

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 OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

CIARA GRAYSON, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

HARVARD PARTNERS HOME HEALTH,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CVRI2203131

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF,
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203; and
9. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§2698, *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Ciara Grayson ("PLAINTIFF"), an individual, on behalf of herself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 her own acts and knowledge, the following:

4 5 **INTRODUCTION**

6 1. Defendant Harvard Partners Home Health, Inc. ("DEFENDANT") in order to
7 service their customers, hires workers to aid DEFENDANT in providing healthcare services.
8 The cost, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not
9 only the pay and overtime pay of these employees but the cost of the employer's share of tax
10 payments to the federal and state governments for income taxes, social security taxes, medicare
11 insurance, unemployment insurance and payments for workers' compensation insurance
12 ("Business Related Expenses"). To avoid the payment of these legally proscribed Business
13 Related Expenses to the fullest extent possible, DEFENDANT devised a scheme to place the
14 responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders
15 of PLAINTIFF and other Nurses. As employer, DEFENDANT is legally responsible for the
16 payment of all these Business Related Expenses. This lawsuit is brought on behalf of the
17 Certified Nurse Assistants, Licensed Vocational Nurses, Registered Nurses and other similar
18 job titles for persons who worked for DEFENDANT in California and were classified as
19 independent contractors, in order to collect the wages due them as employees of DEFENDANT,
20 the cost of the employer's share of payments to the federal and state governments for income
21 taxes, social security taxes, medicare insurance, unemployment insurance and payments for
22 workers' compensation insurance, plus penalties and interest.

23 24 **THE PARTIES**

25 2. DEFENDANT at all relevant times mentioned herein conducted and continues
26 to conduct substantial and regular business in the State of California.

27 3. DEFENDANT operates a business that connects individuals looking for care-
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1 giving services on demand.

2 4. PLAINTIFF was employed by DEFENDANT as a Certified Nurse Assistant from
3 February of 2021 to September of 2021 and again from February of 2022 to May of 2022 and
4 was classified by DEFENDANT as an independent contractor during her entire employment
5 with DEFENDANT.

6 5. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
7 or employer to engage in . . . [w]illful misclassification of an individual as an independent
8 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
9 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
10 each violation, in addition to any other penalties or fines permitted by law.” It is further
11 provided that, in the event that an employer is found to have engaged in “a pattern or practice
12 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
13 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
14 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

15 6. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Certified
16 Nursing Assistants, Licensed Vocational Nurses and Registered Nurses, and other similarly
17 situated persons with similar job titles collectively referred herein as “Nurses” as described in
18 Cal. Labor Code § 226.8 and Labor Code Section 2750.3 *et seq.*, and further, that
19 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by the
20 California Labor Code.

21 7. Upon hire, the position of a Nurse was represented by DEFENDANT to
22 PLAINTIFF and the other Nurses as an independent contractor position capable of paying an
23 hourly rate for time worked for DEFENDANT. PLAINTIFF and other Nurses were paid an
24 hourly rate to perform services on DEFENDANT’s behalf.

25 8. To perform their job duties, the PLAINTIFF and the other Nurses performed work
26 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
27 complete control over the work performed and the manner and means in which the work was
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1 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
2 as to how to perform their services.

3 9. California Labor Code § 3357 defines “employee” as “every person in the service
4 of an employer under any appointment or contact of hire or apprenticeship, express or implied,
5 oral or written, whether lawfully or unlawfully employed.” In addition to the California Labor
6 Code’s presumption that workers are employees, the California Supreme Court has determined
7 the most significant factor to be considered in distinguishing an independent contractor from
8 an employee is whether the *employer or principal has control or the right to control the work*
9 *both as to the work performed and the manner and means in which the work is performed.*

10 DEFENDANT heavily controlled both the work performed and the manner and means in which
11 PLAINTIFF and the other Nurses performed their work in that:

12 (a) PLAINTIFF and other Nurses were not involved in a distinct business, but
13 instead were provided with instructions as to how to perform their work and the manner and
14 means in which the work was to be performed by means of DEFENDANT’s manuals and
15 written instructions;

16 (b) PLAINTIFF and other Nurses were continuously provided with training
17 and supervision, including following DEFENDANT’s company documents and received
18 training from DEFENDANT as to how and in what way to perform services;

19 (c) DEFENDANT set the requirements as to what policies and procedures all
20 of the Nurses were to follow;

