

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MARK BRUNO KOVACIC, an individual,
on behalf of himself and on behalf of all
persons similarly situated, and on behalf of
the State of California, as a private attorney
general,

Plaintiff,

vs.

THE ALARIS GROUP, INC., a
Corporation;
PARADIGM MANAGEMENT
SERVICES, LLC, a Limited Liability
Company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. C22-01125

[*Consolidated with C22-01425*]

**FIRST AMENDED CONSOLIDATED
CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802, and,
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Mark Bruno Kovacic ("PLAINTIFF"), an individual, on behalf of himself and
2 all other similarly situated current and former employees, alleges on information and belief,
3 except his own acts and knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant The Alaris Group, Inc. ("ALARIS") is a corporation that conducts
7 regular and substantial business in the State of California. ALARIS provides case management
8 services. The ALARIS offers medical and vocational case management, consultancy, and other
9 services.

10 2. Defendant Paradigm Management Services, LLC ("PARADIGM") is a
11 corporation that conducts regular and substantial business in the State of California.
12 PARADIGM provides case management services. The PARADIGM offers medical and
13 vocational case management, consultancy, and other services.

14 3. To successfully compete against the other comprehensive medical management
15 service providers, ALARIS and PARADIGM (collectively "DEFENDANTS") substantially
16 reduced its labor costs by placing the labor burden on a smaller number of employees that
17 DEFENDANTS classified as exempt from overtime wages. The goal of overtime laws includes
18 expanding employment throughout the workforce by putting financial pressure on the employer
19 and nurturing a stout job market, as well as the important public policy goal of protecting
20 employees in a relatively weak bargaining position against the unfair scheme of uncompensated
21 overtime work. An employer's obligation to pay its employees wages is more than a matter of
22 private concern between the parties. That obligation is founded on a compelling public policy
23 judgment that employees are entitled to work a livable number of hours at a livable wage. In
24 addition, statutes and regulations that compel employers to pay overtime relate to fundamental
25 issues of social welfare worthy of protection. The requirement to pay overtime wages extends
26 beyond the benefits individual workers receive because overtime wages discourage employers
27 from concentrating work in a few overburdened hands and encourage employers to instead hire
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1 additional employees. Especially in today's economic climate, the importance of spreading
2 available work to reduce unemployment cannot be overestimated.

3 4. As part of their business, DEFENDANTS employ a fleet of Case Managers. The
4 employees employed in positions at DEFENDANTS with the titles of "Field Nurse Case
5 Manager," "Telephonic Nurse Case Manager," "Medical Case Manager," and "Utilization Case
6 Manager" all perform the same primary job duty which is to perform day-to-day routine clerical
7 work in the management of medical conditions of injured workers and/or chronically ill patients
8 and are collectively referred to herein as the "Case Managers" or "CM".

9 5. PLAINTIFF has been employed by DEFENDANTS in California as a Case
10 Manager since February of 2020 to present. From February of 2020 to May of 2020 Plaintiff
11 was classified as a non-exempt employee paid on an hourly basis. From May of 2020 to present
12 day, PLAINTIFF has been classified as a salaried employee exempt from overtime pay and the
13 legally required meal and rest breaks.

14 6. As part of their business, DEFENDANTS employ a fleet of "Case Managers."
15 PLAINTIFF, as a CM, is engaged in the core, day-to-day business activities of DEFENDANTS.
16 The CMs engage in the finite set of non-exempt clerical tasks of reviewing client's pre-injury
17 and/or pre-illness position, making appointments with client's physician or therapist, listening
18 to and reviewing the physician's or therapist's diagnosis, obtaining prescriptions,
19 communicating both in-person and by telephone with employers, medical providers, attorneys,
20 insurance carriers and claims adjusters, applying all special instructions required by individual
21 insurance carriers and referral sources, following all pre-established and required case
22 management plans, preparing reports and other required paperwork to document all casework
23 activities, meeting weekly billing requirements, operating office machines, accessing filing
24 cabinets, and attending staff meetings, workshops and/or training programs all in strict
25 compliance with established specific procedures and protocols which governed and controlled
26 every aspect of the work performed by PLAINTIFF and other Case Managers. These
27 standardized procedures mirror the realities of the workplace evidencing a uniformity of the
28 highly skilled clerical work performed by PLAINTIFF and other Case Managers and negate any

1 exercise of independent judgment and discretion as to any matter of significance and negate any
2 role in the participation of formulating DEFENDANTS' business policies.

3 7. PLAINTIFF and other Case Managers job duties include monitoring a recovery
4 plan controlled by a physician and a claims adjuster and do not have the power to alter that
5 course of treatment. Any advice PLAINTIFF and other Case Managers provide is on an
6 individual level, far from questions affecting management or general operations of the business.
7 Rather, PLAINTIFF and other Case Managers use their RN training to coordinate care, act as
8 intermediary between patients, adjustors, and doctors and operated in a framework in which
9 these employees do not exercise ultimate decision-making power.

10 8. To perform their finite set of tasks, the CMs do not engage in a supervisory role
11 given the constraints placed upon them by company policy. CMs do not determine what work
12 is to be done by other employees or in what time frame. Furthermore, the CMs also do not have
13 a distinct role in training other employees or determining what training they are to receive.
14 Lastly, PLAINTIFF and other CMs do not have the authority to hire, fire, or promote
15 employees, determine their pay rates or benefits, or give raises as they are unable to make
16 employment-related, personnel decisions. Consequently, PLAINTIFF and the other CMs do
17 not have the authority to decide whether or not an employee should be disciplined for an
18 infraction. Disciplinary decisions are made by the human resources department or dictated by
19 company policies. Overall, PLAINTIFF's and other CMs recommendations are given little, if
20 any, weight on all the above issues. As a result, PLAINTIFF and the other CMs are engaged
21 in a type of work that requires no exercise of independent judgment or discretion as to any
22 matter of significance.

23 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all individuals who are or previously were employed by DEFENDANTS in the State
25 of California who worked as Case Managers and who were classified as exempt basis (the
26 "CALIFORNIA CLASS") from June 1, 2018 to the earlier of preliminary approval or December
27 30, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
28 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 10. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members
2 is set by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members work from
3 time to time in excess of eight (8) hours in a workday and/or more than forty (40) hours in any
4 given workweek.

5 11. PLAINTIFF and the other CALIFORNIA CLASS Members are not provided with
6 overtime compensation and other benefits required by law as a result of being classified as
7 "exempt" by DEFENDANTS.

8 12. As a matter of company policy, practice, and procedure, DEFENDANTS has
9 unlawfully, unfairly and/or deceptively classified every CM as exempt from overtime pay and
10 other related benefits, fails to pay the required overtime compensation and otherwise fails to
11 comply with all applicable labor laws with respect to these CMs.

12 13. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
16 the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
18 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
19 responsible in some manner for one or more of the events and happenings that proximately
20 caused the injuries and damages hereinafter alleged.

21 14. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendants are legally attributable to the other Defendants and
26 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

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1 Members with legally required meal and rest breaks is evidenced by DEFENDANTS' business
2 records which contains no record of these breaks.

3 17. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
4 are properly classified as exempt and that (b) DEFENDANTS otherwise complies with
5 applicable laws.

6 18. During their employment with DEFENDANT, PLAINTIFF and the other
7 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are
8 nevertheless classified by DEFENDANTS as exempt from overtime pay and work more than
9 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

10 19. A crucial requirement to be properly classified as exempt under both the
11 California Professional and Administrative exemptions is the ability to exercise independent
12 discretion and judgment as to matters of significance. PLAINTIFF and the other Case
13 Managers are assigned cases involving injured workers and chronically ill patients and are
14 micro-managed in every aspect of managing their assigned cases. These employees do not
15 exercise discretion in the sense of making important decisions of significance to the employer's
16 business even though they exercise some measure of discretion and judgment as to the manner
17 in which they performed their tasks. PLAINTIFF and other Case Managers perform routine
18 clerical tasks and followed set guidelines that were mandated and authorized by DEFENDANT.

19 20. Given the circumstances of the job functions performed by PLAINTIFF and the
20 others similarly situated, PLAINTIFF and the others similarly situated are hired as registered
21 nurses for Case Manager positions since their nursing experience is useful for reviewing
22 medical data, but they do not provide "traditional" direct medical services to injured workers
23 or chronically ill patients, render an opinion or make any medical diagnosis (which is prohibited
24 by state law). PLAINTIFF and others similarly situated do not primarily perform office or non-
25 manual staff functions directly related to policymaking and/or the general operation of the
26 DEFENDANT. The work of PLAINTIFF and the others similarly situated do not require the
27 use of "traditional" nursing skills, training, experience and/or knowledge. Instead, PLAINTIFF
28 and the others similarly situated all serve as Case Managers whose primary job duty was and

1 is to perform day-to-day routine clerical work in the management of medical conditions of
2 injured workers and/or chronically ill patients. Courts and State Labor Boards have held that
3 registered nurses, like PLAINTIFF and the others similarly situated, who were not expected to
4 utilize "traditional" nursing skills and instead rely on company manuals to perform
5 administrative services, or who do not need a nursing degree or license to qualify for
6 employment, do not exercise discretion and independent judgment as to matters of significance,
7 and therefore, are non-exempt employees entitled to overtime compensation.

8 21. PLAINTIFF and the other Case Managers employed by DEFENDANTS are also
9 not engaged in work of a type that was or now is performed at the level of the policy or
10 management of the DEFENDANT. PLAINTIFF and the other Case Managers employed by
11 DEFENDANTS are also not engaged in work requiring knowledge of an advanced type in a
12 field or science or learning customarily acquired by a prolonged course of specialized
13 intellectual instruction and study, but rather their work involves the performance of routine
14 mental, clerical, and/or technical processes. California law provides two alternative avenues
15 to Professional exempt status that PLAINTIFF and other Case Managers fail to meet. To be
16 exempt from overtime pay and minimum wage requirements under the California exemption
17 for "professional" employees, the employees must either be licensed by the State of California
18 and "primarily engaged" in an enumerated profession, or "primarily engaged in an occupation
19 commonly recognized as a learned or artistic profession." 8 California Code of Regulations §
20 11010 *et seq.* PLAINTIFF and other Case Managers are not required to be certified by the State
21 of California to perform the finite set of tasks engaged in by Case Managers and/or do not
22 primarily engage in the recognized profession of law, medicine, dentistry, optometry,
23 architecture, engineering, teaching, or accounting. The federal regulations after which the
24 California learned professional exemption was explicitly patterned condition the learned
25 professions exemption upon completion of an advanced course of education. Case Managers
26 do not qualify as exempt learned professionals because an "advanced specialized academic
27 degree" is not a standard prerequisite for entry into the field. To perform the finite set of tasks
28 required of a Case Manager, PLAINTIFF and other CALIFORNIA CLASS Members are not

1 required to hold an advanced degree customarily acquired by a prolonged course of specialized
2 intellectual instruction and study, as distinguished from a general four-year baccalaureate
3 degree. Moreover, it is not sufficient that an employee have an advanced degree, but rather the
4 position the employee occupies and the work performed must actually require such a degree.
5 California Industrial Wage Order 4-2001(1)(A)(3)(b)(1). The position of a Case Manager does
6 not actually require an advanced degree. PLAINTIFF and the other Case Managers employed
7 by DEFENDANTS are also not engaged in work that is intellectual and varied in character, but
8 rather is routine mental and clerical work that is of such character that the output produced or
9 the result accomplished can be standardized in relation to a given period of time. The work of
10 a Case Manager of DEFENDANTS is work wherein PLAINTIFF and the members of the
11 CALIFORNIA CLASS are engaged in the day-to-day business of DEFENDANT.

12 22. CMs are classified as exempt from California overtime and related laws by
13 DEFENDANT, however, these employees do not have managerial duties or authority. CMs in
14 performing these ongoing day-to-day, non-exempt and non-managerial tasks have no role in
15 supervising employees and have no authority to make employment-related decisions relating
16 to DEFENDANTS' employees. Furthermore, the CMs are tightly controlled by company policy
17 and by their supervisors, do not exercise discretion or independent judgment as to matters of
18 significance, and their tasks are not directly related to DEFENDANTS' management policies
19 or general business operations.

20 23. PLAINTIFF and all members of the CALIFORNIA CLASS are uniformly
21 classified and treated by DEFENDANTS as exempt at the time of hire and thereafter,
22 DEFENDANTS have failed to take the proper steps to determine whether PLAINTIFF, and the
23 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial
24 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
25 exempt from applicable California labor laws. Since DEFENDANTS affirmatively and
26 willfully misclassified PLAINTIFF and the members of the CALIFORNIA CLASS in
27 compliance with California labor laws, DEFENDANTS' practices violated and continue to
28 violate California law. In addition, DEFENDANTS acted deceptively by falsely and

1 fraudulently telling PLAINTIFF and each member of the CALIFORNIA CLASS that they are
2 exempt from overtime pay when DEFENDANTS knew or should have known that this
3 statement is false and not based on known facts. DEFENDANTS also acted unfairly by
4 violating the California labor laws, and as a result of this policy and practice, DEFENDANTS
5 also violated the UCL. In doing so, DEFENDANTS cheated the competition by paying the
6 CALIFORNIA CLASS less than the amount competitors paid who complied with the law and
7 cheated the CALIFORNIA CLASS by not paying them in accordance with California law.

8 24. DEFENDANTS as a matter of corporate policy, practice and procedure,
9 intentionally and knowingly fails to reimburse and indemnify PLAINTIFF and the other
10 CALIFORNIA CLASS Members for required business expenses incurred by PLAINTIFF and
11 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on
12 behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
13 to indemnify employees for all expenses incurred in the course and scope of their employment.
14 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
17 though unlawful, unless the employee, at the time of obeying the directions, believed them to
18 be unlawful."

19 25. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
20 Members as business expenses, are required by DEFENDANTS to use their own personal
21 homes offices to work remotely for DEFENDANTS as a result of and in furtherance of their
22 job duties as employees for DEFENDANTS but are not reimbursed or indemnified by
23 DEFENDANTS for the cost associated with the use of their personal home offices for
24 DEFENDANTS' benefit. As a result, in the course of their employment with DEFENDANT,
25 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
26 expenses.

27 26. When PLAINTIFF and other CALIFORNIA CLASS Members work overtime,
28 DEFENDANTS also failed to provide PLAINTIFF and the other CALIFORNIA CLASS

1 Members with a wage statement in writing that accurately sets forth gross wages earned, all
2 applicable hourly rates in effect during the pay period and the corresponding amount of time
3 worked at each hourly rate by the PLAINTIFF and the other CALIFORNIA CLASS Members.
4 This conduct violated California Labor Code § 226. The pay stub also does not accurately
5 display anywhere PLAINTIFF's and the other CALIFORNIA CLASS Members' overtime work
6 and applicable rates of overtime pay for the pay period.

7 27. By reason of this uniform conduct applicable to PLAINTIFF and all the
8 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
9 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
10 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly
11 classify PLAINTIFF and the CALIFORNIA CLASS of CMs as non-exempt. The proper
12 classification of these employees is DEFENDANTS' burden. As a result of DEFENDANTS'
13 intentional disregard of the obligation to meet this burden, DEFENDANTS fails to properly
14 calculate and/or pay all required overtime compensation for work performed by the members
15 of the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor
16 Code and the regulations promulgated thereunder as herein alleged.

17 28. Specifically as to PLAINTIFF, he performs the finite set of tasks of reviewing
18 client's pre-injury and/or pre-illness position, making appointments with client's physician or
19 therapist, listening to and reviewing the physician's or therapist's diagnosis, obtaining
20 prescriptions, communicating both in-person and by telephone with employers, medical
21 providers, attorneys, insurance carriers and claims adjusters, applying all special instructions
22 required by individual insurance carriers and referral sources, following all pre-established and
23 required case management plans, preparing reports and other required paperwork to document
24 all casework activities, meeting weekly billing requirements, operating office machines,
25 accessing filing cabinets, and attending staff meetings, workshops and/or training programs.
26 All of these tasks were performed in strict compliance with established specific procedures and
27 protocols which governs and controls every aspect of the work performed by PLAINTIFF.
28 PLAINTIFF uses the skill, training, and expertise acquired on the job to perform his job tasks,

1 and performs these job tasks in compliance with the directives given to him by other employees
2 of DEFENDANT. During the CALIFORNIA CLASS PERIOD, PLAINTIFF as a Case
3 Manager, has been classified by DEFENDANTS as exempt from overtime pay and works in
4 excess of eight (8) hours in a workday and/or more than forty (40) hours in a workweek, but as
5 a result of DEFENDANTS' misclassification of PLAINTIFF as exempt from the applicable
6 California Labor Code provisions, PLAINTIFF is not compensated by DEFENDANTS for his
7 overtime hours worked at the applicable overtime rate. DEFENDANTS do not have a policy
8 or practice which provides meal and rest breaks to PLAINTIFF and also fails to compensate
9 PLAINTIFF for his missed meal and rest breaks. As a consequence of the foregoing,
10 PLAINTIFF is not provided with accurate and itemized wage statements showing the gross
11 wages earned, the net wages earned, all applicable hourly rates in effect during the pay period,
12 including overtime hourly rates, and the corresponding number of hours worked at each hourly
13 rate, by DEFENDANTS during the CALIFORNIA CLASS PERIOD in violation of Cal. Lab.
14 Code § 226(a).

15 **THE CALIFORNIA CLASS**

16 29. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
17 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
18 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California
19 Class, defined as all individuals who are or previously were employed by DEFENDANTS in
20 the State of California who worked as Case Managers and who were classified as exempt basis
21 (the "CALIFORNIA CLASS") from June 1, 2018 to the earlier of preliminary approval or
22 December 30, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for
23 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

25 30. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
27 accordingly.
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1 31. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
3 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engages in a practice whereby DEFENDANTS unfairly, unlawfully, and deceptively
5 instituted a practice to ensure that the employees employed in a CM position are not properly
6 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

7 32. DEFENDANTS have the burden of proof to make sure that each and every
8 employee is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510,
9 *et seq.* DEFENDANT, however, as a matter of policy and procedure had in place during the
10 CALIFORNIA CLASS PERIOD and still has in place a policy and practice that misclassifies
11 the CALIFORNIA CLASS Members as exempt. DEFENDANTS' uniform policy and practice
12 in place at all times during the CALIFORNIA CLASS PERIOD and currently in place is to
13 classify each and every CALIFORNIA CLASS Member as exempt from the requirements of
14 the California Labor Code §§ 510, *et seq.* This common business practice applicable to each
15 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
16 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
17 (the "UCL") as causation, damages, and reliance are not elements of this claim.

18 33. At no time during PLAINTIFF's employment with DEFENDANTS has any Case
19 Manager been reclassified as non-exempt from the applicable requirements of California Labor
20 Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly, and
21 systematically classified as exempt upon being hired.

22 34. Any individual declarations of any employees offered at this time purporting to
23 indicate that one or more Case Managers may have been properly classified is of no force or
24 affect absent contemporaneous evidence that DEFENDANTS' uniform system did not
25 misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt pursuant to
26 Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
27 DEFENDANTS' business practice is unlawful, unfair and/or deceptive under the UCL and may
28 be so adjudicated on a class-wide basis. As a result of the UCL violations, PLAINTIFF and the

1 CALIFORNIA CLASS Members are entitled to compel DEFENDANTS to provide
2 restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to restitute these
3 funds to PLAINTIFF and the CALIFORNIA CLASS Members according to proof.

4 35. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 36. DEFENDANTS violated the rights of the CALIFORNIA CLASS under California
7 law by:

- 8 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
9 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
10 having in place company policies, practices and procedures that uniformly
11 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS
12 as exempt;
- 13 (b) Committing an act of unfair competition in violation of the UCL, by
14 unlawfully, unfairly, and/or deceptively failing to have in place a company
15 policy, practice and procedure that accurately determines the amount of
16 working time spent by PLAINTIFF and the members of the
17 CALIFORNIA CLASS performing non-exempt labor;
- 18 (c) Committing an act of unfair competition in violation of the UCL, by
19 having in place a company policy, practice and procedure that fails to
20 reclassify as non-exempt those members of the CALIFORNIA CLASS
21 whose actual tasks were comprised of non-exempt job functions;
- 22 (d) Committing an act of unfair competition in violation of the UCL, by
23 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
24 overtime pay to PLAINTIFF and the members of the CALIFORNIA
25 CLASS who are improperly classified as exempt, and retaining the unpaid
26 overtime to the benefit of DEFENDANTS;

- 1 (e) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
3 the CALIFORNIA CLASS members; and,
- 4 (f) Committing an act of unfair competition in violation of the California
5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
6 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
7 the CALIFORNIA CLASS members with necessary expenses incurred in
8 the discharge of their job duties.

9 37. This Class Action meets the statutory prerequisites for the maintenance of a Class
10 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 11 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
12 that the joinder of all such persons is impracticable and the disposition of
13 their claims as a class will benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
15 raised in this Complaint are common to the CALIFORNIA CLASS will
16 apply uniformly to every member of the CALIFORNIA CLASS;
- 17 (c) The claims of the representative PLAINTIFF are typical of the claims of
18 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA CLASS, was initially classified as
20 exempt upon hiring based on the defined corporate policies and practices
21 and labored under DEFENDANTS' procedure that fails to properly
22 classify as non-exempt PLAINTIFF and the members of the
23 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
24 result of DEFENDANTS' employment practices. PLAINTIFF and the
25 members of the CALIFORNIA CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair and pervasive
27 pattern of misconduct engaged in by DEFENDANTS by deceptively
28 advising all Case Managers that they were exempt from overtime wages

1 based on the defined corporate policies and practices, and unfairly failing
2 to pay overtime to these employees who were improperly classified as
3 exempt; and,

- 4 (d) The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA CLASS, and has retained counsel
6 who are competent and experienced in Class Action litigation. There are
7 no material conflicts between the claims of the representative PLAINTIFF
8 and the members of the CALIFORNIA CLASS that would make class
9 certification inappropriate. Counsel for the CALIFORNIA CLASS will
10 vigorously assert the claims of all employees in the CALIFORNIA
11 CLASS.

12 38. In addition to meeting the statutory prerequisites to a Class Action, this Action
13 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 14 (a) Without class certification and determination of declaratory, statutory and
15 other legal questions within the class format, prosecution of separate
16 actions by individual members of the CALIFORNIA CLASS will create
17 the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to
26 protect their interests.

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
28 act on grounds generally applicable to the CALIFORNIA CLASS, making

1 appropriate class-wide relief with respect to the CALIFORNIA CLASS
2 as a whole in that DEFENDANTS uniformly classified and treated the
3 Case Managers as exempt and, thereafter, uniformly failed to take proper
4 steps to determine whether the Case Managers were properly classified as
5 exempt, and thereby denied these employees overtime wages as required
6 by law;

7 1) With respect to the First Cause of Action, the final relief on behalf
8 of the CALIFORNIA CLASS sought does not relate exclusively to
9 restitution because through this claim the PLAINTIFF seeks
10 declaratory relief holding that DEFENDANTS' policies and
11 practices constitute unfair competition, along with incidental
12 equitable relief as may be necessary to remedy the conduct declared
13 to constitute unfair competition;

14 (c) Common questions of law and fact exist as to the members of the
15 CALIFORNIA CLASS, with respect to the practices and violations of
16 California law as listed above, and predominate over any question
17 affecting only individual CALIFORNIA CLASS Members, and a Class
18 Action is superior to other available methods for the fair and efficient
19 adjudication of the controversy, including consideration of:

20 1) The interests of the members of the CALIFORNIA CLASS in
21 individually controlling the prosecution or defense of separate
22 actions in that the substantial expense of individual actions will be
23 avoided to recover the relatively small amount of economic losses
24 sustained by the individual CALIFORNIA CLASS Members when
25 compared to the substantial expense and burden of individual
26 prosecution of this litigation;

27 2) Class certification will obviate the need for unduly duplicative
28 litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA CLASS, which
3 would establish incompatible standards of conduct for
4 DEFENDANTS; and/or,

5 B. Adjudications with respect to individual members of the
6 CALIFORNIA CLASS would as a practical matter be
7 dispositive of the interests of the other members not parties
8 to the adjudication or substantially impair or impede their
9 ability to protect their interests;

10 3) In the context of wage litigation because as a practical matter a
11 substantial number of individual CALIFORNIA CLASS Members
12 will avoid asserting their legal rights out of fear of retaliation by
13 DEFENDANTS, which may adversely affect an individual's job
14 with DEFENDANTS or with a subsequent employer, the Class
15 Action is the only means to assert their claims through a
16 representative; and,

17 4) A Class Action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class treatment
19 will obviate the need for unduly and unnecessary duplicative
20 litigation that is likely to result in the absence of certification of
21 this Action pursuant to Cal. Code of Civ. Proc. § 382.

22 39. This Court should permit this Action to be maintained as a Class Action pursuant
23 to Cal. Code of Civ. Proc. § 382, because:

24 (a) The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual CALIFORNIA
26 CLASS Members because DEFENDANTS' employment practices were
27 applied with respect to the CALIFORNIA CLASS;
28

- 1 (b) A Class Action is superior to any other available method for the fair and
2 efficient adjudication of the claims of the members of the CALIFORNIA
3 CLASS because in the context of employment litigation a substantial
4 number of individual CALIFORNIA CLASS Members will avoid
5 asserting their rights individually out of fear of retaliation or adverse
6 impact on their employment;
- 7 (c) The members of the CALIFORNIA CLASS are so numerous that it is
8 impractical to bring all members of the CALIFORNIA CLASS before the
9 Court;
- 10 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
11 able to obtain effective and economic legal redress unless the action is
12 maintained as a Class Action;
- 13 (e) There is a community of interest in obtaining appropriate legal and
14 equitable relief for the acts of unfair competition, statutory violations and
15 other improprieties, and in obtaining adequate compensation for the
16 injuries which DEFENDANTS' actions have inflicted upon the
17 CALIFORNIA CLASS;
- 18 (f) There is a community of interest in ensuring that the combined assets of
19 DEFENDANTS are sufficient to adequately compensate the members of
20 the CALIFORNIA CLASS for the injuries sustained;
- 21 (g) DEFENDANTS have acted or refused to act on grounds generally
22 applicable to the CALIFORNIA CLASS, thereby making final class-wide
23 relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- 24 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
25 the business records of DEFENDANTS. The CALIFORNIA CLASS
26 consists of all DEFENDANTS' Case Managers who were classified as
27 exempt and who were employed in California during the CALIFORNIA
28 CLASS PERIOD; and,

1 (I) Class treatment provides manageable judicial treatment calculated to bring
2 an efficient and rapid conclusion to all litigation of all wage and hour
3 related claims arising out of the conduct of DEFENDANTS as to the
4 members of the CALIFORNIA CLASS.

5 40. DEFENDANTS maintain records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANTS' employees who have been intentionally
7 subjected to DEFENDANTS' corporate policies, practices and procedures as herein alleged.
8 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
9 similarly situated employees when they have been identified.

10 **THE CALIFORNIA LABOR SUB-CLASS**

11 41. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth Causes of
12 Action on behalf of a California sub-class, defined as all individuals who are or previously were
13 employed by DEFENDANTS in the State of California who worked as Case Managers and who
14 were classified as exempt basis (the "CALIFORNIA LABOR SUB-CLASS") from June 1, 2018
15 to the earlier of preliminary approval or December 30, 2023 (the "CALIFORNIA LABOR SUB-
16 CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The amount in
17 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
18 five million dollars (\$5,000,000.00).

19 42. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
20 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
21 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and
22 systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA
23 CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and
24 other labor laws based on DEFENDANTS' comprehensive policies and procedures in order to
25 avoid the payment of overtime wages by misclassifying their positions as exempt from overtime
26 wages and other labor laws. To the extent equitable tolling operates to toll claims by the
27
28

1 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR
2 SUB-CLASS PERIOD should be adjusted accordingly.

3 43. DEFENDANTS maintain records from which the Court can ascertain and identify
4 by job title each of DEFENDANTS' employees who as CALIFORNIA LABOR SUB-CLASS
5 Members have been systematically, intentionally and uniformly misclassified as exempt as a
6 matter of DEFENDANTS' corporate policies, practices and procedures. PLAINTIFF will seek
7 leave to amend the Complaint to include these additional job titles when they have been
8 identified.

9 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
10 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

11 45. Common questions of law and fact exist as to members of the CALIFORNIA
12 LABOR SUB-CLASS, including, but not limited, to the following:

- 13 (a) Whether DEFENDANTS unlawfully fails to pay overtime compensation
14 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
15 the California Labor Code and California regulations and the applicable
16 California Wage Order;
- 17 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
18 non-exempt employees entitled to overtime compensation for overtime
19 worked under the overtime pay requirements of California law;
- 20 (c) Whether DEFENDANTS' policy and practice of classifying the
21 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime
22 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS
23 Members overtime violate applicable provisions of California law;
- 24 (d) Whether DEFENDANTS unlawfully fails to keep and furnish
25 CALIFORNIA LABOR SUB-CLASS Members with accurate records of
26 overtime worked; and,
- 27 (e) The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS.

1 46. DEFENDANTS, as a matter of corporate policy, practice and procedure,
2 erroneously classifies all Case Managers as exempt from overtime wages and other labor laws.
3 All Case Managers, including PLAINTIFF, perform the same finite set of tasks and are paid by
4 DEFENDANTS according to company procedures, which, as alleged herein above, fails to
5 correctly pay overtime compensation. This business practice has been applied to each and every
6 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
7 conduct can be adjudicated on a class-wide basis.

8 47. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
9 under California law by:

- 10 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
11 failing to pay PLAINTIFF and the members of the CALIFORNIA
12 LABOR SUB-CLASS the correct overtime pay for a workday longer than
13 eight (8) hours and/or a workweek longer than forty (40) hours for which
14 DEFENDANTS is liable pursuant to Cal. Lab. Code § 1194;
- 15 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
16 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
17 classified as exempt with an accurate itemized statement in writing
18 showing the gross wages earned, the net wages earned, all applicable
19 hourly rates in effect during the pay period and the corresponding amount
20 of time worked at each hourly rate by the employee when these employees
21 worked overtime from time to time in a pay period;
- 22 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
23 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
24 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
25 the legally required rest breaks; and,
- 26 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
27 the CALIFORNIA CLASS members with necessary expenses incurred in
28 the discharge of their job duties.

1 48. This Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 3 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
4 so numerous that the joinder of all such persons is impracticable and the
5 disposition of their claims as a class will benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
7 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
8 CLASS and will apply uniformly to every member of the CALIFORNIA
9 LABOR SUB-CLASS;
- 10 (c) The claims of the representative PLAINTIFF are typical of the claims of
11 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
12 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
13 was improperly classified as exempt and denied overtime pay as a result
14 of DEFENDANTS' systematic classification practices. PLAINTIFF and
15 all the other members of the CALIFORNIA LABOR SUB-CLASS
16 sustained economic injuries arising from DEFENDANTS' violations of
17 the laws of California; and,
- 18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
20 retained counsel who are competent and experienced in Class Action
21 litigation. There are no material conflicts between the claims of the
22 representative PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS that would make class certification inappropriate.
24 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
25 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

26 49. In addition to meeting the statutory prerequisites to a Class Action, this Action
27 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
28

- 1 (a) Without class certification and determination of declaratory, statutory and
2 other legal questions within the class format, prosecution of separate
3 actions by individual members of the CALIFORNIA LABOR SUB-
4 CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the parties
8 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a practical
11 matter be dispositive of interests of the other members not party to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
15 or refused to act on grounds generally applicable to the CALIFORNIA
16 LABOR SUB-CLASS, making appropriate class-wide relief with respect
17 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
18 DEFENDANTS uniformly classified and treated the Case Managers as
19 exempt and, thereafter, uniformly failed to take proper steps to determine
20 whether the Case Managers were properly classified as exempt, and
21 thereby denied these employees overtime wages as required by law;
- 22 (c) Common questions of law and fact predominate as to the members of the
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
24 violations of California law as listed above, and predominate over any
25 question affecting only individual CALIFORNIA LABOR SUB-CLASS
26 Members, and a Class Action is superior to other available methods for the
27 fair and efficient adjudication of the controversy, including consideration
28 of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for DEFENDANTS; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative

1 litigation that is likely to result in the absence of certification of
2 this Action pursuant to Cal. Code of Civ. Proc. § 382.

3 50. This Court should permit this Action to be maintained as a Class Action pursuant
4 to Cal. Code of Civ. Proc. § 382, because:

- 5 (a) The questions of law and fact common to the CALIFORNIA LABOR
6 SUB-CLASS predominate over any question affecting only individual
7 CALIFORNIA LABOR SUB-CLASS Members;
- 8 (b) A Class Action is superior to any other available method for the fair and
9 efficient adjudication of the claims of the members of the CALIFORNIA
10 LABOR SUB-CLASS because in the context of employment litigation a
11 substantial number of individual CALIFORNIA LABOR SUB-CLASS
12 Members will avoid asserting their rights individually out of fear of
13 retaliation or adverse impact on their employment;
- 14 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
15 numerous that it is impractical to bring all members of the CALIFORNIA
16 LABOR SUB-CLASS before the Court;
- 17 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
18 Members, will not be able to obtain effective and economic legal redress
19 unless the action is maintained as a Class Action;
- 20 (e) There is a community of interest in obtaining appropriate legal and
21 equitable relief for the acts of unfair competition, statutory violations and
22 other improprieties, and in obtaining adequate compensation for the
23 damages and injuries which DEFENDANTS' actions have inflicted upon
24 the CALIFORNIA LABOR SUB-CLASS;
- 25 (f) There is a community of interest in ensuring that the combined assets of
26 DEFENDANTS are sufficient to adequately compensate the members of
27 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
28

- 1 (g) DEFENDANTS have acted or refused to act on grounds generally
2 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making
3 final class-wide relief appropriate with respect to the CALIFORNIA
4 LABOR SUB-CLASS as a whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The
7 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
8 CLASS Members who were employed by DEFENDANTS in California
9 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 10 (I) Class treatment provides manageable judicial treatment calculated to bring
11 a efficient and rapid conclusion to all litigation of all wage and hour
12 related claims arising out of the conduct of DEFENDANT.

13 **JURISDICTION AND VENUE**

14
15 51. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §
16 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action
17 on behalf of similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ.
18 Proc. § 382.

19 52. Venue is proper in this Court pursuant to California Code of Civil Procedure,
20 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
21 DEFENDANTS (I) currently maintains and at all relevant times maintained offices and facilities
22 in this County and/or conducts substantial business in this County, and (ii) committed the
23 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
24 and CALIFORNIA LABOR SUB-CLASS.

25 **FIRST CAUSE OF ACTION**

26 **For Unlawful Business Practices**

27 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

28 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

1 53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 54. DEFENDANTS are "persons" as that term is defined under Cal. Bus. and Prof.
5 Code § 17021.

6 55. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
7 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
8 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
9 competition as follows:

10 Any person who engages, has engaged, or proposes to engage in unfair
11 competition may be enjoined in any court of competent jurisdiction. The court
12 may make such orders or judgments, including the appointment of a receiver,
13 as may be necessary to prevent the use or employment by any person of any
14 practice which constitutes unfair competition, as defined in this chapter, or as
15 may be necessary to restore to any person in interest any money or property, real
16 or personal, which may have been acquired by means of such unfair
17 competition.

18 California Business & Professions Code § 17203.

19 56. By the conduct alleged herein, DEFENDANTS have engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code
22 Sections 204, 210, 226.7, 510, 512, 1194, 1198 & 2802, and for which this Court should issue
23 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
24 necessary to prevent and remedy the conduct held to constitute unfair competition, including
25 restitution of wages wrongfully withheld.

26 57. By the conduct alleged herein, DEFENDANTS' practices are unlawful and unfair
27 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous
28 or substantially injurious to employees, and are without valid justification or utility for which
this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
California Business & Professions Code, including restitution of wages wrongfully withheld.

 58. By the conduct alleged herein, DEFENDANTS' practices are deceptive and
fraudulent in that DEFENDANTS' uniform policy and practice is to represent to PLAINTIFF

1 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact
2 these representations are false and likely to deceive, for which this Court should issue injunctive
3 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
4 wrongfully withheld.

5 59. By the conduct alleged herein, DEFENDANTS' practices are also unlawful,
6 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and
7 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 60. By the conduct alleged herein, DEFENDANTS' practices are also unfair and
10 deceptive in that DEFENDANTS' policies, practices and procedures fail to provide mandatory
11 meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

12 61. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
14 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
15 for each workday in which a second off-duty meal period was not timely provided for each ten
16 (10) hours of work.

17 62. PLAINTIFF further demands on behalf of himself and on behalf of each
18 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
19 was not timely provided as required by law.

20 63. By and through the unlawful and unfair business practices described herein,
21 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and
22 the other members of the CALIFORNIA CLASS and have deprived them of valuable rights and
23 benefits guaranteed by law and contract, all to the detriment of these employees and to the
24 benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against
25 competitors who comply with the law.

26 64. All the acts described herein as violations of, among other things, the California
27 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,
28 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and

1 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute
2 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§
3 17200, *et seq.*

4 65. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
5 and do, seek such relief as may be necessary to restore to them the money and property which
6 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
7 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
8 unfair business practices, including earned but unpaid overtime wages for all overtime worked.

9 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
10 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
12 engaging in any unlawful and unfair business practices in the future.

13 67. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
16 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
18 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
19 engage in these unlawful and unfair business practices.

20 21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Overtime Compensation**

23 **[Cal. Lab. Code §§ 510, 1194 and 1198]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

26 68. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
28 of this Complaint.

69. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

71. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

72. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

73. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

74. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

75. DEFENDANTS have intentionally and uniformly designated certain employees as "exempt" employees, by their job title alone and without regard to DEFENDANTS' realistic expectations and actual overall requirements of the job, including PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-managerial side of DEFENDANTS' business. This is done in an illegal attempt to avoid payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

1 76. For an employee to be exempt as a bona fide "executive," all the following criteria
2 must be met and DEFENDANTS have the burden of proving that:

- 3 (a) The employee's primary duty must be management of the enterprise, or of a
4 customarily recognized department or subdivision; and,
5 (b) The employee must customarily and regularly direct the work of at least two (2)
6 or more other employees; and,
7 (c) The employee must have the authority to hire and fire, or to command particularly
8 serious attention to his or her recommendations on such actions affecting other
9 employees; and,
10 (d) The employee must customarily and regularly exercise discretion and independent
11 judgment; and,
12 (e) The employee must be primarily engaged in duties which meet the test of
13 exemption.

14 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they
15 all fail to meet the requirements of being an "executive" within the meaning of the applicable
16 Wage Order.

17 77. For an employee to be exempt as a bona fide "administrator," all of the following
18 criteria must be met and DEFENDANTS have the burden of proving that:

- 19 (a) The employee must perform office or non-manual work directly related to
20 management policies or general business operation of the employer; and,
21 (b) The employee must customarily and regularly exercise discretion and independent
22 judgment; and,
23 (c) The employee must regularly and directly assist a proprietor or an exempt
24 administrator; or,
25 (d) The employee must perform, under only general supervision, work requiring
26 special training, experience, or knowledge; or,
27 (e) The employee must execute special assignments and tasks under only general
28 supervision; and,

1 (f) The employee must be primarily engaged in duties which meet the test of
2 exemption.

3 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
4 they all fail to meet the requirements for being an "administrator" under the applicable Wage
5 Order.

6 78. The Industrial Welfare Commission, in Wage Order 4-2001, at section
7 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
8 with to place an employee in the "professional" exempt category. For an employee to be exempt
9 as a bona fide "professional," all the following criteria must be met and DEFENDANTS have
10 the burden of proving that:

11 (a) The employee is primarily engaged in an occupation commonly recognized as a
12 learned or artistic profession. For the purposes of this subsection, "learned or
13 artistic profession" means an employee who is primarily engaged in the
14 performance of:

- 15 1) Work requiring knowledge of an advanced type in a field or science or
16 learning customarily acquired by a prolonged course of specialized
17 intellectual instruction and study, as distinguished from a general
18 academic education and from an apprenticeship, and from training in the
19 performance of routine mental, manual, or physical processes, or work that
20 is an essential part or necessarily incident to any of the above work; or,
- 21 2) Work that is original and creative in character in a recognized field of
22 artistic endeavor, and the result of which depends primarily on the
23 invention, imagination or talent of the employee or work that is an
24 essential part of or incident to any of the above work; and,
- 25 3) Whose work is predominately intellectual and varied in character (as
26 opposed to routine mental, manual, mechanical, or physical work) and is
27 of such character cannot be standardized in relation to a given period of
28 time.

1 (b) The employee must customarily and regularly exercise discretion and independent
2 judgment; and,

3 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
4 state minimum wage for full-time employment.

5 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they
6 all fail to meet the requirements of being a "professional" within the meaning of the applicable
7 Wage Order.

8 79. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
9 do not fit the definition of an exempt executive, administrative, or professional employee
10 because:

11 (a) They did not work as executives or administrators; and,

12 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
13 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet
14 all the applicable requirements to work under the professional exemption for the
15 reasons set forth above in this Complaint.

16 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the
17 other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours
18 in a workday and/or more than forty (40) hours in a workweek.

19 81. DEFENDANTS fail to pay PLAINTIFF, and the other members of the
20 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in
21 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and
22 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, are required to work, and do in fact work, overtime.

24 82. By virtue of DEFENDANTS' unlawful failure to pay additional compensation
25 to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their
26 overtime work, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are
28 presently unknown to them and which will be ascertained according to proof at trial.

83. DEFENDANTS knew or should have known that PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate policy, practice and procedure.

84. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment, these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein. Further, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

85. In performing the acts and practices herein alleged in violation of labor laws and refusing to provide the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF, and toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights and otherwise causing them injury in order to increase corporate profits at the expense of PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS.

THIRD CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

87. During the CALIFORNIA CLASS PERIOD, DEFENDANTS fail to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

88. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who are not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period is not provided.

89. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

92. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who are not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

95. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

96. When PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members work overtime, DEFENDANTS also failed to provide PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members with a wage statement in writing that accurately sets forth

1 gross wages earned, all applicable hourly rates in effect during the pay period and the
2 corresponding amount of time worked at each hourly rate by the PLAINTIFF and the other
3 CALIFORNIA LABOR SUB-CLASS Members. This conduct violated California Labor Code
4 § 226. The pay stub also does not accurately display anywhere PLAINTIFF's and the other
5 CALIFORNIA LABOR SUB-CLASS Members' overtime work and applicable rates of
6 overtime pay for the pay period.

7 97. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
8 § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
9 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
10 true time worked and the amount of employment taxes which were not properly paid to state and
11 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and
12 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated
13 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for
14 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according
15 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each
16 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

17 18 **SIXTH CAUSE OF ACTION**

19 **For Failure to Reimburse Employees for Required Expenses**

20 **[Cal. Lab. Code § 2802]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

23 98. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
24 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
25 of this Complaint.

26 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures
28 or losses incurred by the employee in direct consequence of the discharge of his
or her duties, or of his or her obedience to the directions of the employer, even

though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

100. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. Specifically, DEFENDANTS fail to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not limited to, costs related to using their personal home offices and personal cell phones all on behalf of and for the benefit of DEFENDANTS. DEFENDANTS' policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal home offices and personal cell phones to work remotely for DEFENDANTS within the course and scope of their employment for DEFENDANT. These expenses are necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS fail to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

101. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

102. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1 103. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
3 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
4 fundamentally a law enforcement action designed to protect the public and not to benefit private
5 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
6 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
7 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
8 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
9 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
10 subject to arbitration.

11 104. PLAINTIFF, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, brings this Representative Action on behalf of the State of California with respect to
14 himself and all individuals who are or previously were employed by DEFENDANTS in the
15 State of California who worked as Case Managers and who were classified as exempt basis
16 ("AGGRIEVED EMPLOYEES") from May 8, 2021 to the earlier of preliminary approval or
17 December 30, 2023 (the "PAGA PERIOD").

18 105. On January 14, 2022, PLAINTIFF gave written notice by electronic mail to the
19 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated as required by
21 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
22 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
23 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
24 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
25 pursuant to Section 2699 as the proxy of the State of California with respect to all
26 AGGRIEVED EMPLOYEES as herein defined.

27 106. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANTS (a) failed to provide PLAINTIFF and the

1 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
2 and provide legally required meal and rest periods, (c) failed to pay overtime wages and sick
3 pay wages, and (d) failed to reimburse employees for required expenses, all in violation of the
4 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
5 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
6 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s),
7 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
8 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act
9 of 2004 as the representative of the State of California for the illegal conduct perpetrated on
10 PLAINTIFF and the AGGRIEVED EMPLOYEES.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
14 severally, as follows:

15
16 1. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;
19 B) An order requiring DEFENDANTS to correctly calculate and pay all overtime
20 wages and all sums unlawfully withheld from compensation due to PLAINTIFF
21 and the other members of the CALIFORNIA CLASS;
22 C) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
23 for restitution of the sums incidental to DEFENDANTS' violations due to the
24 PLAINTIFF and to the other members of the CALIFORNIA CLASS according
25 to proof; and,
26

27
28

¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code
§558(a)(3).

1 D) An order temporarily, preliminarily, and permanently enjoining and restraining
2 DEFENDANTS from engaging in similar unlawful conduct as set forth herein.

3 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

4 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of
5 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action
6 pursuant to California Code of Civil Procedure § 382;

7 B) Compensatory damages, according to proof at trial, for overtime compensation
8 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
10 plus interest thereon at the statutory rate;

11 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
12 in which a violation occurs and one hundred dollars (\$100) per each member of
13 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
14 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
15 an award of costs for violation of Cal. Lab. Code § 226;

16 D) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
17 and the other members of the CALIFORNIA CLASS with all legally required
18 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
19 rest breaks; and,

20 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
22 costs of suit.

23 3. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:

25 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004.

27 4. On all claims:

28 A) An award of interest, including prejudgment interest at the legal rate;

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
4 and/or §2802.
5

6 Dated: December 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK
7 DE BLOUW LLP
8

9 By: /s/ Nicholas De Blouw

10 Norman B. Blumenthal
11 Kyle R. Nordrehaug
12 Nicholas J. De Blouw

13 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: December 11, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Nicholas De Blouw

Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On December 11, 2023, I served the document(s) described as:

1. FIRST AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

X **(BY ELECTRONIC SERVICE):** I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

LITTLER MENDELSON P.C.

Chad Greeson (SBN 251928)

E-Mail: cgreeson@littler.com

Daniel Xuli (SBN 316583)

E-Mail: dxuli@littler.com

Treat Towers, Suite 600

1255 Treat Boulevard

Walnut Creek, CA 94597

Telephone: (925) 932-2468

cc: Jeff Smith (JRSmith@littler.com); Monique Kenner (MKenner@littler.com)

X **(State):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 11, 2023 at La Jolla, California.



Yesenia Silva