

Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
W. Zev Abramson, Esq. # 289387
wza@abramsonlabor.com
Jack J. Gindi, Esq. # 293739
jack@abramsonlabor.com
ABRAMSON LABOR GROUP
11846 Ventura Boulevard, Suite 100
Studio City, California 91604
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CHARLES L. BING, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

MIRAMAR HEALTH, LLC, a limited liability
company; MIRAMAR HEALTH, INC., a
California corporation; and DOES 1 through
100, Inclusive,

Defendants.

Case No. 30-2022-01274896-CU-OE-CXC

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

- (1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198)**
- (4) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (7) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Charles L. Bing (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint against
3 Miramar Health, LLC; Miramar Health, Inc., a California corporation; and Does 1 through 100,
4 inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 512, 516, 558, 1198, 2802, 2804,
9 2698, *et seq.*, and Industrial Welfare Commission Wage Order No. 4 (“Wage Order 4”), in
10 addition to seeking declaratory relief and restitution. This class action is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
12 of the California Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Orange County. Defendants own, maintain offices, transact business, have an agent
18 or agents within Orange County, and/or otherwise are found within Orange County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698, *et seq.*, California Business
28 & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which sets

1 employment standards for employees in professional, technical, clerical, mechanical, and similar
2 occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a drug and alcohol rehab facility, and that they employed Plaintiff and other similarly
6 situated non-exempt employees within Orange County and the state of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
11 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
14 unlawful employment practices, wrongs, injuries, and damages complained of herein.

15 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

17 7. At all times herein mentioned, each of said Defendants participated in the acts
18 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
19 each of them, were the agents, servants, and employees of each of the other Defendants, as well
20 as the agents of all Defendants, and at all times herein mentioned were acting within the course
21 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
22 and/or otherwise ratified each of the acts or omissions alleged herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
27 Members (as defined in Paragraph 16).

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

10. During Plaintiff's employment with Defendants, Defendants failed to reimburse Plaintiff and other non-exempt employees for necessary business expenses. Specifically, Plaintiff and other non-exempt employees are required to clock in and out via the Paychex app on their personal cell phones, and were required to communicate with supervisors and other employees in the discharge of their duties for Defendants using their personal cell phones, but Defendants failed to reimburse Plaintiff and other non-exempt employees for a portion of their cell phone bill as required under California law, including Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

12. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by Defendants, and/or because they were required to be constantly available to clients for the duration of their shift. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant rest period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

13. As a result of Defendants' failure to pay all required meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

14. As a further result of Defendants' failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

15. In addition, on those occasions when Defendants did pay meal period premiums, the wage statements issued to Plaintiff and other non-exempt employees were facially deficient in that they failed to list the correct total hours worked and therefore, failed to comply with Labor Code § 226(a)(2). Specifically, the wage statements issued by Defendants included a line item titled “Total Hrs Worked,” and Defendants would include the hours paid as meal period premiums as “hours worked,” even though the hours ascribed to meal period premiums are not actually hours worked. For example, Plaintiff’s wage statement dated August 13, 2021, reported that Plaintiff worked 85.68 “hourly” hours, 11.20 “overtime” hours, and 1.00 “meal premium” hour, and further reported that Plaintiff’s “Total Hrs Worked” was 97.88 hours, i.e., the total of all reported “hours” including the meal premium. Thus, the wage statements issued by Defendants during pay periods when employees were paid meal premiums, failed to accurately report employees’ total hours worked, and in fact reported total hours worked inaccurately, in violation of Labor Code § 226(a)(2).

CLASS ACTION ALLEGATIONS

16. Class Definitions: Plaintiff bring this action on behalf of himself and the following
Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required to use their personal cellular phones for work purposes, at any time from four years immediately preceding the filing of this action through the present.

b. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours

without a 30-minute meal period beginning prior to the end of the fifth of work, at any time from four years immediately preceding the filing of this action through the present.

c. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

d. The Waiting Time Class consists of all members of the Meal Period Class and/or Rest Period Class, who are no longer employed by Defendants and who last worked for Defendants at any time from three years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of (i) all members of the Meal Period Class and/or Rest Period Class who received a wage statement at any time from one year immediately preceding the filing of this action through the present; and (ii) all of Defendants' current and former non-exempt employees in California who were issued a wage statement that included meal premiums and/or any other category of hours that are not actual hours worked among "total hours worked" on the wage statement, at any time from one year immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants reimbursed employees for work-related expenses;
- ii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- v. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' reimbursement, wage statement, meal period, rest period, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was not reimbursed for all business expenses incurred, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, and was deprived of all final wages upon his separation of employment from Defendants.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in

California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action, and the format of laws available to Plaintiff and Class members, make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class member to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO REIMBUSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24. As alleged herein, it was necessary for Plaintiff and members of the Expense Reimbursement Class to use their personal cell phones in performing their work for Defendants. Although Plaintiff and members of the Expense Reimbursement Class incurred these expenses in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of this lawsuit.

1 25. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
2 states that “an employer shall indemnify his or her employees for all necessary expenditures or
3 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
4 his or her obedience to the directions of the employer.”

5 26. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
6 states, “any contract or agreement, express or implied, made by any employee to waive the
7 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
8 employee or his personal representative of any right or remedy to which he is entitled under the
9 laws of this State.”

10 27. As a proximate result of Defendants’ policies and/or practices in violation of Labor
11 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class were damaged in
12 sums, which will be shown according to proof.

13 28. Plaintiff and members of the Expense Reimbursement Class are entitled to
14 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.
15 Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary
16 expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and
17 members of the Expense Reimbursement Class are entitled to interest, which shall accrue from
18 the date on which they incurred the initial necessary expenditure.

19 **SECOND CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 29. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

23 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
25 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
26 the mandates of the California Labor Code and Wage Order 4, for the reasons set forth in this
27 Complaint.

28 ///

31. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

34. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods.

35. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all meal and rest period premium wages earned, and total hours worked, in violation of Labor Code § 226.

38. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to,

1 among other things, the non-payment of all their meal and rest period premium wages, an
2 inaccurate accounting of total hours worked, and deprived them of the information necessary to
3 identify the discrepancies in Defendants' reported data.

4 39. Defendants' failures create an entitlement to recovery by Plaintiff and members of
5 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
6 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
7 of suit according to California Labor Code §§ 226 and 226.3.

8 **FIFTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

11 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 41. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
13 an employer to pay all wages immediately at the time of separation of employment in the event
14 the employer discharges the employee, or the employee provides at least 72 hours of notice of
15 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
16 to quit, said employee's wages become due and payable not later than 72 hours upon said
17 employee's last date of employment.

18 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
20 at their separation from employment, including (but not limited to) unpaid meal and rest period
21 premium wages.

22 43. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
23 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
24 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
25 to the requirements of Cal. Labor Code §§ 201-203.

26 44. Defendants' failure to pay all final wages was willful within the meaning of Labor
27 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
28 Time Class their earned wages upon separation from employment results in a continued payment

1 of daily wages up to thirty (30) days from the time the wages were due. Plaintiff and members of
2 the Waiting Time Class are entitled to compensation pursuant to Cal. Labor Code § 203, plus
3 reasonable attorneys' fees and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

7 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 46. Defendants have engaged, and continue to engage, in unfair and/or unlawful
9 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to
10 reimburse business expenses incurred, failing to provide meal periods or pay meal period
11 premium wages, failure to authorize and permit rest periods or pay rest period premium wages,
12 failing to furnish accurate and complete itemized wage statements in violation of Labor Code §
13 226, and failing to pay all earned wages to Waiting Time Class members at the time of their
14 separation of employment.

15 47. Defendants' utilization of these unfair and/or unlawful business practices has
16 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
17 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
18 Defendants' competitors who have been and/or are currently employing workers and attempting
19 to do so in honest compliance with applicable wage and hour laws.

20 48. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
21 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
22 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
23 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

24 49. The acts complained of herein occurred within the four years immediately
25 preceding the filing of this action.

26 50. Plaintiff was compelled to retain the services of counsel to file this court action to
27 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
28 of Defendants' current non-exempt employees, and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **SEVENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(AGAINST ALL DEFENDANTS)**

6 51. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 52. Defendants have committed several Labor Code violations against Plaintiff and
8 other aggrieved employees. Plaintiff is an "aggrieved employees" within the meaning of Labor
9 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
10 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
11 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
12 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
13 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
14 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
15 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
16 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
17 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
18 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
19 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
20 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
21 employee per pay period for those violations of the Labor Code for which no civil penalty is
22 specifically provided, based on the following Labor Code violations:

- 23 a. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business
24 expenditures, in violation of Labor Code §§ 2802, 2804, and 1198;
- 25 b. Failing to provide all legally required meal periods and failing to pay meal period
26 premiums, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 27 c. Failing to authorize and permit all legally required rest periods and failing to pay rest
28 period premiums, in violation of Labor Code §§ 226.7, 516, 558, and 1198;

- d. Failing to provide Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- e. Failing to pay Plaintiff and other aggrieved former employees all final wages due at the end of their employment, in violation of Labor Code §§ 201-203;
- f. Failing to pay all wages to Plaintiff and other aggrieved employees at least twice per calendar month, in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

53. On or around August 11, 2022, Plaintiff notified Defendants Miramar Health, LLC and Miramar Health, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in paragraph 52 (a)-(g) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802, 2804, and 1198;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

5 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226, *et seq.*;

7 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-203;

9 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
12 *seq.*;

13 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
15 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay
16 each employee and \$200.00 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
19 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
20 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
21 pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
22 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
23 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
24 period for those violations of the Labor Code for which no civil penalty is specifically provided,
25 pursuant to Labor Code § 2699(f);

26 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
27 §§ 218.6, 1194(a), 2802(b), Civil Code § 3287, and Art. XV, § 1 of the California Constitution;

28 ///

1 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

3 13. For such other and further relief the Court may deem just and proper.

4
5 Date: October 14, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

6
7 By: _____


Tuvia Korobkin
Attorney for Plaintiff

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

11
12
13 Dated: October 14, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

14
15 By: _____


Tuvia Korobkin
Attorney for Plaintiff