21 (d) PLAINTIFF and other Nurses had no opportunity for profit or loss because
22 DEFENDANT only paid these employees based on the hours they worked for DEFENDANT
23 and DEFENDANT controlled and assigned the weekly schedules PLAINTIFF and other Nurses
24 were required to work. DEFENDANT also controlled which Nurses would receive a particular
25 medical assignment;

26 (e) PLAINTIFF and other Nurses performed healthcare services which is part
27 of DEFENDANT's principal business and is closely integrated with and essential to the
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1 employer's business of providing healthcare services to their customers;

2 (f) PLAINTIFF and other Nurses performed the work themselves and did not
3 hire others to perform their work for them;

4 (g) PLAINTIFF and other Nurses did not have the authority to make
5 employment-related personnel decisions;

6 (h) PLAINTIFF and other Nurses performed their work in a particular order
7 and sequence in accordance with DEFENDANT's company policy; and,

8 (i) DEFENDANT had the "right" to control every critical aspect of
9 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
10 PLAINTIFF and other Nurses as to the entire process of assisting clients. PLAINTIFF and
11 other Nurses provided services ONLY for DEFENDANT's customers, which DEFENDANT
12 controlled via the company's technology.

13 10. As a result, stripped of all the legal fictions and artificial barriers to an honest
14 classification of the relationship between PLAINTIFF and all the other Nurses on the one hand,
15 and DEFENDANT on the other hand, PLAINTIFF and all the other Nurses are and were
16 employees of DEFENDANT and not independent contractors of DEFENDANT and should
17 therefore be properly classified as non-exempt, hourly employees.

18 11. PLAINTIFF brings this Class Action on behalf of herself and a California class,
19 defined as all individuals who worked for DEFENDANT in California as a Nurse and who were
20 classified as independent contractors (the "CALIFORNIA CLASS") at any time during the
21 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
22 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
23 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

25 12. As a matter of company policy, practice and procedure, DEFENDANT has
26 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as
27 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
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1 and state laws that require payment for all time worked, business expenses, and the employer's
2 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
3 and state governments and the CALIFORNIA CLASS Members, PLAINTIFF and the
4 CALIFORNIA CLASS Members were underpaid throughout their employment with
5 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
6 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
7 to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant to Cal.
8 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, allege that
9 each of the Defendants designated herein is legally responsible in some manner for the unlawful
10 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
11 the true names and capacities of the Defendants when they have been ascertained and become
12 known.

13 13. The agents, servants and/or employees of the Defendants and each of them
14 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
15 as the agent, servant and/or employee of the Defendants, and personally participated in the
16 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
19 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
20 servants and/or employees.

21 THE CONDUCT

22 14. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
23 CLASS Members as defined by DEFENDANT was executed by them through the performance
24 of non-exempt labor.
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26 15. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
27 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
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1 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
2 by which all of these CALIFORNIA CLASS Members were classified as "independent
3 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and
4 reimbursement for business related expenses. By reason of this uniform misclassification, the
5 CALIFORNIA CLASS Members were also required to pay DEFENDANT 's share of payroll
6 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
7 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members
8 who performed this work for DEFENDANT, DEFENDANT committed acts of unfair
9 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§
10 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
11 which uniformly failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS
12 Members as employees and thereby failed to pay them overtime wages for overtime worked,
13 reimbursement of business related expenses, failed to provide them with meal and rest breaks,
14 and failed to reimburse these employees for the employer's share of payroll taxes and
15 mandatory insurance. The proper classification of these employees is DEFENDANT's burden.
16 As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
17 DEFENDANT violated the California Labor Code and regulations promulgated thereunder as
18 herein alleged. DEFENDANT did not have in place a policy, practice or procedure that
19 provided meal and/or rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as
20 evidenced by DEFENDANT's business records which contain no record of these breaks.

21 16. DEFENDANT, as a matter of law, has the burden of proving that employees are
22 properly classified and that DEFENDANT otherwise complies with applicable laws.
23 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
24 CALIFORNIA CLASS Members as independent contractors.

25 17. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly
26 classified and treated by DEFENDANT as independent contractors at the time of hire and
27 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
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1 the CLASS Members are properly classified under the applicable Industrial Welfare
2 Commission Wage Order and Cal. Lab. Code § 510 as exempt from applicable labor laws.
3 Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and CALIFORNIA
4 CLASS Members in compliance with California labor laws, DEFENDANT's practices violated
5 and continue to violate California law. In addition, DEFENDANT acted deceptively by falsely
6 and fraudulently classifying PLAINTIFF and each CALIFORNIA CLASS Member as
7 independent contractors when DEFENDANT knew or should have known that this
8 classification was false and not based on known facts. DEFENDANT also acted deceptively
9 by violating the California labor laws, and as a result of this policy and practice, DEFENDANT
10 also violated the UCL. In doing so, DEFENDANT cheated the competition by paying the
11 CALIFORNIA CLASS less than the amount competitors paid who complied with the law and
12 cheated the CALIFORNIA CLASS by not paying them in accordance with California law.

13 18. As a result of their rigorous work schedules, PLAINTIFF and other
14 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
15 and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA
16 CLASS Members were required from time to time to perform work as ordered by
17 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
18 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
19 Members with a second off-duty meal period from time to time in which these employees were
20 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
21 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
22 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

23 19. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
27 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
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1 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
4 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
6 proper rest periods by DEFENDANT and DEFENDANT's managers.

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

17 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
18 Members as a business expense, are required by DEFENDANT to use personal cellular phones
19 and their home offices as a result of and in furtherance of their job duties as employees for
20 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
21 associated with the use of the personal cellular phones and personal vehicles for
22 DEFENDANT's benefit. In order to work as a Nurse for DEFENDANT, PLAINTIFF and other
23 CALIFORNIA CLASS Members are required to communicate with DEFENDANT and as such
24 it is mandatory to have a cell phone that is compatible to remain in constant contact with
25 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
26 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
27 unreimbursed business expenses which include, but are not limited to, costs related to the use
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1 of their personal cellular phones and personal vehicle expenses all on behalf of and for the
2 benefit of DEFENDANT.

3 22. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements
5 which failed to show, among other things, the correct amount of time worked, including, work
6 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
7 and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every
8 employer shall furnish each of his or her employees with an accurate itemized wage statement
9 in writing showing, among other things, gross wages earned and all applicable hourly rates in
10 effect during the pay period and the corresponding amount of time worked at each hourly rate.
11 As a result, DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA
12 CLASS with wage statements which violated Cal. Lab. Code § 226.

13 23. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA
14 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
15 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
16 engaging in a company-wide policy, practice and procedure which failed to correctly classify
17 PLAINTIFF and the CALIFORNIA CLASS Members as employees. The proper classification
18 of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional
19 disregard of the obligation to meet this burden, DEFENDANT failed to pay all required
20 overtime compensation for work performed by PLAINTIFF and other CALIFORNIA CLASS
21 Members and violated the California Labor Code and regulations promulgated thereunder as
22 herein alleged. The amount in controversy for PLAINTIFF individually does not exceed the
23 sum or value of \$75,000.

24 **THE CALIFORNIA CLASS**

25 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
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1 individuals who worked for DEFENDANT in California as a Nurse and who were classified as
2 independent contractors (the "CALIFORNIA CLASS") at any time during the period beginning
3 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
4 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
5 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

6 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

9 26. All CALIFORNIA CLASS Members who performed and continue to perform this
10 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in
11 that they are subject to DEFENDANT's policy and practice that required them to perform work
12 without compensation as required by law.

13 27. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in
14 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
15 Wage Order requirements, and the applicable provisions of California law, intentionally,
16 knowingly and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and
17 deceptively instituted a practice to ensure that all individuals employed as independent
18 contractors were not properly classified as non-exempt employees from the requirements of
19 California Labor Code § 510.

20 28. During the CALIFORNIA CLASS PERIOD, DEFENDANT violated the rights
21 of the PLAINTIFF and the CALIFORNIA CLASS Members under California law, without
22 limitation, in the following manners:

- 23 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
24 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
25 employer, devised and implemented a scheme whereby PLAINTIFF and
26 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
27 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
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1 overtime, business related expenses, and DEFENDANT's share of
2 employment taxes, social security taxes, unemployment insurance and
3 workers' compensation insurance;

4 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
6 having in place company policies, practices and procedures that uniformly
7 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
8 independent contractors;

9 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
11 failing to have in place a company policy, practice and procedure that
12 accurately determined the amount of working time spent by PLAINTIFF
13 and the CALIFORNIA CLASS Members performing non-exempt
14 employee labor;

15 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
17 other members of the CALIFORNIA CLASS with all legally required
18 meal and rest breaks; and,

19 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
21 failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members
22 with necessary expenses incurred in the discharge of their job duties.

23 29. As a result of DEFENDANT's policies, practices and procedures, there are
24 numerous questions of law and fact common to all CALIFORNIA CLASS Members who
25 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
26 limited, to the following:

27 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
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1 misclassified as independent contractors by DEFENDANT;

2 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all
3 afforded all the protections of the California Labor Code that apply when
4 properly classified as non-exempt employees;

5 (c) Whether DEFENDANT's policies, practices and pattern of conduct
6 described in this Complaint was and is unlawful;

7 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
8 federal employment taxes as required by state and federal tax laws;

9 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
10 CALIFORNIA CLASS Members as independent contractors exempt from
11 hourly wages laws for all time worked and failing to pay the
12 CALIFORNIA CLASS Members all amounts due violates applicable
13 provisions of California State law;

14 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
15 CALIFORNIA CLASS Members with accurate records of all time
16 worked, including overtime worked;

17 (g) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct; and,

19 (h) Whether DEFENDANT's conduct was willful.

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

22 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of their claims as a class
24 will benefit the parties and the Court;

25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply to
27 every CALIFORNIA CLASS Member;

1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
3 Members, were classified as an independent contractor upon hiring based on the defined
4 corporate policies and practices and labors under DEFENDANT's systematic procedure that
5 failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS Members.
6 PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices.
7 PLAINTIFF and the CALIFORNIA CLASS Members were and are similarly or identically
8 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged
9 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members that they
10 were not entitled to overtime wages, the employer's share of payment of payroll taxes and
11 mandatory insurance, and reimbursement for business expenses based on the defined corporate
12 policies and practices, and unfairly failed to pay these employees who were improperly
13 classified as independent contractors; and,

14 (d) The representative PLAINTIFF will fairly and adequately represent and
15 protect the interest of the CALIFORNIA CLASS, and have retained counsel who is competent
16 and experienced in Class Action litigation. There are no material conflicts between the claims
17 of the representative PLAINTIFF and the CALIFORNIA CLASS Members that would make
18 class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
19 the claims of all employees in the CALIFORNIA CLASS.

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

22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of separate actions by
24 individual members of the CALIFORNIA CLASS will create the risk of:

25 (i) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS which would establish incompatible standards of
27 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
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1 (ii) Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
3 other members not party to the adjudication or substantially impair or impeded their ability to
4 protect their interests.

5 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
6 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
7 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
8 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter,
9 uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members
10 were properly classified as independent contractors, and thereby denied these employees wages
11 and payments for business expenses and the employer's share of payroll taxes and mandatory
12 insurance as required by law.

13 (i) With respect to the First Cause of Action, the final relief on behalf
14 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
15 this claim the PLAINTIFF seek declaratory relief holding that DEFENDANT's policies and
16 practices constitute unfair competition, along with incidental equitable relief as may be
17 necessary to remedy the conduct declared to constitute unfair competition.

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

23 (i) The interest of the CALIFORNIA CLASS Members in individually
24 controlling the prosecution or defense of separate actions;

25 (ii) The extent and nature of any litigation concerning the controversy
26 already commenced by or against members of the CALIFORNIA CLASS;

27 (iii) In the context of wage litigation because as a practical matter a
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1 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
2 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an
3 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only
4 means to assert their claims through a representative;

5 (iv) The desirability or undesirability of concentration the litigation of
6 the claims in the particular forum;

7 (v) The difficulties likely to be encountered in the management of a
8 Class Action; and,

9 (vi) The basis of DEFENDANT's policies and practices applied to all
10 the CALIFORNIA CLASS Members.

11 32. The Court should permit this Action to be maintained as a Class Action pursuant
12 to Cal. Code of Civ. Proc. § 382 because:

13 (a) The questions of law and fact common to the CALIFORNIA CLASS
14 predominate over any question affecting only individual members;

15 (b) A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

17 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
18 to bring all CALIFORNIA CLASS Members before the Court;

19 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able
20 to obtain effective and economic legal redress unless the action is maintained as a Class Action;

21 (e) There is a community of interest in obtaining appropriate legal and
22 equitable relief for the acts of unfair competition, statutory violations and other improprieties,
23 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's
24 actions have inflicted upon the CALIFORNIA CLASS;

25 (f) There is a community of interest in ensuring that the combined assets and
26 available insurance of DEFENDANT are sufficient to adequately compensate the
27 CALIFORNIA CLASS Members for any injuries sustained;

28 (g) DEFENDANT has acted or has refused to act on grounds generally

1 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
2 with respect to the CLASS as a whole;

3 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
4 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
5 DEFENDANT's Nurses in California classified as independent contractors during the
6 CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices and
7 procedures as herein alleged; and,

8 (i) Class treatment provides manageable judicial treatment calculated to bring
9 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
10 of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

11 33. DEFENDANT maintains records from which the Court can ascertain and identify
12 by name and job title, each of DEFENDANT's employees who have been intentionally
13 subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged.
14 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
15 similarly situated employees when they have been identified.

16 17 **THE CALIFORNIA LABOR SUB-CLASS**

18 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
19 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
20 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
21 as a Nurse and who were classified as Independent Contractors (the "CALIFORNIA LABOR
22 SUB-CLASS") at any time during the period three (3) years prior to the filing of the Complaint
23 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
24 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
25 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
26 (\$5,000,000.00).

27 35. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
28 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare

1 Commission (“IWC”) Wage Order requirements intentionally, knowingly, and wilfully, on the
2 basis of job title alone and without regard to the actual overall requirements of the job,
3 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS as independent contractors in order to avoid the payment of overtime wages, and
5 in order to avoid the obligations under the applicable California Labor Code provisions. To the
6 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
7 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
8 accordingly.

9 36. DEFENDANT maintains records from which the Court can ascertain and identify
10 by job title each of DEFENDANT’s employees who as CALIFORNIA LABOR SUB-CLASS
11 Members have been systematically, intentionally and uniformly misclassified as independent
12 contractors as a matter of DEFENDANT’s corporate policy, practices and procedures.
13 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
14 they have been identified.

15 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

17 38. DEFENDANT, as a matter of corporate policy, practice and procedure,
18 erroneously classified all Nurses as independent contractors making these employees exempt
19 from California labor laws. All Nurses, including PLAINTIFF, performed the same finite set
20 of tasks and were paid by DEFENDANT according to uniform and systematic company
21 procedures, which, as alleged herein above, failed to correctly pay minimum and overtime
22 compensation. This business practice was applied to each and every member of the
23 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
24 adjudicated on a class-wide basis.

25 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

- 27 (a) Violating Cal. Lab. Code § 510 by misclassifying and thereby failing to
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS the correct overtime pay for a workday longer than eight (8) hours
2 and/or a workweek longer than forty (40) hours, for which DEFENDANT
3 is liable pursuant to Cal. Lab. Code § 1194;

4 (b) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
5 members of the CALIFORNIA LABOR SUB-CLASS who were
6 improperly classified as independent contractors with an accurate itemized
7 statement in writing showing the gross wages earned, the net wages
8 earned, all applicable hourly rates in effect during the pay period and the
9 corresponding amount of time worked at each hourly rate by the
10 employee;

11 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
12 the CALIFORNIA CLASS members with necessary expenses incurred in
13 the discharge of their job duties;

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

18 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
19 when an employee is discharged or quits from employment, the employer
20 must pay the employee all wages due without abatement, by failing to
21 tender full payment and/or restitution of wages owed or in the manner
22 required by California law to the members of the CALIFORNIA LABOR
23 SUB-CLASS who have terminated their employment.

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

26 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
27 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
28

Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the CALIFORNIA LABOR SUB-CLASS, were improperly classified as independent contractors and was thus overtime pay and meal and rest breaks, among other things, as a result of DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR
2 SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.

12 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
13 or refused to act on grounds generally applicable to the CALIFORNIA
14 LABOR SUB-CLASS, making appropriate class-wide relief with respect
15 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
16 DEFENDANT uniformly classified and treated the members of the
17 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
18 thereafter, uniformly failed to take proper steps to determine whether the
19 CALIFORNIA LABOR SUB-CLASS Members were properly classified
20 as independent contractors, and thereby denied these employees the
21 protections afforded to them under the California Labor Code;

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

1 of:

- 2 1) The interests of the members of the CALIFORNIA LABOR SUB-
3 CLASS in individually controlling the prosecution or defense of
4 separate actions in that the substantial expense of individual actions
5 will be avoided to recover the relatively small amount of economic
6 losses sustained by the individual CALIFORNIA LABOR SUB-
7 CLASS Members when compared to the substantial expense and
8 burden of individual prosecution of this litigation;
- 9 2) Class certification will obviate the need for unduly duplicative
10 litigation that would create the risk of:
- 11 A. Inconsistent or varying adjudications with respect to
12 individual members of the CALIFORNIA LABOR SUB-
13 CLASS, which would establish incompatible standards of
14 conduct for the DEFENDANT; and/or,
- 15 B. Adjudications with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS would as a practical
17 matter be dispositive of the interests of the other members
18 not parties to the adjudication or substantially impair or
19 impede their ability to protect their interests;
- 20 3) In the context of wage litigation because a substantial number of
21 individual CALIFORNIA LABOR SUB-CLASS Members will
22 avoid asserting their legal rights out of fear of retaliation by
23 DEFENDANT, which may adversely affect an individual's job
24 with DEFENDANT or with a subsequent employer, the Class
25 Action is the only means to assert their claims through a
26 representative; and,
- 27 4) A class action is superior to other available methods for the fair and
28

1 efficient adjudication of this litigation because class treatment will
2 obviate the need for unduly and unnecessary duplicative litigation
3 that is likely to result in the absence of certification of this action
4 pursuant to Cal. Code of Civ. Proc. § 382.

5 42. This Court should permit this action to be maintained as a Class Action pursuant
6 to Cal. Code of Civ. Proc. § 382 because:

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

1 DEFENDANT are sufficient to adequately compensate the members of the
2 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable
4 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
5 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
6 CLASS as a whole;

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
10 CLASS Members who are or previously were employed by DEFENDANT
11 in California as Nurses and classified as independent contractors during
12 the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT.

16
17 **JURISDICTION AND VENUE**

18 43. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
20 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
21 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

22 44. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
23 395.5, because PLAINTIFF resides in this County and DEFENDANT (i) currently maintains
24 and at all relevant times maintained its principal offices and facilities in this County and/or
25 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
26 alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
27 LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful, Unfair and Deceptive Business Practices**

3 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CLASS and Against All Defendants)**

5 45. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
6 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 46. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code
8 § 17021.

9 47. Section 17200 of the California Business & Professions Code defines unfair
10 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
11 applies to violations of labor laws in the employment context. Section 17203 authorizes
12 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
13 follows:

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

18 California Business & Professions Code § 17203.

19 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to the
21 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221,
22 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3, & 2802, and California Code of
23 Regulations § 11090, for which this Court should issue declaratory, injunctive, and other
24 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and
25 remedy the conduct held to constitute unfair competition, including restitution of wages
26 wrongfully withheld, business expenses wrongfully withheld and for the payment of the
27 employer's share of income taxes, social security taxes, unemployment insurance and workers'
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1 compensation insurance.

2 49. By the conduct alleged herein DEFENDANT has obtained valuable property,
3 money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS,
4 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment
5 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.
6 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and
7 pecuniary compensation alone would not afford adequate and complete relief.

8 50. All the acts described herein as violations of, among other things, the California
9 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
10 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
11 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,
12 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

13 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's policy and practice was to represent to the CALIFORNIA
15 CLASS Members that they were not entitled to overtime wages, payment for payroll taxes or
16 mandatory insurance and other benefits as required by California law, when in fact these
17 representations were false and likely to deceive and for which this Court should issue
18 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
19 of wages wrongfully withheld.

20 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
21 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
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1 unfair business practices, including earned but unpaid wages for all overtime worked.

2 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
3 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
4 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
5 engaging in any unlawful and unfair business practices in the future.

6 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
7 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
8 all legally required meal and rest breaks to PLAINTIFF and the other members of the
9 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

10 56. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
11 CALIFORNIA CLASS member, overtime wages, payment for the employer's share of payroll
12 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
13 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
14 for each workday in which a second off-duty meal period was not timely provided for each ten
15 (10) hours of work.

16 57. PLAINTIFF further demands on behalf of herself and each member of the
17 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
18 duty paid rest period was not timely provided as required by law.

19 58. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked
22 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
23 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
24 to unfairly compete against competitors who comply with the law.

25 59. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California
27 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
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1 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

3 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
7 unfair business practices.

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

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

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26 **SECOND CAUSE OF ACTION**

27 **For Failure To Pay Minimum Wages**

1 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

2 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

3 **and Against All Defendants)**

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

7 64. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
9 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
10 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
11 Members.

12 65. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
13 public policy, an employer must timely pay its employees for all hours worked.

14 66. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than
16 the minimum so fixed is unlawful.

17 67. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
18 including minimum wage compensation and interest thereon, together with the costs of suit.

19 68. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
21 time they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully
22 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
23 the CALIFORNIA LABOR SUB-CLASS.

24 69. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
25 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
26 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.
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1 70. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculates the correct time worked and consequently underpays the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
4 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
5 benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 71. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
9 the correct minimum wage compensation for their time worked for DEFENDANT.

10 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
11 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
12 Members to work without paying them for all the time they were under DEFENDANT's
13 control. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
14 paid less for time worked that they were entitled to, constituting a failure to pay all earned
15 wages.

16 73. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
17 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
18 CLASS for the true time they worked, PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
20 injury in amounts which are presently unknown to them and which will be ascertained
21 according to proof at trial.

22 74. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
24 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
25 to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor
26 as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this
27 scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR
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1 SUB-CLASS the correct minimum wages for their time worked.

2 75. In performing the acts and practices herein alleged in violation of California labor
3 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
4 all time worked and provide them with the requisite compensation, DEFENDANT acted and
5 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
7 for their legal rights, or the consequences to them, and with the despicable intent of depriving
8 them of their property and legal rights, and otherwise causing them injury in order to increase
9 company profits at the expense of these employees.

10 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
11 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
12 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
13 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
14 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
15 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
16 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
17 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
18 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
19 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
20 CLASS Members are entitled to seek and recover statutory costs.

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27 **THIRD CAUSE OF ACTION**
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For Failure To Pay Overtime Wages
[Cal. Lab. Code §§ 510, 1194, & 1198]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

77. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly required, permitted or suffered by DEFENDANT to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by DEFENDANT's business records and witnessed by DEFENDANT's employees.

79. By virtue of DEFENDANT's unlawful failure to pay compensation to PLAINTIFF and the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and CALIFORNIA CLASS Members have suffered, and will continue to suffer, an economic in amounts which are presently unknown to them and which can be ascertained according to proof at trial.

80. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA CLASS Members were misclassified as independent contractors and DEFENDANT's elected, either through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and procedure.

81. PLAINTIFF and the CALIFORNIA CLASS Members therefore request recovery of all compensation according to proof, interest, costs, as well as the assessment of any statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members 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 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

82. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for 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 these employees.

FOURTH 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)

83. 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.

84. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed 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 did 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 were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,

1 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
2 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
3 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
4 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
5 which these employees were required by DEFENDANT to work ten (10) hours of work. As
6 a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
7 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
8 strict corporate policy and practice.

9 85. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
10 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
11 CLASS Members who were not provided a meal period, in accordance with the applicable
12 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
13 each workday that a meal period was not provided.

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

18
19 **FIFTH CAUSE OF ACTION**

20 **For Failure to Provide Required Rest Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

27 88. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
28

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

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

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

20
21 **SIXTH CAUSE OF ACTION**

22 **For Failure to Provide Accurate Itemized Statements**

23 **[Cal. Lab. Code § 226]**

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

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

1 92. Cal. Labor Code § 226 provides that an employer must furnish employees with
2 an “accurate itemized statement in writing showing:

3 (1) gross wages earned,

4 (2) total hours worked by the employee, except for any employee whose compensation
5 is solely based on a salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
7 Commission,

8 (3) the number of piecerate units earned and any applicable piece rate if the employee
9 is paid on a piece-rate basis,

10 (4) all deductions, provided that all deductions made on written orders of the employee
11 may be aggregated and shown as one item,

12 (5) net wages earned,

13 (6) the inclusive dates of the period for which the employee is paid,

14 (7) the name of the employee and his or her social security number, except that by
15 January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on
17 the itemized statement,

18 (8) the name and address of the legal entity that is the employer, and

19 (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee.”

21 93. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
23 statements which failed to show, among other things, the correct amount of time worked,
24 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
25 any workweek, and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226
26 provides that every employer shall furnish each of his or her employees with an accurate
27 itemized wage statement in writing showing, among other things, gross wages earned and all
28

1 applicable hourly rates in effect during the pay period and the corresponding amount of time
2 worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
4 Cal. Lab. Code § 226.

5 94. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
6 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
7 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
8 true amount of time worked and the amount of employment taxes which were not properly paid
9 to state and federal tax authorities. These damages are difficult to estimate. Therefore,
10 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
11 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
12 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
13 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
14 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

15
16 **SEVENTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

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

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

24 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
28 though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

1 97. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
2 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
4 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA
5 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
6 associated with the use of their personal cellular phones and personal vehicles for
7 DEFENDANT's benefit. In order to work as a Nurse for DEFENDANT, PLAINTIFF and other
8 CALIFORNIA CLASS Members were required to use DEFENDANT's mobile application and
9 as such it is mandatory to have a cell phone that is compatible with DEFENDANT's mobile
10 application. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
11 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
12 business expenses which included, but were not limited to, the costs related to the use of their
13 personal cellular phones and personal vehicles all on behalf of and for the benefit of
14 DEFENDANT. These expenses are necessary to complete their principal job duties.
15 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
16 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
17 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
18 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
19 expenses as an employer is required to do under the laws and regulations of California.

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

24 ///

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26 ///

1 **EIGHTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

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

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

9 100. Cal. Lab. Code § 200 provides that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed under
15 contract, subcontract, partnership, station plan, or other agreement if the labor to
16 be paid for is performed personally by the person demanding payment.

17 101. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
18 an employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 102. Cal. Lab. Code § 202 provides, in relevant part, that:

21 If an employee not having a written contract for a definite period quits his or her
22 employment, his or her wages shall become due and payable not later than 72
23 hours thereafter, unless the employee has given 72 hours previous notice of his
24 or her intention to quit, in which case the employee is entitled to his or her wages
25 at the time of quitting. Notwithstanding any other provision of law, an employee
26 who quits without providing a 72-hour notice shall be entitled to receive payment
27 by mail if he or she so requests and designates a mailing address. The date of the
28 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

103. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
CLASS Members' employment contract.

104. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, 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

1 therefor is commenced; but the wages shall not continue for more than 30 days.

2 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
3 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
4 employees who actually worked overtime, as required by law.

5 106. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
6 members of the CALIFORNIA LABOR SUB-CLASS whose employment has ended,
7 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time
8 of termination for all employees who terminated employment during the CALIFORNIA
9 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
10 plus interest and statutory costs as allowed by law.

11 **NINTH CAUSE OF ACTION**

12 **For Violation of the Private Attorneys General Act**

13 **[Cal. Lab. Code §§ 2698, *et seq.*]**

14 **(By PLAINTIFF and Against All Defendants)**

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

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

27 109. PLAINTIFF, and such persons that may be added from time to time who satisfy
28

1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to herself
3 and all individuals who worked for DEFENDANT in California as Certified Nursing Assistants,
4 Licensed Vocational Nurses and Registered Nurses, and other similarly situated persons with
5 similar job titles and who were classified as independent contractors ("AGGRIEVED
6 EMPLOYEES") during the time period of April 22, 2021 until a date as determined by the
7 Court (the "PAGA PERIOD").

8 110. On April 22, 2022, PLAINTIFF gave written notice by electronic mail to the
9 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
10 employer of the specific provisions of this code alleged to have been violated as required by
11 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
12 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
13 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
14 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

15 111. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
17 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
18 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
19 to pay overtime wages, (e) failed to reimburse employees for required expenses, and (f) failed
20 to provide wages when due, all in violation of the applicable Labor Code sections listed in
21 Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
22 1197, 1197.1, 1198, 2750.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section
23 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11040,
24 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
25 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as
26

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

1 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
2 State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
3 EMPLOYEES.

4 112. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
7 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
8 AJDAR 12157 (Certified for Publication 12/19/18).

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

- 14 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
15 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
16 B) An order temporarily, preliminarily and permanently enjoining and restraining
17 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
18 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
19 sums unlawfully withheld from compensation due to PLAINTIFF and the other
20 members of the CALIFORNIA CLASS; and,
21 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
22 for restitution of the sums incidental to DEFENDANT's violations due to
23 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 25 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
26 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
27 action pursuant to Cal. Code of Civ. Proc. § 382;
28 B) Compensatory damages, according to proof at trial, including compensation due

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
2 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus
3 interest thereon at the statutory rate; and,

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

9 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
10 the applicable IWC Wage Order;

11 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
12 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
13 costs of suit;

14 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
15 1197; and,

16 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
17 CLASS as a penalty from the due date thereof at the same rate until paid or until
18 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

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

22 4. On all claims:

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

24 B) Such other and further relief as the Court deems just and equitable; and,

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
27 §2802.
28

1
2 Dated: September 1, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

3
4 By: /s/ Nicholas De Blouw

Norman B. Blumenthal

Kyle R. Nordrehaug

Nicholas J. De Blouw

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6 *Attorneys for Plaintiff*

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DEMAND FOR JURY TRIAL

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

Dated: September 1, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff