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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

22CV408857

JEFFREY ERIC DE GUZMAN CRISTE, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

BIO-MEDICAL APPLICATIONS OF
CALIFORNIA, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Jeffrey Eric de Guzman Criste (“Plaintiff”) hereby submits this Representative
2 Action Complaint (“Complaint”) against Defendant Bio-Medical Applications of California, Inc.
3 (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), on behalf of himself and all
4 other aggrieved employees of Defendant for penalties pursuant to the Private Attorneys General
5 Act, Labor Code section 2698, et seq. (“PAGA”), for Defendant’s violations of the California Labor
6 Code, as follows:

7 **INTRODUCTION**

8 1. This representative action is within the Court’s jurisdiction under California Labor
9 Code sections 201, 202, 203, 204, 226, 246 and 2698, *et seq.*, and the applicable Wage Orders of
10 the California Industrial Welfare Commission (“IWC”).

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendant.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
14 and severally, have acted intentionally and with deliberate indifference and conscious disregard to
15 the rights of all employees by failing to pay sick pay at the regular rate of pay and failing to provide
16 accurate wage statements.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code and the
19 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
20 knowingly deny employees the above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code sections
23 201, 202, 203, 204, 226, 246 and 2698, *et seq.*, and the applicable IWC Wage Orders.

24 6. Venue is proper in Santa Clara County because Plaintiff worked for Defendant in
25 San Jose, California.

26 **PARTIES**

27 7. Plaintiff was employed by Defendant as a Registered Nurse from about June 2012,
28 to about June 8, 2022. Throughout Plaintiff’s employment, Plaintiff was an hourly non-exempt

1 employee.

2 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
3 complained of in this action in ways that have deprived him of the rights guaranteed by California
4 Labor Code sections 201, 202, 203, 204, 226, 246 and 2698, *et seq.*, and the applicable IWC Wage
5 Orders.

6 9. Plaintiff is informed and believes, and based thereon alleges, that Bio-Medical
7 Applications of California, Inc. was and is a Delaware corporation that provides medical services
8 throughout the State of California, including San Jose, California.

9 10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
10 mentioned Does 1 through 50, are and were corporations, business entities, individuals, and
11 partnerships, licensed to do business and actually doing business in the State of California. As such,
12 and based upon all the facts and circumstances incident to Defendants' business, Defendants are
13 subject to the California Labor Code.

14 11. Plaintiff does not know the true names or capacities, whether individual, partner or
15 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
20 the illegal employment practices, wrongs and injuries complained of herein.

21 12. At all times herein mentioned, each defendant participated in the doing of the acts
22 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and
23 each of them, were the agents, servants, and employees of each of the other defendants, as well as
24 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
25 scope of said agency and employment.

26 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting within

1 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
2 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
3 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

4 14. At all times herein mentioned, Defendants, and each of them, were members of, and
5 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
6 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

7 15. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
12 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
13 damages as herein alleged.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

16 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

17 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
18 fully set forth herein.

19 17. Plaintiff brings this cause of action as a proxy for the State of California and in this
20 capacity seeks penalties on behalf of all Aggrieved Employees in the State of California from
21 October 20, 2021, through the present, for Defendant's violations of Labor Code sections 201, 202,
22 203, 204, 226, and 246, arising from Defendant's policy and practice of: (1) failing to pay
23 employees sick pay at the correct regular rate of pay that included all non-discretionary
24 remuneration, in violation of Labor Code sections 201, 202, 203, 204 and 246; and (2) failing to
25 provide accurate itemized wage statements, in violation of Labor Code sections 226(a).

26 18. Plaintiff and Aggrieved Employees earned sick pay and non-discretionary incentive
27 wages, including shift premiums/differentials, during the same workweek. However, the non-
28 discretionary incentive wages were not factored into the regular rate of pay for the purposes of

1 paying sick pay, as required by Labor Code section 246. More specifically, as a matter of policy
2 and practice, Defendant paid sick pay at the employee's base hourly rate of pay. This resulted in the
3 underpayment of sick pay wages to Plaintiff and Aggrieved Employees and resulted in derivative
4 violations of California Labor Code sections 201, 202, 203 and 204 because Defendant did not pay,
5 or timely pay, Plaintiff and Aggrieved Employees all owing and unpaid wages for work performed
6 by them during their employment and at the end of their employment.

7 19. As a result of the sick pay underpayment, the wage statements issued to Plaintiff and
8 Aggrieved Employees failed to identify the correct gross wages earned, net wages earned, and
9 accurate rates of pay, in violation of Labor Code section 226(a).

10 20. On or about October 20, 2022, Plaintiff sent written notice to the California Labor &
11 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections 201,
12 202, 203, 204, 226, and 246, pursuant to the PAGA. In addition to the LWDA, Plaintiff also sent
13 the notice to Defendant via certified mail pursuant to Labor Code section 2699.3.

14 11. As of the date of the filing of this Complaint, the LWDA has not responded to
15 Plaintiff's written notice nor indicated that it intends to investigate the Labor Code violations
16 provided for in the written notice.

17 21. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and
18 all applicable civil penalties for Defendant's violations of Labor Code sections 201, 202, 203, 204,
19 226, and 246, and for the time period described above, on behalf of herself and other Aggrieved
20 Employees.

21 **PRAYER FOR RELIEF**

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

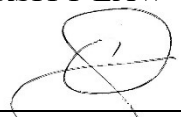
24 1. On the First Cause of Action, for civil penalties and/or damages pursuant to
25 California Labor Code section 2698, *et seq.*, and for interest, costs and attorneys' fees;

26 2. On all causes of action, for attorneys' fees and costs as provided by California Labor
27 Code section 2698 *et seq.* and Code of Civil Procedure section 1021.5; and

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

1 DATED: December 22, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 

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Kristen M. Agnew

Nicholas Rosenthal

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5 Attorneys for Plaintiff and the Aggrieved
6 Employees