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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

04/24/2023

Clerk of the Court

BY: GINA GONZALES

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

KAYCIE CROSSLEY, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

CEREBRAL MEDICAL GROUP, P.A., a
Professional Association; CEREBRAL MEDICAL
GROUP, A PROFESSIONAL CORPORATION, a
Professional Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CGC-22-599132

**CONSOLIDATED CLASS AND
REPRESENTATIVE 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. CIVIL PENALTIES PURSUANT TO LABOR
CODE § 2699, *et seq.* FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
1197, 1197.1, 1198, 2750.3 *et seq.*, 2802,
CALIFORNIA CODE OF REGULATIONS TITLE
8, SECTION 11040, SUBDIVISION 5(A)-(B),
AND THE APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

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

4 5 **INTRODUCTION**

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

24 25 **THE PARTIES**

26 2. Defendant Cerebral Medical Group, P.A. at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business in the State of California.

1 3. Defendant Cerebral Medical Group, a Professional Corporation at all relevant
2 times mentioned herein conducted and continues to conduct substantial and regular business in
3 the State of California.

4 4. Cerebral Medical Group, P.A. and Cerebral Medical Group, a Professional
5 Corporation were the joint employers of PLAINTIFF as evidenced by paycheck and by the
6 company PLAINTIFF performed work for respectively, and are therefore jointly responsible
7 as employers for the conduct alleged herein, and are therefore collectively referred to herein as
8 "DEFENDANT."

9 5. DEFENDANT operates a business that connects individuals looking for mental
10 health services on demand.

11 6. PLAINTIFF was employed by DEFENDANT as a Care Counselor from April of
12 2021 to August of 2021 and was classified by DEFENDANT as an independent contractor
13 during her entire employment with DEFENDANT.

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

23 8. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Care
24 Counselors, Therapists and other similarly situated persons with similar job titles collectively
25 referred herein as "Counselors" as described in Cal. Labor Code § 226.8 and Labor Code
26 Section 2750.3 et seq., and further, that DEFENDANT has engaged in a "pattern or practice"
27 of such violations as contemplated by the California Labor Code.

1 9. Upon hire, the position of a Counselor was represented by DEFENDANT to
2 PLAINTIFF and the other Counselors as an independent contractor position capable of paying
3 an hourly rate for time worked for DEFENDANT. PLAINTIFF and other Counselors were paid
4 an hourly rate to perform services on DEFENDANT's behalf. PLAINTIFF and other
5 Counselors were not compensated overtime wages for any of their time spent working in excess
6 of eight (8) hours in a workday and/or forty (40) hours in a workweek.

7 10. To perform their job duties, the PLAINTIFF and the other Counselors performed
8 work subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
9 complete control over the work performed and the manner and means in which the work was
10 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
11 as to how to perform their services.

12 11. California Labor Code § 3357 defines "employee" as "every person in the service
13 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
14 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
15 Code's presumption that workers are employees, the California Supreme Court has determined
16 the most significant factor to be considered in distinguishing an independent contractor from
17 an employee is whether the *employer or principal has control or the right to control the work*
18 *both as to the work performed and the manner and means in which the work is performed.*
19 DEFENDANT heavily controlled both the work performed and the manner and means in which
20 PLAINTIFF and the other Counselors performed their work in that:

21 (a) PLAINTIFF and other Counselors were not involved in a distinct business,
22 but instead were provided with instructions as to how to perform their work and the manner and
23 means in which the work was to be performed by means of DEFENDANT's manuals and
24 written instructions;

25 (b) PLAINTIFF and other Counselors were continuously provided with
26 training and supervision, including following DEFENDANT's company documents and
27 received training from DEFENDANT as to how and in what way to perform services;

1 (c) DEFENDANT set the requirements as to what policies and procedures all
2 of the Counselors were to follow;

3 (d) PLAINTIFF and other Counselors had no opportunity for profit or loss
4 because DEFENDANT only paid these employees based on the hours they worked for
5 DEFENDANT and DEFENDANT controlled and assigned the weekly schedules PLAINTIFF
6 and other Counselors were required to work. DEFENDANT also controlled which Counselors
7 would receive a particular medical assignment;

8 (e) PLAINTIFF and other Counselors performed mental healthcare services
9 which is part of DEFENDANT's principal business and is closely integrated with and essential
10 to the employer's business of providing healthcare services to their customers;

11 (f) PLAINTIFF and other Counselors performed the work themselves and did
12 not hire others to perform their work for them;

13 (g) PLAINTIFF and other Counselors did not have the authority to make
14 employment-related personnel decisions;

15 (h) PLAINTIFF and other Counselors performed their work in a particular
16 order and sequence in accordance with DEFENDANT's company policy; and,

17 (i) DEFENDANT had the "right" to control every critical aspect of
18 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
19 PLAINTIFF and other Counselors as to the entire process of assisting clients. PLAINTIFF and
20 other Counselors provided services ONLY for DEFENDANT's customers, which
21 DEFENDANT controlled via the company's technology.

22 12. As a result, stripped of all the legal fictions and artificial barriers to an honest
23 classification of the relationship between PLAINTIFF and all the other Counselors on the one
24 hand, and DEFENDANT on the other hand, PLAINTIFF and all the other Counselors are and
25 were employees of DEFENDANT and not independent contractors of DEFENDANT and
26 should therefore be properly classified as non-exempt, hourly employees.

27 13. PLAINTIFF brings this Class Action on behalf of herself and a California class,
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1 defined as all individuals who worked for Cerebral Medical Group, P.A. and/or Cerebral
2 Medical Group, a Professional Corporation in California as a Therapist, Care Counselor and
3 other similar job titles and who were classified as independent contractors (the "CALIFORNIA
4 CLASS") at any time during the period of April 11, 2018 through the earlier of preliminary
5 approval or April 24, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in
6 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
7 dollars (\$5,000,000.00).

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

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

4 5 **THE CONDUCT**

6 16. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
7 CLASS Members as defined by DEFENDANT was executed by them through the performance
8 of non-exempt labor.

9 17. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
10 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
11 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
12 by which all of these CALIFORNIA CLASS Members were classified as "independent
13 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and
14 reimbursement for business related expenses. By reason of this uniform misclassification, the
15 CALIFORNIA CLASS Members were also required to pay DEFENDANT's share of payroll
16 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
17 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members
18 who performed this work for DEFENDANT, DEFENDANT committed acts of unfair
19 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§
20 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
21 which uniformly failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS
22 Members as employees and thereby failed to pay them overtime wages for overtime worked,
23 reimbursement of business related expenses, failed to provide them with meal and rest breaks,
24 and failed to reimburse these employees for the employer's share of payroll taxes and mandatory
25 insurance. The proper classification of these employees is DEFENDANT's burden. As a result
26 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
27 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

1 DEFENDANT did not have in place a policy, practice or procedure that provided meal and/or
2 rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as evidenced by
3 DEFENDANT's business records which contain no record of these breaks.

4 18. DEFENDANT, as a matter of law, has the burden of proving that employees are
5 properly classified and that DEFENDANT otherwise complies with applicable laws.
6 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
7 CALIFORNIA CLASS Members as independent contractors.

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

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

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

17 22. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
18 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
19 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
20 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
21 2802, employers are required to indemnify employees for all expenses incurred in the course
22 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
24 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
25 directions of the employer, even though unlawful, unless the employee, at the time of obeying
26 the directions, believed them to be unlawful."

27 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
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1 Members as a business expense, are required by DEFENDANT to use personal cellular phones
2 and their home offices as a result of and in furtherance of their job duties as employees for
3 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
4 associated with the use of the personal cellular phones, home offices, and personal vehicles for
5 DEFENDANT's benefit. In order to work as a Counselor for DEFENDANT, PLAINTIFF and
6 other CALIFORNIA CLASS Members are required to communicate with DEFENDANT and
7 as such it is mandatory to have a cell phone that is compatible to remain in constant contact with
8 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
9 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
10 unreimbursed business expenses which include, but are not limited to, costs related to the use
11 of their personal cellular phones, home offices, and personal vehicle expenses all on behalf of
12 and for the benefit of DEFENDANT.

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

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

7 **THE CALIFORNIA CLASS**

8 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
9 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
10 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
11 individuals who worked for Cerebral Medical Group, P.A. and/or Cerebral Medical Group, a
12 Professional Corporation in California as a Therapist, Care Counselor and other similar job titles
13 and who were classified as independent contractors (the "CALIFORNIA CLASS") at any time
14 during the period of April 11, 2018 through the earlier of preliminary approval or April 24, 2023
15 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
16 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

17 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

20 28. All CALIFORNIA CLASS Members who performed and continue to perform this
21 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in
22 that they are subject to DEFENDANT's policy and practice that required them to perform work
23 without compensation as required by law.

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

4 30. During the CALIFORNIA CLASS PERIOD, DEFENDANT violated the rights
5 of the PLAINTIFF and the CALIFORNIA CLASS Members under California law, without
6 limitation, in the following manners:

- 7 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
8 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
9 employer, devised and implemented a scheme whereby PLAINTIFF and
10 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
11 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
12 overtime, business related expenses, and DEFENDANT's share of
13 employment taxes, social security taxes, unemployment insurance and
14 workers' compensation insurance;
- 15 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
17 having in place company policies, practices and procedures that uniformly
18 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
19 independent contractors;
- 20 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
21 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
22 failing to have in place a company policy, practice and procedure that
23 accurately determined the amount of working time spent by PLAINTIFF
24 and the CALIFORNIA CLASS Members performing non-exempt
25 employee labor;
- 26 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
27 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
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1 other members of the CALIFORNIA CLASS with all legally required
2 meal and rest breaks; and,

- 3 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
4 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
5 failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members
6 with necessary expenses incurred in the discharge of their job duties.

7 31. As a result of DEFENDANT's policies, practices and procedures, there are
8 numerous questions of law and fact common to all CALIFORNIA CLASS Members who
9 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
10 limited, to the following:

- 11 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
12 misclassified as independent contractors by DEFENDANT;
13 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all
14 afforded all the protections of the California Labor Code that apply when
15 properly classified as non-exempt employees;
16 (c) Whether DEFENDANT's policies, practices and pattern of conduct
17 described in this Complaint was and is unlawful;
18 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
19 federal employment taxes as required by state and federal tax laws;
20 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
21 CALIFORNIA CLASS Members as independent contractors exempt from
22 hourly wages laws for all time worked and failing to pay the
23 CALIFORNIA CLASS Members all amounts due violates applicable
24 provisions of California State law;
25 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
26 CALIFORNIA CLASS Members with accurate records of all time
27 worked, including overtime worked;
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1 (g) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct; and,

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

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

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

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

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

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

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

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

9 (i) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA CLASS which would establish incompatible standards of
11 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

12 (ii) Adjudication with respect to individual members of the
13 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
14 other members not party to the adjudication or substantially impair or impeded their ability to
15 protect their interests.

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

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

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

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

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

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

16 (iv) The desirability or undesirability of concentrating the litigation of
17 the claims in the particular forum;

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

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

22 34. The 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 members;

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

28 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical

1 to bring all CALIFORNIA CLASS Members before the Court;

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

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

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

12 (g) DEFENDANT has acted or has refused to act on grounds generally
13 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
14 with respect to the CLASS as a whole;

15 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
16 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
17 DEFENDANT's Counselors in California classified as independent contractors during the
18 CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices and
19 procedures as herein alleged; and,

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

23 35. DEFENDANT maintains records from which the Court can ascertain and identify
24 by name and job title, each of DEFENDANT's employees who have been intentionally
25 subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged.
26 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
27 similarly situated employees when they have been identified.
28

THE CALIFORNIA LABOR SUB-CLASS

36. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Cerebral Medical Group, P.A. and/or Cerebral Medical Group, a Professional Corporation in California as a Therapist, Care Counselor and other similar job titles and who were classified as Independent Contractors (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period of April 11, 2015 through the earlier of preliminary approval or April 24, 2023 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

37. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”) Wage Order requirements intentionally, knowingly, and wilfully, on the basis of job title alone and without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS as independent contractors in order to avoid the payment of overtime wages, and in order to avoid the obligations under the applicable California Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all

1 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

2 40. DEFENDANT, as a matter of corporate policy, practice and procedure,
3 erroneously classified all Counselors as independent contractors making these employees
4 exempt from California labor laws. All Counselors, including PLAINTIFF, performed the same
5 finite set of tasks and were paid by DEFENDANT according to uniform and systematic
6 company procedures, which, as alleged herein above, failed to correctly pay minimum and
7 overtime compensation. This business practice was applied to each and every member of the
8 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
9 adjudicated on a class-wide basis.

10 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
11 under California law by:

- 12 (a) Violating Cal. Lab. Code § 510 by misclassifying and thereby failing to
13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
14 CLASS the correct overtime pay for a workday longer than eight (8) hours
15 and/or a workweek longer than forty (40) hours, for which DEFENDANT
16 is liable pursuant to Cal. Lab. Code § 1194;
- 17 (b) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
18 members of the CALIFORNIA LABOR SUB-CLASS who were
19 improperly classified as independent contractors with an accurate itemized
20 statement in writing showing the gross wages earned, the net wages
21 earned, all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate by the
23 employee;
- 24 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA CLASS members with necessary expenses incurred in
26 the discharge of their job duties;
- 27 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
28

1 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
2 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
3 the legally required rest breaks; and,

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

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

- 12 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
13 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
14 Members is impracticable and the disposition of their claims as a class will
15 benefit the parties and the Court;
- 16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 LABOR SUB-CLASS and will apply to every member of the
19 CALIFORNIA LABOR SUB-CLASS;
- 20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
22 like all other members of the CALIFORNIA LABOR SUB-CLASS, were
23 improperly classified as independent contractors and was thus overtime
24 pay and meal and rest breaks, among other things, as a result of
25 DEFENDANT's systematic classification practices. PLAINTIFF and all
26 other members of the CALIFORNIA LABOR SUB-CLASS sustained
27 economic injuries arising from DEFENDANT's violations of the laws of
28

1 California; and,

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

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

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

16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUB-CLASS which
18 would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA LABOR SUB-CLASS; or,

20 2) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS which would as a practical
22 matter be dispositive of interests of the other members not party to
23 the adjudication or substantially impair or impede their ability to
24 protect their interests.

- 25 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
26 or refused to act on grounds generally applicable to the CALIFORNIA
27 LABOR SUB-CLASS, making appropriate class-wide relief with respect
28

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
2 DEFENDANT uniformly classified and treated the members of the
3 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
4 thereafter, uniformly failed to take proper steps to determine whether the
5 CALIFORNIA LABOR SUB-CLASS Members were properly classified
6 as independent contractors, and thereby denied these employees the
7 protections afforded to them under the California Labor Code;

8 (c) Common questions of law and fact predominate as to the members of the
9 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
10 violations of California law as listed above, and predominate over any
11 question affecting only individual CALIFORNIA LABOR SUB-CLASS
12 Members, and a Class Action is superior to other available methods for the
13 fair and efficient adjudication of the controversy, including consideration
14 of:

15 1) The interests of the members of the CALIFORNIA LABOR SUB-
16 CLASS in individually controlling the prosecution or defense of
17 separate actions in that the substantial expense of individual actions
18 will be avoided to recover the relatively small amount of economic
19 losses sustained by the individual CALIFORNIA LABOR SUB-
20 CLASS Members when compared to the substantial expense and
21 burden of individual prosecution of this litigation;

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

24 A. Inconsistent or varying adjudications with respect to
25 individual members of the CALIFORNIA LABOR SUB-
26 CLASS, which would establish incompatible standards of
27 conduct for the DEFENDANT; and/or,
28

1 B. Adjudications with respect to individual members of the
2 CALIFORNIA LABOR SUB-CLASS would as a practical
3 matter be dispositive of the interests of the other members
4 not parties to the adjudication or substantially impair or
5 impede their ability to protect their interests;

6 3) In the context of wage litigation because a substantial number of
7 individual CALIFORNIA LABOR SUB-CLASS Members will
8 avoid asserting their legal rights out of fear of retaliation by
9 DEFENDANT, which may adversely affect an individual's job
10 with DEFENDANT or with a subsequent employer, the Class
11 Action is the only means to assert their claims through a
12 representative; and,

13 4) A class action is superior to other available methods for the fair and
14 efficient adjudication of this litigation because class treatment will
15 obviate the need for unduly and unnecessary duplicative litigation
16 that is likely to result in the absence of certification of this action
17 pursuant to Cal. Code of Civ. Proc. § 382.

