and the other class members all wages due to them, within any time period permissible
6 under California Labor Code section 204. As a result of the off-the-clock, and unpaid meal and rest
7 period premiums, the reoccurring pay of employees was deficient, in violation of Labor Code § 204.

8 107. Plaintiffs and the other class members are entitled to recover all remedies available
9 for violations of California Labor Code section 204.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 226(a))**

12 **(Against all Defendants and DOES 1 through 100)**

13 108. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
14 107, and each and every part thereof with the same force and effect as though fully set forth herein.

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

28 ///

110. Defendants have intentionally and willfully failed to provide Plaintiffs and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiffs and the other class members (in violation of Labor Code § 226(a)(2). In addition, as a result of the off-the-clock, and unpaid meal and rest period premiums, the wage statements employees inaccurately reflected not only their total hours worked (violating Labor Code § 226(a)(2), but also their net and gross wages earned (violating Labor Code §§ 226(a)(1) and (5)), and the applicable rates and associated hours worked (violating Labor Code § 226(a)(9)). The Defendants' auto-deduct practice also violated Labor Code § 226.

111. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected rights.

112. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

113. Plaintiffs and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

114. Plaintiffs and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against all Defendants and DOES 1 through 100)

115. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 114, and each and every part thereof with the same force and effect as though fully set forth herein.

116. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed,

1 payroll records showing the hours worked daily by and the wages paid to, and the number of piece-
2 rate units earned by and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments. These records shall be kept in accordance with rules established for this
4 purpose by the commission, but in any case shall be kept on file for not less than two years.

5 117. Defendants have intentionally and willfully failed to keep accurate and complete
6 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other class
7 members. As a result of the off-the-clock work (including by virtue of the auto-deduct practice) and
8 the time-rounding, Defendants' payroll records are inaccurate.

9 118. As a result of Defendants' violation of California Labor Code section 1174(d),
10 Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected
11 rights.

12 119. More specifically, Plaintiffs and the other class members have been injured by
13 Defendants' intentional and willful violation of California Labor Code section 1174(d) because they
14 were denied both their legal right and protected interest, in having available, accurate and complete
15 payroll records pursuant to California Labor Code section 1174(d).

16 **NINTH CAUSE OF ACTION**

17 **(Violation of California Labor Code §§ 2800 and 2802)**

18 **(Against all Defendants and DOES 1 through 100)**

19 120. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
20 119, and each and every part thereof with the same force and effect as though fully set forth herein.

21 121. Pursuant to California Labor Code sections 2800 and 2802, an employer must
22 reimburse its employee for all necessary expenditures incurred by the employee in direct
23 consequence of the discharge of his or her job duties or in direct consequence of his or her obedience
24 to the directions of the employer.

25 122. Plaintiffs and the other class members incurred necessary business-related expenses
26 and costs that were not fully reimbursed by Defendants. Employees were routinely required by
27 Defendants to utilize their personal cell phones for work-related purposes, without reimbursement.
28 In addition, from time to time, employees were required to drive beyond their ordinary work

1 commutes without mileage reimbursement or travel allowance pay.

2 123. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
3 other class members for all necessary business-related expenses and costs.

4 124. Plaintiffs and the other class members are entitled to recover from Defendants their
5 business-related expenses and costs incurred during the course and scope of their employment, plus
6 interest accrued from the date on which the employee incurred the necessary expenditures at the
7 same rate as judgments in civil actions in the State of California.

8 **TENTH CAUSE OF ACTION**

9 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

10 **(Against All Defendants and DOES 1 through 100)**

11 125. Plaintiffs incorporates by reference the allegations contained in paragraphs 1 through
12 124, and each and every part thereof with the same force and effect as though fully set forth herein.

13 126. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
14 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
15 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest
16 within the meaning of Code of Civil Procedure section 1021.5.

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

20 128. A violation of California Business & Professions Code section 17200, et seq. may
21 be predicated on the violation of any state or federal law. In this instant case, Defendants' policies
22 and practices of requiring employees, including Plaintiffs and the other class members, to work
23 overtime without paying them proper compensation violate California Labor Code sections 510 and
24 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs
25 and the other class members, to work through their meal and rest periods without paying them proper
26 compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and
27 practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and
28 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs

1 and the other class members violate California Labor Code sections 201, 202 and 204. Defendants
2 also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

3 129. As a result of the herein described violations of California law, Defendants
4 unlawfully gained an unfair advantage over other businesses.

5 130. Plaintiffs and the other class members have been personally injured by Defendants'
6 unlawful business acts and practices as alleged herein, including but not necessarily limited to the
7 loss of money and/or property.

8 131. Pursuant to California Business & Professions Code sections 17200, et seq.,
9 Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained
10 by Defendants during a period that commences four years preceding the filing of this Complaint; an
11 award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
12 applicable laws; and an award of costs.

13 **ELEVENTH CAUSE OF ACTION**

14 **(Violation of California Labor Code § 2698, et seq.)**

15 **(Against All Defendants and DOES 1 through 100)**

16 132. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
17 131, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

27 135. Plaintiffs and the other hourly-paid or non-exempt employees are "aggrieved
28 employees" as defined by California Labor Code section 2699(c) in that they are all current or

1 former employees of Defendants, and one or more of the alleged violations was committed against
2 them. Plaintiffs and the aggrieved employees assert this cause of action as a non-class representative
3 action under PAGA against TotalCare Medical Group. The Labor Code violations committed
4 include the following.

5 **Failure to Pay Overtime**

6 136. Defendants' failure to pay legally required overtime wages to Plaintiffs and the other
7 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
8 prohibited by California Labor code sections 510 and 1198.

9 **Failure to Provide Meal Periods**

10 137. Defendants' failure to provide legally required meal periods to Plaintiffs and the
11 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
12 activity prohibited by California Labor Code sections 226.7 and 512(a).

13 **Failure to Provide Rest Breaks**

14 138. Defendants' failure to provide legally required rest periods to Plaintiffs and the other
15 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
16 prohibited by California Labor Code section 226.7.

17 **Failure to Pay Minimum Wages**

18 139. Defendants' failure to pay legally required minimum wages to Plaintiffs and the other
19 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
20 prohibited by California Labor Code sections 1194, 1197 and 1197.1.

21 **Failure to Pay Wages Upon Termination**

22 140. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
23 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
24 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

25 **Failure to Timely Pay Wages During Employment**

26 141. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
27 employees during employment in accordance with Labor Code section 204 constitutes unlawful
28 and/or unfair activity prohibited by California Labor Code section 204.

1 **Failure to Provide Complete and Accurate Wage Statements**

2 142. Defendants' failure to provide complete and accurate wage statements to Plaintiffs
3 and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes
4 unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

5 **Failure to Keep Complete and Accurate Payroll Records**

6 143. Defendants' failure to keep complete and accurate payroll records relating to
7 Plaintiffs and the other aggrieved employees in accordance with California Labor Code section
8 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
9 1174(d).

10 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

11 144. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for
12 necessary business-related expenses and costs in accordance with California Labor Code sections
13 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
14 sections 2800 and 2802.

15 145. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on
16 behalf of all aggrieved employees, request and are entitled to recover from TotalCare Medical Group
17 and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well
18 as all penalties pursuant to PAGA, including but not limited to:

19 a. Penalties under California Labor Code section 2699 in the amount of a hundred
20 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
21 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

22 b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the
23 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation,
24 and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
25 violation;

26 c. Penalties under California Labor Code section 210 in addition to, and entirely
27 independent and apart from, any other penalty provided in the California Labor Code in the amount
28 of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and

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

3 d. Any and all additional penalties and sums as provided by the California Labor Code
4 and/or other statutes.

5 146. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
6 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
7 Workforce Development Agency for the enforcement of labor laws and education of employers and
8 employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved
9 employees.

10 147. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and
11 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
12 statute.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs request a trial by jury on all issues, claims, and causes of action so triable.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, individually and on behalf of other members of the general public
17 similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;
20 2. That Plaintiffs be appointed as the representatives of the Class;
21 3. That counsel for Plaintiffs be appointed as Class Counsel; and
22 4. That Defendants provide to Class Counsel immediately the names and most
23 current/last know contact information (address, email and telephone numbers) of all class members.

24 **As to the First Cause of Action**

- 25 5. That the Court declare, adjudge and decree that Defendants violated California Labor
26 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
27 overtime wages due to Plaintiffs and the other class members;

1 6. For general unpaid wages at overtime wage rates and such general and special
2 damages as may be appropriate;

3 7. For pre-judgment interest on any unpaid overtime compensation commencing from
4 the date such amounts were due;

5 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code section 1194; and

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

8 **As to the Second Cause of Action**

9 10. That the Court declare, adjudge and decree that Defendants violated California Labor
10 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all
11 meal periods (including second meal periods) to Plaintiffs and the other class members;

12 11. That the Court make an award to Plaintiffs and the other class members of one (1)
13 hour of pay at each employee's regular rate of compensation for each workday that a meal period
14 was not provided;

15 12. For all actual, consequential, and incidental losses and damages, according to proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(c);

17 14. For pre-judgment interest on any unpaid wages from the date such were due;

18 15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

20 **As to the Third Cause of Action**

21 17. That the Court declare, adjudge and decree that Defendants violated California Labor
22 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all
23 rest breaks to Plaintiffs and the other class members;

24 18. That the Court make an award to Plaintiffs and the other class members of one (1)
25 hour of pay at each employee's regular rate of compensation for each workday that a rest break was
26 not provided;

27 19. For all actual, consequential, and incidental losses and damages, according to proof;

28 20. For premium wages pursuant to California Labor Code section 226.7(c);

- 1 21. For pre-judgment interest on any unpaid wages from the date such were due; and
2 22. For such other and further relief as the Court may deem just and proper.

3 **As to the Fourth Cause of Action**

4 23. That the Court declare, adjudge and decree that Defendants violated California Labor
5 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and
6 the other class members;

7 24. For general unpaid wages and such general and special damages as may be
8 appropriate;

9 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
10 Plaintiffs and the other class members in the amount as may be established according to proof at
11 trial;

12 26. For pre-judgment interest on any unpaid compensation commencing from the date
13 such amounts were due;

14 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Labor Code section 1194(a);

16 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

18 **As to the Fifth Cause of Action**

19 30. That the Court declare, adjudge and decree that Defendants violated California Labor
20 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
21 termination of the employment of Plaintiffs and the other class members no longer employed by
22 Defendants;

23 31. For all actual, consequential, and incidental losses and damages, according to proof;

24 32. For statutory wage penalties pursuant to California Labor Code section 203 for
25 Plaintiffs and the other class members who have left Defendants' employ;

26 33. For pre-judgment interest on any unpaid compensation from the date such amounts
27 were due; and

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

1 **As to the Sixth Cause of Action**

2 35. That the Court declare, adjudge and decree that Defendants violated California Labor
3 Code section 204 by willfully failing to pay all compensation owed at the time required by California
4 Labor Code section 204 to Plaintiffs and the other class members;

5 36. For all actual, consequential, and incidental losses and damages, according to proof;

6 37. For pre-judgment interest on any unpaid compensation from the date such amounts
7 were due; and

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

9 **As to the Seventh Cause of Action**

10 39. That the Court declare, adjudge and decree that Defendants violated the record
11 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to
12 Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage
13 statements thereto;

14 40. For all actual, consequential, and incidental losses and damages, according to proof;

15 41. For statutory penalties pursuant to California Labor Code section 226(e);

16 42. For injunctive relief to ensure compliance with this section, pursuant to California
17 Labor Code section 226(h); and

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

19 **As to the Eighth Cause of Action**

20 44. That the Court declare, adjudge and decree that Defendants violated California Labor
21 Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiffs
22 and the other class members as required by California Labor Code section 1174(d);

23 45. For actual, consequential and incidental losses and damages, according to proof;

24 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

26 **As to the Ninth Cause of Action**

27 48. That the Court declare, adjudge and decree that Defendants violated California Labor
28 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members

1 for all necessary business-related expenses as required by California Labor Code sections 2800 and
2 2802;

3 49. For actual, consequential and incidental losses and damages, according to proof;

4 50. For the imposition of civil penalties and/or statutory penalties;

5 51. For reasonable attorneys' fees and costs of suit incurred herein; and

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

7 **As to the Tenth Cause of Action**

8 53. That the Court decree, adjudge and decree that Defendants violated California
9 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the other
10 class members all overtime compensation due to them, failing to provide all meal and rest periods
11 to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and
12 the other class members, failing to pay Plaintiffs' and the other class members' wages timely as
13 required by California Labor Code section 201, 202 and 204 and by violating California Labor Code
14 sections 226(a), 1174(d), 2800 and 2802.

15 54. For restitution of unpaid wages to Plaintiffs and all the other class members and all
16 pre-judgment interest from the day such amounts were due and payable;

17 55. For the appointment of a receiver to receive, manage and distribute any and all funds
18 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
19 result of violation of California Business and Professions Code sections 17200, et seq.;

20 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

22 57. For injunctive relief to ensure compliance with this section, pursuant to California
23 Business and Professions Code sections 17200, et seq.; and

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

25 **As to the Eleventh Cause of Action**

26 59. For civil penalties pursuant to California Labor Code sections 2699(a), (f), (g) and
27 558, costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202,
28 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

1 60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
2 Labor Code sections 210, 218.5 and 2699;

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

5 Dated: September 2, 2022

SCHEPPACH BAUER PC

By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiffs
RACHEL VALENZUELA, MELISSA
AMEZOLA, and VANESSA CABRERA, on
behalf of themselves and all others similarly
situated

EXHIBIT A

LAWYERS FOR JUSTICE[®]

July 16, 2021

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: *EMERZIAN CHIROPRACTIC PROFESSIONAL CORPORATION; TOTAL CARE MEDICAL GROUP, INC.; JOHN H. EMERZIAN, AN INDIVIDUAL*

Dear Representative:

We have been retained to represent Melissa Amezola against Emerzian Chiropractic Professional Corporation, Total Care Medical Group, Inc., and John H. Emerzian, an individual (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as "ECPC") for violations of California wage-and-hour laws. Ms. Amezola seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

John H. Emerzian is the Chief Executive Officer of Emerzian Chiropractic Professional Corporation and the Chief Financial Officer of Total Care Medical Group, Inc. John H. Emerzian, at all times herein relevant, was acting either individually or as an officer, owners, director, agent or employee of ECPC, who caused and continues to cause all of the wage and hour violations alleged herein against the "aggrieved employees," as defined herein, including without limitation violations of Labor Code Section 558 and 1197.1

Ms. Amezola seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

ECPC employed Ms. Amezola as an hourly-paid, non-exempt employee from approximately October 2019 to approximately July 2020, in the State of California. Pursuant to the Emergency Rules Related to COVID-19, Rule 9(a), "the statutes of limitation and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020."

The "aggrieved employees" that Ms. Amezola may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, ECPC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,

1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 5-2001.

ECPC required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, responding to work related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Ms. Amezola and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Ms. Amezola and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, ECPC required Ms. Amezola and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, ECPC failed to pay Ms. Amezola and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, ECPC failed to pay Ms. Amezola and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ECPC did not provide Ms. Amezola and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ECPC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Ms. Amezola and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Ms. Amezola and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Ms. Amezola and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Ms. Amezola and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Ms. Amezola and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, ECPC failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Ms. Amezola and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 2810.5 requires an employer to provide written notice to an employee, at the time of hiring, containing the following information:

The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. The regular payday designated by the employer in accordance with the requirements of this code. The name of the employer, including any "doing business as" names used by the employer. The physical address of the employer's main office or principal place of business, and a mailing address, if different. The telephone number of the employer. The name, address, and telephone number of the

employer's workers' compensation insurance carrier. That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. Any other information the Labor Commissioner deems material and necessary.

ECPC failed to accurately provide aggrieved employees with the requisite notice in violation of California Labor Code section 2810.5.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ECPC did not provide Ms. Amezola and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

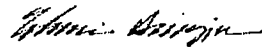
California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001 and 5-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, ECPC failed to pay Ms. Amezola and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Ms. Amezola and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, ECPC failed to pay Ms. Amezola and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Ms. Amezola and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Ms. Amezola and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ECPC.

Therefore, on behalf of all aggrieved employees, Ms. Amezola seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwanian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Emerzian Chiropractic Professional Corporation
Total Care Medical Group, Inc.
c/o John H. Emerzian
Agent for Service of Process
5361 E. Kings Canyon Rd.,
Fresno, CA 93727

John H. Emerzian
3690 W. Alluvial Ave.,
Fresno, CA 93711

EXHIBIT B

LAWYERS FOR JUSTICE[®]

July 16, 2021

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: EMERZIAN CHIROPRACTIC PROFESSIONAL CORPORATION; TOTAL CARE MEDICAL GROUP, INC.; JOHN H. EMERZIAN, AN INDIVIDUAL

Dear Representative:

We have been retained to represent Vanessa Cabrera against Emerzian Chiropractic Professional Corporation, Total Care Medical Group, Inc., and John H. Emerzian, an individual (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as "ECPC") for violations of California wage-and-hour laws. Ms. Cabrera seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

John H. Emerzian is the Chief Executive Officer of Emerzian Chiropractic Professional Corporation and the Chief Financial Officer of Total Care Medical Group, Inc. John H. Emerzian, at all times herein relevant, was acting either individually or as an officer, owners, director, agent or employee of ECPC, who caused and continues to cause all of the wage and hour violations alleged herein against the "aggrieved employees," as defined herein, including without limitation violations of Labor Code Section 558 and 1197.1

Ms. Cabrera seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

ECPC employed Ms. Cabrera as an hourly-paid, non-exempt employee from approximately January 2015 to approximately March 2020, in the State of California. Pursuant to the Emergency Rules Related to COVID-19, Rule 9(a), "the statutes of limitation and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020."

The "aggrieved employees" that Ms. Cabrera may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, ECPC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,

1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 5-2001.

ECPC required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, responding to work related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Ms. Cabrera and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Ms. Cabrera and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, ECPC required Ms. Cabrera and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, ECPC failed to pay Ms. Cabrera and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, ECPC failed to pay Ms. Cabrera and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ECPC did not provide Ms. Cabrera and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ECPC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Ms. Cabrera and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

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California Labor Code section 2810.5 requires an employer to provide written notice to an employee, at the time of hiring, containing the following information:

The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. The regular payday designated by the employer in accordance with the requirements of this code. The name of the employer, including any "doing business as" names used by the employer. The physical address of the employer's main office or principal place of business, and a mailing address, if different. The telephone number of the employer. The name, address, and telephone number of the

employer's workers' compensation insurance carrier. That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. Any other information the Labor Commissioner deems material and necessary.

ECPC failed to accurately provide aggrieved employees with the requisite notice in violation of California Labor Code section 2810.5.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ECPC did not provide Ms. Cabrera and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

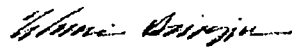
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California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Ms. Cabrera and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ECPC.

Therefore, on behalf of all aggrieved employees, Ms. Cabrera seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us.
Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwazian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Emerzian Chiropractic Professional Corporation
Total Care Medical Group, Inc.
c/o John H. Emerzian
Agent for Service of Process
5361 E. Kings Canyon Rd.,
Fresno, CA 93727

John H. Emerzian
3690 W. Alluvial Ave.,
Fresno, CA 93711

EXHIBIT C

AMENDMENT TO PAGA NOTICES

July 21, 2022

VIA CERTIFIED MAIL

Employer

Emerzian Chiropractic Professional Corporation
Total Care Medical Group, Inc.
John H. Emerzian
Total Care Management Group, Inc.
San Joaquin TotalCare, Inc.
C/O William M. Woolman, Esq.
5260 N. Palm Avenue, Suite 400
Fresno, CA 93704

VIA ONLINE SUBMISSION

Agency

California Labor & Workforce Development
Agency

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Re: *Amezola v. Emerzian Chiropractic Prof. Corp., et al.* (LWDA-CM-838316-21)
Cabrera v. Emerzian Chiropractic Prof. Corp., et al. (LWDA-CM-838315-21)
Amendment to PAGA Notices

Dear Employer and the LWDA:

Melissa Amezola (“Amezola”) and Vanessa Cabrera (“Cabrera”), on behalf of themselves and all other aggrieved employees, and through their undersigned representative, hereby provide this Amendment to PAGA Notices (“Amendment”) to amend their respective original PAGA Notices that were previously submitted to the LWDA pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698-2699.5 (“PAGA”).

This Amendment supplements and amplifies Amezola’s and Cabrera’s respective original PAGA Notices (both submitted to the LWDA on July 16, 2021). This Amendment names specifically the entities that were identified in Amezola’s and Cabrera’s original PAGA Notices as “affiliates.” Those affiliates include Total Care Management Group, Inc. and San Joaquin TotalCare, Inc. Those affiliates are alleged to be responsible parties. Thus, all claims in the original PAGA Notices of Amezola and Cabrera, and all claims in this Amendment, are alleged against the originally-named parties, Emerzian Chiropractic Professional Corporation, Total Care Medical Group, Inc., and John H. Emerzian, as well as the affiliates, Total Care Management Group, Inc. and San Joaquin TotalCare, Inc., and all such parties are collectively referred to as the “Company” or “ECPC.”

This Amendment also includes additional factual allegations against the Company (which are discussed below). For the sake of brevity, Amezola and Cabrera will not repeat the contents of their respective original PAGA Notices, which remain in effect.

Amezola and Cabrera seek recovery on behalf of a group of aggrieved employees identified as all current and former employees of the Company who worked for the Company in California as non-exempt employees at any time from January 20, 2020 to July 5, 2022 (the "PAGA Period"). These are the "aggrieved employees" to whom Amezola's original PAGA Notice, Cabrera's original PAGA Notice, and this Amendment apply. Amezola and Cabrera are included within the group of aggrieved employees. Amezola's and Cabrera's respective original PAGA Notices and this Amendment invoke all applicable forms of tolling, including the tolling provided by the Judicial Council's Emergency Rule 9.

AMENDMENT

I. Rest Breaks.

Under California law, all non-exempt employees must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC Wage Orders, § 12(A).) Non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

Here, the Company did not provide legally-compliant rest breaks to employees. Rest breaks were not written into the daily patient schedules or otherwise woven into the daily operations of ECPC.

The Company's written policy on rest breaks is unlawful on its face:

"Each workday, full-time nonexempt employees are provided with 2 rest periods of 10 minutes in length. To the extent possible, rest periods will be provided in the middle of the work periods. Since this time is counted and paid as hours worked, employees must not be absent from their work stations beyond the allotted rest period time. Part-time employees are provided with 1 rest period of 10 minutes in length." (underscore added.)

Under California law, to be legally compliant, a rest break must provide a "net" 10 minutes of rest. (IWC Wage Orders, § 12(A).) Accordingly, an employee's 10 minutes of rest does not start and end at their work station. Rather, the employee is entitled to a full 10 minutes of rest after they have reached an area suitable for rest that is away from their work station. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112.) Accordingly, the Company's written

policy -- which prohibits an employee from being away from their work station for longer than 10 minutes -- necessarily precludes a "net" 10 minutes of rest.

Additionally, the Company's written policy erroneously tethers the quantity of rest breaks provided to the employee's status as a "full-time" or "part-time" employee, rather than the actual time an employee works during a shift. Under the law, part-time and full-time employees alike are entitled two paid rest breaks for shifts exceeding 6 hours of work, and three paid rest breaks for shifts exceeding 10 hours of work. (*Brinker Restaurant Corp.*, 53 Cal.4th at p. 1029.) It is the hours worked, not part-time or full-time status, that matters.

The Company's rest period violations resulted in unpaid rest period premiums.

II. Meal Periods.

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an uncontrolled, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) All non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second unpaid, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a).)

Aggrieved employees regularly worked during their meal periods and/or took meal periods late. The Company schedules numerous patients per day, and also takes walk-in patients. The volume of patients and workload prevented aggrieved employees from taking thirty duty-free minutes for a meal period—they often worked at their desks or were called back to assist—and also caused them to work more than five (5) hours in a row before clocking out for a meal period.

The Company also has a policy that unlawfully deducts one hour if an employee does not clock out for a meal period, stating: "It will be assumed you had an one hour lunch if you don't clock in or out." This is illegal under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 76, as the lack of a meal period clock-out creates a "presumption" of a meal period violation, and the burden of proof is on the "employer" to rebut the presumption. There is no such thing as a presumed legally-compliant meal period under California law.

The Company's meal period violations resulted in unpaid meal period premiums.

III. Off-The-Clock Work/Uncompensated Work.

Off-the-clock work is prohibited under California law. (See, e.g., Labor Code, §§ 510 & 1194.) Aggrieved employees had to work off-the-clock during meal periods, and outside their scheduled shift hours. During the PAGA Period, the Company had a "no overtime" policy, which meant that aggrieved employees were prohibited from recording overtime that was not pre-approved, regardless of whether they actually worked overtime hours.

In addition, the Company also intermittently applied time-rounding to employee time-punches that, on information and belief, resulted in a disproportionately negative impact on aggrieved employees.

IV. Inaccurate Wage Statements.

As a result of the off-the-clock and unpaid meal and rest period premiums, the wage statements of aggrieved employees inaccurately reflected their total hours worked (violating Labor Code § 226(a)(2), and their net and gross wages earned (violating Labor Code §§ 226(a)(1) and (5); see *Naranjo v. Spectrum Security Services, Inc.* (2022) --- Cal. 5th --- (S258966) [holding that failure to pay meal period and rest break premiums violate section 226(a)].)

In addition, the automatic deduction of one hour of pay failed to comply with Labor Code section 226(a)(2)'s requirement to show the total hours worked on wage statements. (*Cornn v. UPS, Inc.* (N.D. Cal 2006) 2006 WL 449138, *1-3 [concluding that an employer's alleged practice of deducting a standard 30 or 60-minute meal period from an employee's total hours worked without regard to the meal periods actually taken would constitute a violation of Labor Code section 226]; DLSE Opinion Letter, May 17, 2002, p. 3 [Labor Code section 226 obligates the employer to specify "the precise, actual number of hours worked" on the wage statements of employees].)

V. Failure To Pay All Wages Due Upon Separation From Employment.

As a result of the off-the-clock, and unpaid meal and rest period premiums, the Company willfully failed to provide all wages due to separated employees under Labor Code section 203.

VI. Unreimbursed Expenses.

California Labor Code section 2802 requires an employer to reimburse its employees for all necessary expenditures incurred in direct consequence of the discharge of their job duties or in direct consequence of their obedience to the directions of the employer.

At all times during the PAGA Period, aggrieved employees were required to use their personal cell phones for work-related communications, including for work-related calls, work-related text messaging, and ordinary business calls while the office phones were temporarily offline. Employees were required to utilize their personal cell phones for work-related communications, yet the Company did not reimburse employees for this personal cell phone usage. Consequently, the Company violated Labor Code section 2802. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 [reimbursement owed under Labor Code § 2802 for required use of personal cell phones].)

In addition, certain employees of the Company have been required to report to multiple office locations. For example, some employees have been required to drive paperwork from one

office to another. On other occasions, the Company required employees from one office to cover shifts of absent employees in a different office. The Company did not reimburse employees for mileage when they had to drive beyond their normal commute, violating Labor Code § 2802. (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562 ["[I]f an employer requires an employee to travel on company business, the employer must reimburse the employee for the cost of that travel under [s]ection 2802".])

Based on the above Amendment and on the original PAGA Notices of Amezola and Cabrera, the Company is on notice of violating Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the IWC Wage Orders, including but not limited to Wage Orders 4-2001.

Sincerely,

A handwritten signature in black ink, appearing to read 'John M. Scheppach', written over a circular stamp or seal.

John M. Scheppach
Scheppach Bauer PC

1 **PROOF OF SERVICE**

2 I am employed as a shareholder of Scheppach Bauer PC, a law firm with a principal
3 place of business in Orange County, California. I am over the age of eighteen (18) and am
4 not a party to this action. My business address is 23181 Verdugo Drive, Suite 105-A, Laguna
5 Hills, CA, 92653.

6 On October 3, 2022, I served the within document(s) described as:

7 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES**

8 on the interested parties in this action as stated below:

9 **SAGASER, WATKINS & WIELAND, PC**
10 William M. Woolman, Esq.
11 bill@sw2law.com
12 Charles P. Hamamjian, Esq.
13 charles@sw2law.com
14 5260 North Palm Avenue, Suite 400
15 Fresno, CA 93704

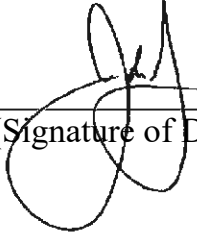
ATTORNEYS FOR DEFENDANTS
Emerzian Chiropractic Professional
Corporation, Total Care Medical
Group, Inc., John H. Emerzian, Total
Care Management Group, Inc. and San
Joaquin TotalCare, Inc.

16 ☒ **BY ELECTRONIC SERVICE VIA ONE LEGAL:** By submitting an electronic
17 version of the document(s) to One Legal, LLC, through the user interface
18 www.onelegal.com. My electronic notification address is jmscheppach@sbpc.law

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

21 Executed on October 3, 2022

22 John M. Scheppach
23 (Type or print name)

24 
25 (Signature of Declarant)