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Superior Court of California
County of Los Angeles
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Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Gomez Deputy

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GREGORY M. DURHAM, an individual,
on behalf of himself and others similarly
situated,

Plaintiff,

vs.

ASSESSMENT CONSULTATION AND
TREATMENT, INC.; and DOES 1 to 50,
inclusive,

Defendants.

Case No.: 21STCV46525

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Pay Timely Wages Pursuant to Labor Code § 204
3. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
5. Violation of Labor Code § 226(a)
6. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
7. Penalties Pursuant to Labor Code § 203
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

Plaintiff GREGORY M. DURHAM, an individual, on behalf of himself, all others similarly situated, complains of Defendant ASSESSMENT CONSULTATION AND TREATMENT, INC. ("Defendant") and each of them, as follows:

I

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of

1 Plaintiff and a Proposed Class defined as:

2 All persons who are employed or have been employed as an
3 hourly employee by ASSESSMENT CONSULTATION AND
4 TREATMENT, INC. in the State of California since four (4)
years prior to the filing of this action to the present.

5 2. From at least four (4) years prior to the filing of this action continuing to the
6 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
7 hourly employees for all work perform at the proper rate of compensation. Defendant required
8 Plaintiff and the Proposed Class to drive to and from clients without compensation. In addition,
9 Defendant required Plaintiff and the Proposed Class to perform work “off the clock” drafting
10 and responding to emails and communications with Defendant and clients. Lastly, Defendant
11 did not provide administrative time for Plaintiff and the Proposed Class to complete their reports
12 and paperwork related to their clients. This resulted in underpayment of wages and/or overtime.
13 As a result of Defendant’s unlawful policies, Plaintiff and the Proposed Class were paid at a
14 regular rate less than the rate required under California law.

15 3. For at least four (4) years prior to the filing of this action continuing to the
16 present, Defendant has had a consistent policy of failing to timely pay their California
17 employees after the conclusion of each pay period in compliance with Labor Code § 204.

18 4. For at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendant has had a consistent policy of failing to inform employees of their right to
20 take meal periods and requiring employees within the State of California, including Plaintiff, to
21 work at least five (5) hours without a meal period and failing to pay such employees one (1)
22 hour of pay at the employees’ regular rate of compensation for each workday that the meal
23 period is not provided or provided after five (5) hours, as required by California state wage and
24 hour laws.

25 5. For at least four (4) years prior to the filing of this action and continuing to the
26 present, Defendant has had a consistent policy of failing to inform employees of their right to
27 take rest periods and of failing to provide employees within the State of California, including
28 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction

1 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
2 compensation for each workday that the rest period was not provided, as required by California
3 state wage and hour laws.

4 6. For at least four (4) year prior to the filing of this action continuing to the
5 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include
6 necessary and required information on wage statements provided to Plaintiff and the Proposed
7 Class. Defendant failed to include the total hours worked, all applicable hourly rates in effect
8 during the pay period, and the corresponding number of hours worked at each hourly rate by the
9 employee.

10 7. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendant has not reimbursed Plaintiff and the Proposed Class the cost and
12 maintenance of their personal vehicles, personal cell phones, home internet, and printing
13 supplies necessary to perform their job duties during the relevant time period in violation of
14 Labor Code § 2802.

15 8. Based on the allegations alleged above, from at least four (4) years prior to the
16 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
17 time of termination or resignation to Plaintiff and the Proposed Class.

18 9. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
19 pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802;
20 Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
21 wages and/or overtime, timely payment of wages, meal break premiums, rest break premiums,
22 penalties for accurate itemized wage statements, reimbursement of expenses, wages upon
23 termination or resignation, other penalties, injunctive and other equitable relief, and reasonable
24 attorney's fees and costs.

25 10. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
26 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
27 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

28 11. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this

representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1199, and 2802.

II

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

13. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Los Angeles and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within the County of Los Angeles. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the County of Los Angeles.

15. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III

PARTIES

A. PLAINTIFF

16. Plaintiff GREGORY M. DURHAM is a resident of California.

1 17. Plaintiff and the Proposed Class Members were regularly required to:
2 a. Work without being paid for all hours worked at the proper rate;
3 b. Work without being paid wages in a timely manner;
4 c. Work without being provided their meal periods;
5 d. Work without being provided their rest periods;
6 e. Work without Defendant maintaining accurate time records showing
7 when the employee begins and ends each work period, meal periods, and total daily hours
8 worked and work without being provided an accurate itemized wage statement that reflects all
9 deductions from payment of wages and accurately report total hours worked, including when the
10 employee begins and ends each work period, meal periods, and total daily hours worked, and
11 the applicable rates of pay by Plaintiff and Proposed Class Members; and
12 f. Work without being reimbursed for expenses as a condition of
13 employment.

14 18. Defendant willfully failed to compensate Plaintiff and all Proposed Class
15 Members for wages at the termination of their employment with Defendant.

16 19. As a result of this conduct, Defendant has engaged in unfair competition and
17 unlawful business practices.

18 20. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this
19 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
20 violation of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1199, and
21 2802.

22 **B. DEFENDANTS**

23 21. Defendant ASSESSMENT CONSULTATION AND TREATMENT, INC. is
24 believed to be a California corporation operating within the State of California. Defendant's
25 corporate address is believed to be 255 E Santa Clara Street Suite 210, Arcadia, CA 91006.
26 Upon information and belief, Defendant employed Plaintiff and similarly situated persons as
27 employees within California. Defendant has done and does business throughout the State of
28 California.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

IV

FACTUAL BACKGROUND

24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as employees by Defendant.

25. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

26. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to drive to and from clients without compensation. In addition, Defendant required Plaintiff and the Proposed Class to perform work “off the clock” drafting and responding to emails and communications with Defendant and clients. Lastly, Defendant did not provide administrative time for Plaintiff and the Proposed Class to complete their reports and paperwork related to their clients. This resulted in underpayment of wages and/or overtime. As a result of Defendant’s

1 unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less than the rate
2 required under California law.

3 27. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
4 timely at the conclusion of the pay period. Defendant's employees are paid bi-monthly payroll.
5 Labor Code § 204 requires that wages for the labor performed between the 1st and 15th days,
6 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
7 during which the labor was performed, and labor performed between the 16th and the last day,
8 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
9 month. Defendant pays wages for the labor performed between the 1st and 15th days on the last
10 day of the month and the labor performed between the 16th and the last day on the month on the
11 15th of the following month. As such, Defendant pays Plaintiff and the Proposed Class beyond
12 the period required in violation of Labor Code §§ 204(a), 204(d) and 210.

13 28. Plaintiff and the Proposed Class Members have been forced by Defendant to
14 work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
15 meal break and not being compensated one (1) hour of pay at the regular rate of compensation
16 for each workday that a meal period was not provided or provided after five (5) hours, all in
17 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
18 Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
19 to take meal periods by way of a lawful policy.

20 29. Plaintiff and the Proposed Class have been required to work four-hour
21 increments (or major fractions thereof) without being provided with a ten (10) minute rest
22 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
23 to take rest periods by way of a lawful policy.

24 30. Defendant has failed to provide accurate itemized wage statements in compliance
25 with Labor Code § 226(a) by failing to maintain time records showing when the employee
26 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
27 statements all deductions from payment of wages, accurately reporting total hours and
28 applicable rates of pay for Plaintiff and the Proposed Class.

31. On a regular and consistent basis, Plaintiff and the Proposed Class have not been properly reimbursed expenses associated with the cost and maintenance of their personal vehicles, personal cell phones, home internet, and printing supplies necessary to perform their job duties as a condition of employment.

32. Defendant willfully failed to pay wages and compensation, when Plaintiff and Proposed Class Members quit or were discharged. Defendant failed to pay the wages described above at the time of termination or resignation. This failure was willful, without legal justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

33. As a result of the facts alleged above, Defendant has engaged in unfair competition and unlawful business practices.

34. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et seq.*

V

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by ASSESSMENT CONSULTATION AND TREATMENT, INC. in the State of California since four (4) years prior to the filing of this action to the present.

36. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

37. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Class is easily ascertainable.

A. Numerosity

38. The potential members of the Proposed Class as defined are so numerous that

1 joinder of all the members of the Proposed Class is impracticable. While the precise number of
2 Proposed Class Members has not been determined at this time, Plaintiff is informed and believes
3 that Defendant currently employ, and during the relevant time periods employed 50 to 99
4 members of the Proposed Class at any given time.

5 39. Plaintiff alleges that Defendant's employment records would provide information
6 as to the number and location of all Proposed Class Members. Joinder of all members of the
7 Proposed Class is not practicable.

8 **B. Commonality**

9 40. There are questions of law and fact common to the Proposed Class that
10 predominate over any questions affecting only individual Proposed Class Members. These
11 common questions of law and fact include, without limitation:

12 a. Whether Defendant failed to pay wages to Plaintiff and the Proposed
13 Class as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1197,
14 and 1199;

15 b. Whether Defendant failed to timely pay wages to Plaintiff and the
16 Proposed Class during the course of employment, in violation of Labor Code § 204;

17 c. Whether Defendant failed to provide all lawful meal periods or pay one
18 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

19 d. Whether Defendant failed to provide all lawful rest periods or pay one
20 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

21 e. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
22 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
23 failing to issue accurate and complete itemized wage statements;

24 f. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-
25 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for
26 the cost and maintenance of their personal vehicles, personal cell phones, home internet, and
27 printing supplies necessary to perform their job duties;

28 g. Whether Defendant violated §§ 201-203 of the Labor Code by failing to

1 pay compensation due and owing at the time that any Proposed Class Member's employment
2 with Defendant terminated;

3 h. Whether Defendant violated § 17200, *et seq.* of the Business &
4 Professions Code by engaging in the acts previously alleged;

5 i. Whether Plaintiff and the members of the Proposed Class are entitled to
6 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

7 j. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in
8 the acts alleged herein.

9 **C. Typicality**

10 41. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff
11 and all members of the Proposed Class sustained injuries and damages arising out of and caused
12 by Defendant's common course of conduct in violation of laws, regulations that have the force
13 and effect of law, and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 42. Plaintiff will fairly and adequately represent and protect the interests of the
16 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are
17 competent and experienced in litigating large employment class actions.

18 **E. Superiority of Class Action**

19 43. A class action is superior to other available means for the fair and efficient
20 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
21 practicable, and questions of law and fact common to the Proposed Class predominate over any
22 questions affecting only individual members of the Proposed Class. Each member of the
23 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
24 policy and/or practice of failing to pay wages for all hours worked, failing to pay timely wages,
25 failing to provide meal periods, failing to provide rest periods, failing to provide accurate
26 itemized wage statements, failing to provide reimbursement of expenses, and failing to pay all
27 wages upon resignation or termination.

28 44. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial
2 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
3 management of this action that would preclude its maintenance as a class action.

4 **VI**

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES/OVERTIME**

7 **VIOLATION OF LABOR CODE §§ 510, 1194, 1197, AND 1199**

8 45. Plaintiff incorporates each and every allegation set forth in all of the foregoing
9 paragraphs as if fully set forth herein.

10 46. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
11 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
12 one workweek must be compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay
14 its employees the legal minimum wage and the legal overtime compensation applicable.
15 California law also requires that any compensation, including a bonus, must be included in the
16 regular rate of pay.

17 47. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
18 at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to drive
19 to and from clients without compensation. In addition, Defendant required Plaintiff and the
20 Proposed Class to perform work "off the clock" drafting and responding to emails and
21 communications with Defendant and clients. Lastly, Defendant did not provide administrative
22 time for Plaintiff and the Proposed Class to complete their reports and paperwork related to their
23 clients. This resulted in underpayment of wages and/or overtime. As a result of Defendant's
24 unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less than the rate
25 required under California law.

26 48. Plaintiff and the Proposed Class were forced to work on a regular and consistent
27 basis without receiving compensation for all hours worked at the proper rate. Specifically,
28 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were

1 working more than eight (8) hours in one day or forty (40) hours in one week.

2 49. By their policy of requiring Plaintiff and the Proposed Class to work in excess of
3 eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
4 at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
5 provisions of Labor Code §§ 510, 1194 and 1199.

6 50. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
7 have been deprived of wages and overtime in amounts to be determined at trial, and are entitled
8 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

9 **VII**

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY WAGES PURSUANT TO LABOR CODE § 204**

12 51. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 52. Labor Code § 204(a) states that all wages earned by any person in any
15 employment are due and payable twice during each calendar month. Further, labor performed
16 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
17 and the 26th day of the month during which the labor was performed, and labor performed
18 between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the
19 1st and 10th day of the following month. Defendant pays wages for the labor performed between
20 the 1st and 15th days on the last day of the month and the labor performed between the 16th and
21 the last day on the month on the 15th of the following month. As such, Defendant pays Plaintiff
22 and the Proposed Class beyond the period required in violation of Labor Code §§ 204(a), 204(d)
23 and 210.

24 53. As a proximate result of Defendant's violations of Labor Code § 204, Plaintiff
25 and the Proposed Class have been damaged in an amount according to proof at the time of trial.

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VIII

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7

AND LABOR CODE § 512

54. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

55. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

56. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

57. Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. When Defendant provided these meal periods, they were often less than thirty (30) minutes in length.

58. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

IX

FOURTH CAUSE OF ACTION

FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

59. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

60. Labor Code § 226.7 require an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

61. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or with only some of their required rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

62. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

X

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

63. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

64. California Labor Code § 226(a) requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by Plaintiff and the Proposed Class.

65. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage statements that do not state the total hours worked during the pay period.

66. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

67. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

68. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

XI

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802

69. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

70. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

71. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost and maintenance of their personal vehicles, personal cell phones, home internet, and printing supplies necessary to perform their job duties during the relevant time period.

72. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

XII

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

73. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

74. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

75. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to

1 penalties under Labor Code § 203, which provides that an employee’s wages shall continue as a
2 penalty until paid for a period of up to thirty (30) days from the time they were due.

3 76. Defendant has failed to pay Plaintiff and others a sum certain at the time of
4 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
5 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
6 and the Proposed Class are entitled to a penalty in the amount of Plaintiff’s and the Proposed
7 Class Members’ daily wage multiplied by thirty (30) days.

8 **XIII**

9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION PURSUANT TO**

11 **BUSINESS & PROFESSIONS CODE § 17200**

12 77. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 78. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
15 himself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
16 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
17 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
18 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
19 public interest within the meaning of Code of Civil Procedure § 1021.5.

20 79. Plaintiff is a “person” within the meaning of Business & Professions Code
21 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
22 and other appropriate equitable relief.

23 80. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
24 business practices.

25 81. California’s wage and hour laws express fundamental public policies. Providing
26 employees with proper wages and compensation are fundamental public policies of this State
27 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
28 enforce vigorously minimum labor standards, to ensure that employees are not required or

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower their costs by failing to comply
3 with minimum labor standards.

4 82. Defendant has violated statutes and public policies as alleged herein. Through
5 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
6 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
7 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
8 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
9 privileges guaranteed to all employees under law.

10 83. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
11 violation of § 17200, *et seq.* of the Business & Professions Code.

12 84. Defendant, by engaging in the conduct herein alleged, either knew or in the
13 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
14 violation of § 17200, *et seq.* of the Business & Professions Code.

15 85. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
16 others similarly situated have been damaged in a sum as may be proven.

17 86. Unless restrained, Defendant will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such
19 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
20 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
21 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
22 restitution and disgorgement of profits which may be necessary to restore Plaintiff and the
23 Proposed Class the money Defendant has unlawfully failed to pay.

24 **XIV**

25 **NINTH CAUSE OF ACTION**

26 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

27 87. Plaintiff incorporates each and every allegation set forth in all of the foregoing
28 paragraphs as if fully set forth herein.

88. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1199, and 2802, which call for civil penalties.

89. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

90. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

91. On December 12, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant (“Notice Letter”, see Exhibit “1”) and paid the filing fee. Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the address listed on the California’s Secretary of State’s website as the entity address for Defendant ASSESSMENT CONSULTATION AND TREATMENT, INC., 255 E Santa Clara Street Suite 210, Arcadia, CA 91006.

92. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of December 21, 2021. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For penalties pursuant to Labor Code § 210 for violation of Labor Code § 204 in the amount of one hundred dollars (\$100) for the initial pay period in which a violation occurs

1 and two hundred dollars (\$200) per employee for each violation in a subsequent pay period, plus
2 25% of the amount unlawfully withheld;

3 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
4 Members' hourly wage for each meal period missed or taken late from at least four (4) years
5 prior to the filing of this action to the present as may be proven;

6 4. For compensatory damages in the amount of Plaintiff's and each Proposed Class
7 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
8 to the filing of this action to the present as may be proven;

9 5. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
10 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
11 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
12 exceeding an aggregate penalty of four thousand dollars (\$4,000);

13 6. For compensatory damages in the amount of Plaintiff's and each Proposed Class
14 Members' out of pocket expenses as a requirement of employment;

15 7. For penalties pursuant to Labor Code § 203 for all employees who were
16 terminated or resigned equal to their daily wage times thirty (30) days;

17 8. An award of prejudgment and post judgment interest;

18 9. An order enjoining Defendant and its agents, servants, and employees, and all
19 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
20 with proper wages and/or overtime, timely payment of wages, meal periods, rest periods,
21 accurate itemized wage statements, reimbursement of expenses, and wages upon
22 termination/resignation pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194,
23 1197, 1199, 2802, and IWC 4-2001;

24 10. For restitution for unfair competition pursuant to Business & Professions Code
25 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

26 11. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

27 12. An award providing for payment of costs of suit;

28 13. An award of attorney's fees; and

1 14. Such other and further relief as this Court may deem proper and just.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

4 DATED: April 25, 2022

KINGSLEY & KINGSLEY, APC

5 By: 

6 DARREN M. COHEN

7 *Attorneys for Plaintiff and the Proposed Class*

EXHIBIT 1

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, December 21, 2021 2:40 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

12/21/2021

LWDA Case No. LWDA-CM-858674-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Gregory M. Durham
Employer: Assessment Consultation and Treatment, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7C5880e4a4f7374790eab208d9c4d2c5be%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637757231825306232%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000&sdata=VwvOnQRkBZZR%2BgOOsFZ5btSkMeMufaFb3S2I8R7%2FLIU%3D&reserved=0

KINGSLEY & KINGSLEY

| L A W Y E R S |

December 21, 2021

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

ASSESSMENT CONSULTATION AND TREATMENT, INC.
255 E Santa Clara Street Suite 210
Arcadia, CA 91006
Certified Mailing: # 7020 0640 0002 1439 8080

Re: Gregory M. Durham v. Assessment Consultation and Treatment, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Gregory M. Durham (“Plaintiff”) for the violations of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Assessment Consultation and Treatment, Inc. (“Defendant”) engaged in with respect to our client and all of their California employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Assessment Consultation and Treatment, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“aggrieved employees”).¹

¹ Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”]. Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Specifically, Defendant has violated Labor Code §§ 510, 1194 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant required Plaintiff and the aggrieved employees to drive to and from clients without compensation. In addition, Defendant required Plaintiff and the aggrieved employees to perform work “off the clock” drafting and responding to emails and communications with Defendant and clients. Lastly, Defendant did not provide administrative time for Plaintiff and the aggrieved employees to complete their reports and paperwork related to their clients. As a result, Plaintiff and the aggrieved employees were not properly paid for these work tasks as a condition of employment. This resulted in underpayment of wages and/or overtime. As such, Plaintiff and the aggrieved employees were not paid for all hours worked at the proper rate.

Also, Defendant has engaged in the practice of untimely compensating their employees following the conclusion of each pay period, in violation of Labor Code §§ 204 and 210. Labor Code § 204(a) states that all wages earned by any person in an employment are due and payable twice during each calendar month. Further, Labor Code § 204 requires that wages for the labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Defendant pays wages for the labor performed between the 1st and 15th days on the last day of the month and the labor performed between the 16th and the last day on the month on the 15th of the following month. As such, Defendant pays Plaintiff and the aggrieved employees beyond the period required in violation of Labor Code §§ 204(a), 204(d) and 210.

Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or

was not provided in a timely manner. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not maintain accurate records of meal periods for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their personal vehicles, personal cell phones, home internet, and printing supplies. These expenses were

incurred as a necessary part of the performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Defendant's failure to provide wages and/or overtime, failure to pay wages in a timely manner, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/km

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
ASSESSMENT CONSULTATION AND TREATMENT, INC. # 7020 0640 0002 1439 8080