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

20 (a) The questions of law and fact common to the CALIFORNIA LABOR
21 SUB-CLASS predominate over any question affecting only individual
22 CALIFORNIA LABOR SUB-CLASS Members;

23 (b) A Class Action is superior to any other available method for the fair and
24 efficient adjudication of the claims of the members of the CALIFORNIA
25 LABOR SUB-CLASS because in the context of employment litigation a
26 substantial number of individual CALIFORNIA LABOR SUB-CLASS
27 Members will avoid asserting their rights individually out of fear of
28

1 retaliation or adverse impact on their employment;

2 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
3 numerous that it is impractical to bring all members of the CALIFORNIA
4 LABOR SUB-CLASS before the Court;

5 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
6 Members, will not be able to obtain effective and economic legal redress
7 unless the action is maintained as a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and
9 equitable relief for the acts of unfair competition, statutory violations and
10 other improprieties, and in obtaining adequate compensation for the
11 damages and injuries which DEFENDANT's actions have inflicted upon
12 the CALIFORNIA LABOR SUB-CLASS;

13 (f) There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of the
15 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

20 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANT. The
22 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
23 CLASS Members who are or previously were employed by DEFENDANT
24 in California as Counselors and classified as independent contractors
25 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 a efficient and rapid conclusion to all litigation of all wage and hour
28

1 related claims arising out of the conduct of DEFENDANT.

2
3 **JURISDICTION AND VENUE**

4 45. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
7 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

8 46. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
9 395.5, because PLAINTIFF resides in this County and DEFENDANT (i) currently maintains
10 and at all relevant times maintained its principal offices and facilities in this County and/or
11 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
12 alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
13 LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

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

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

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

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

21 48. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code
22 § 17021.

23 49. Section 17200 of the California Business & Professions Code defines unfair
24 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
25 applies to violations of labor laws in the employment context. Section 17203 authorizes
26 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
27 follows:
28

1 Any person who engages, has engaged, or proposes to engage in unfair
2 competition may be enjoined in any court of competent jurisdiction. The court
3 may take such orders or judgments, including the appointment of a receiver, as
4 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.

5 California Business & Professions Code § 17203.

6 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to the
8 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221,
9 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3, & 2802, and California Code of
10 Regulations § 11090, for which this Court should issue declaratory, injunctive, and other
11 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and
12 remedy the conduct held to constitute unfair competition, including restitution of wages
13 wrongfully withheld, business expenses wrongfully withheld and for the payment of the
14 employer's share of income taxes, social security taxes, unemployment insurance and workers'
15 compensation insurance.

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

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

27 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and
28

1 fraudulent in that DEFENDANT's policy and practice was to represent to the CALIFORNIA
2 CLASS Members that they were not entitled to overtime wages, payment for payroll taxes or
3 mandatory insurance and other benefits as required by California law, when in fact these
4 representations were false and likely to deceive and for which this Court should issue
5 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
6 of wages wrongfully withheld.

7 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
9 other members of the CALIFORNIA CLASS to be underpaid during their employment with
10 DEFENDANT.

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

16 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
17 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
18 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
19 engaging in any unlawful and unfair business practices in the future.

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

24 58. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, overtime wages, payment for the employer's share of payroll
26 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
27 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
28

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

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

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

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

17 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
21 unfair business practices.

22 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 64. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28

1 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
2 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
3 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
4 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
5 engage in these unlawful and unfair business practices.

6
7 **SECOND CAUSE OF ACTION**

8 **For Failure To Pay Minimum Wages**

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

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

11 **and Against All Defendants)**

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

15 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
17 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
18 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
19 Members.

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

22 68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
23 commission is the minimum wage to be paid to employees, and the payment of a less wage than
24 the minimum so fixed is unlawful.

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

1 70. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
3 time they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS.

6 71. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
7 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
8 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

10 72. In committing these violations of the California Labor Code, DEFENDANT
11 inaccurately calculates the correct time worked and consequently underpays the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
13 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
14 benefits in violation of the California Labor Code, the Industrial Welfare Commission
15 requirements and other applicable laws and regulations.

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

19 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
20 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
21 Members to work without paying them for all the time they were under DEFENDANT's
22 control. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
23 paid less for time worked that they were entitled to, constituting a failure to pay all earned
24 wages.

25 75. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFF and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained according
3 to proof at trial.

4 76. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
6 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
7 to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor
8 as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this
9 scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR
10 SUB-CLASS the correct minimum wages for their time worked.

11 77. In performing the acts and practices herein alleged in violation of California labor
12 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
13 all time worked and provide them with the requisite compensation, DEFENDANT acted and
14 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
16 for their legal rights, or the consequences to them, and with the despicable intent of depriving
17 them of their property and legal rights, and otherwise causing them injury in order to increase
18 company profits at the expense of these employees.

19 78. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
21 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
22 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
26 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
27 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
28

1 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

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

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

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

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

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

27 83. PLAINTIFF and the CALIFORNIA CLASS Members therefore request recovery
28

1 of all compensation according to proof, interest, costs, as well as the assessment of any statutory
2 penalties against DEFENDANT in a sum as provided by the California Labor Code and/or other
3 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
4 CLASS Members who have terminated their employment, these employees would also be
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
6 Further, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members are entitled to
7 seek and recover statutory costs.

8 84. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
10 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
11 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
13 disregard for their legal rights, or the consequences to them, and with the despicable intent of
14 depriving them of their property and legal rights, and otherwise causing them injury in order to
15 increase corporate profits at the expense of these employees.

16
17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

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

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

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

24 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
28

1 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
2 duties for the legally required off-duty meal periods. As a result of their rigorous work
3 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
4 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
7 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
8 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
9 which these employees were required by DEFENDANT to work ten (10) hours of work. As a
10 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
11 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
12 strict corporate policy and practice.

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

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

27 89. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28

1 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
2 of this Complaint.

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

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

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

23 **SIXTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 226]**

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

28 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
2 of this Complaint.

3 94. Cal. Labor Code § 226 provides that an employer must furnish employees with
4 an “accurate itemized statement in writing showing:

5 (1) gross wages earned,

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

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

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

14 (5) net wages earned,

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

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

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

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

23 95. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
25 statements which failed to show, among other things, the correct amount of time worked,
26 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
27 any workweek, and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226
28

1 provides that every employer shall furnish each of his or her employees with an accurate
2 itemized wage statement in writing showing, among other things, gross wages earned and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
6 Cal. Lab. Code § 226.

7 96. DEFENDANT 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 amount of time worked and the amount of employment taxes which were not properly paid
11 to state and federal tax authorities. These damages are difficult to estimate. Therefore,
12 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
13 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
14 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
15 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
16 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

17 **SEVENTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 2802]**

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

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

26 98. 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

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

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

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

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**

5 **and Against All Defendants)**

6 101. 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.

9 102. Cal. Lab. Code § 200 provides, in relevant part, 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
13 time, task, piece, Commission basis, or other method of calculation.

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

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

21 104. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

1 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
2 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
3 required by law.

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

10
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)**

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

17 110. 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.

27 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, brings this Representative Action on behalf of the State of California with respect to herself
2 and all individuals who worked for Cerebral Medical Group, P.A. and/or Cerebral Medical
3 Group, a Professional Corporation in California as a Therapist, Care Counselor and other
4 similar job titles and who were classified as independent contractors ("AGGRIEVED
5 EMPLOYEES") during the time period of April 12, 2021 to the earlier of preliminary approval
6 or April 24, 2023 (the "PAGA PERIOD").

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

14 113. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
16 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
17 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
18 to pay overtime wages, (e) failed to reimburse employees for required expenses, and (f) failed
19 to pay wages when due, all in violation of the applicable Labor Code sections listed in Labor
20 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
21 1197.1, 1198, 2750.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040,
22 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties
23 as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as
24 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
25 State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
26

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

1 EMPLOYEES.

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

7
8 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 interest thereon at the statutory rate; and,
- 2 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 3 in which a violation occurs and one hundred dollars (\$100) per each member of
- 4 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 5 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 6 an award of costs for violation of Cal. Lab. Code § 226;
- 7 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 8 the applicable IWC Wage Order;
- 9 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 10 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 11 costs of suit;
- 12 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 13 1197; and,
- 14 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
- 15 CLASS as a penalty from the due date thereof at the same rate until paid or until
- 16 an action therefore is commenced, in accordance with Cal. Lab. Code § 203
- 17 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 18 A) Recovery of civil penalties as prescribed by the Labor Code Private
- 19 Attorneys General Act of 2004; and,
- 20 B) An award of attorneys' fees and cost of suit, as allowable under the
- 21 law, including, but not limited to, pursuant to Labor Code §2699.
- 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 Dated: April 24, 2023

2 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

3 By: /s/ Nicholas De Blouw
4 Nicholas J. De Blouw

5 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

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

Dated: April 24, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff