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Case #22CV405681
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Attorneys for Plaintiff and the Class

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

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.: 22CV405681

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

**(1) VIOLATION OF LABOR CODE §§ 201,
202 AND 203**

(2) VIOLATION OF LABOR CODE § 226

**(3) VIOLATION OF LABOR CODE § 2698, ET
SEQ.**

DEMAND OVER \$25,000.00

1 JEFFREY ERIC DE GUZMAN CRISTE,
2 AS AN INDIVIDUAL AND ON BEHALF
3 OF ALL OTHERS SIMILARLY
SITUATED,

4 PLAINTIFF,

5 VS.

6 BIO-MEDICAL APPLICATIONS OF
7 CALIFORNIA, INC., A DELAWARE
8 CORPORATION; AND DOES 1
THROUGH 50, INCLUSIVE,

Case No.: 22CV408857

(Assigned to the Honorable Sunil R. Kulkarni,
Department 1)

Complaint filed: December 22, 2022
Trial Date: None

1 Plaintiff Jeffrey Eric de Guzman Criste (“Plaintiff”) hereby submits this First Amended
2 Consolidated Class and Representative Action Complaint (“Complaint”) against Defendant Bio-
3 Medical Applications of California, Inc. (“Defendant”) and Does 1 through 50 (collectively,
4 “Defendants”), as an individual and on behalf of a class of all other similarly situated current and
5 former employees of Defendant for damages and/or penalties for violations of the California Labor
6 Code, including without limitation, failing to pay sick pay at the regular rate of pay, as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code
9 sections 201, 202, 203, 226, 246, and 2698, *et seq.*, and the applicable IWC Wage Orders.

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

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

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

20 **JURISDICTION AND VENUE**

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

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

25 **PARTIES**

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

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

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

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

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

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

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

1 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
2 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

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

13 **CLASS ACTION ALLEGATIONS**

14 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
15 California Code of Civil Procedure section 382, of the following class: All former non-exempt
16 employees of Defendant in the State of California who earned non-discretionary incentive wages,
17 including but not limited to shift premiums/differentials, and sick pay during the same workweek,
18 and whose employment ended at any time between October 31, 2019, through the present (“Class”
19 or “Class Members”).

20 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
21 joinder of all members would be impractical, if not impossible. The identity of the members of the
22 Class is readily ascertainable by review of Defendant’s records, including payroll records. Plaintiff
23 is informed and believes, and based thereon alleges, that Defendant failed to pay sick pay at the
24 regular rate of pay and failed to provide accurate wage statements in violation of Labor Code
25 sections 201, 202, 203, 226, and 246.

26 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
27 necessary steps to represent fairly and adequately the interests of the Class defined above.
28 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and the

1 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
2 the past and currently have a number of wage-and-hour class actions pending in California state and
3 federal courts.

4 19. Defendant uniformly administered a corporate policy, practice of failing to pay sick
5 pay at the regular rate of pay and failing to provide accurate wage statements in violation of Labor
6 Code sections 201, 202, 203, 226, and 246.

7 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a
8 consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor
9 Code sections 201, 202, 203, 226, and 246, and the applicable IWC Wage Orders.

10 21. **Common Question of Law and Fact:** There are predominant common questions of
11 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
12 Defendant's policy and practice of failing to pay sick pay at the regular rate of pay and failing to
13 provide accurate wage statements in violation of Labor Code sections 201, 202, 203, 226, and 246.

14 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
15 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
16 manner as the Class Members. As with other California non-exempt employees, Plaintiff earned
17 sick pay and non-discretionary incentive wages, including without limitation, shift
18 premiums/differentials, during the same workweek. However, the non-discretionary incentive
19 wages were not factored into the regular rate of pay for the purposes of paying sick pay, as required
20 by Labor Code section 246. More specifically, as a matter of policy and practice, Defendant paid
21 sick pay at an employee's base hourly rate of pay. This resulted in the underpayment of sick pay
22 wages and resulted in derivative violations of California Labor Code sections 201, 202 and 203
23 because Defendant did not pay, or timely pay, Plaintiff and Class Members all owing and unpaid
24 wages for work performed by them during their employment and at the end of their employment.
25 Further, as a result of such violations, Defendant failed to accurately identify the accurate rates of
26 pay and gross/net wages earned. As such, Plaintiff is a member of the Class and has suffered the
27 alleged violations of California Labor Code sections 201, 202, 203, 226, and 246, and the
28 applicable IWC Wage Orders.

1 23. The California Labor Code upon which Plaintiff bases these claims are broadly
2 remedial in nature. These laws and labor standards serve an important public interest in establishing
3 minimum working conditions and standards in California. These laws and labor standards protect
4 the average working employee from exploitation by employers who may seek to take advantage of
5 superior economic and bargaining power in setting onerous terms and conditions of employment.

6 24. The nature of this action and the format of laws available to Plaintiff and members
7 of the Class identified herein make the class action format a particularly efficient and appropriate
8 procedure to redress the wrongs alleged herein. If each employee were required to file an individual
9 lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it
10 would be able to exploit and overwhelm the limited resources of each individual plaintiff with their
11 vastly superior financial and legal resources. Requiring each Class Member to pursue an individual
12 remedy would also discourage the assertion of lawful claims by employees who would be
13 disinclined to file an action against their former and/or current employer for real and justifiable fear
14 of retaliation and permanent damage to their careers at subsequent employment.

15 25. The prosecution of separate actions by the individual class members, even if
16 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
17 individual Class members against the Defendants and which would establish potentially
18 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
19 individual Class members which would, as a practical matter, be dispositive of the interest of the
20 other Class members not parties to the adjudications or which would substantially impair or impede
21 the ability of the Class members to protect their interests. Further, the claims of the individual
22 members of the Class are not sufficiently large to warrant vigorous individual prosecution
23 considering all of the concomitant costs and expenses.

24 26. Such a pattern, practice, and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
26 by Plaintiff and the Class identified herein, in a civil action, for unpaid sick pay wages, applicable
27 penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor
28 Code sections 201, 202, 203, 226, and 246, and Code of Civil Procedure section 1021.5.

27. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

28. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendant. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201, 202, AND 203

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

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

30. Labor Code section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

31. Labor Code section 246 provides that an employee is entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

1 32. Class Members earned sick pay and non-discretionary incentive wages, during the
2 same workweek. However, the non-discretionary incentive wages were not factored into the regular
3 rate of pay for the purposes of paying sick pay, as required by Labor Code section 246. More
4 specifically, as a matter of policy and practice, Defendant paid sick pay at the employee's base
5 hourly rate of pay. This resulted in the underpayment of sick pay wages to Class Members and
6 resulted in derivative violations of California Labor Code sections 201, 202, and 203 because
7 Defendant did not pay, or timely pay, Class Members all owing and unpaid wages for work
8 performed by them during their employment and at the end of their employment.

9 33. Defendant willfully failed to pay Plaintiff and Class Members all wages due, as
10 alleged hereinabove and hereinafter, upon the termination of their employment within the times
11 prescribed by Labor Code sections 201 and 202 and are therefore subject to a waiting time penalty.
12 Plaintiff and Class Members are entitled to recover from Defendant the statutory penalty for each
13 day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant
14 to California Labor Code section 203.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 226**

17 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

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

20 35. Labor Code section 226(a) requires employers to provide itemized wage statements
21 to its employees that identify accurate information regarding their compensation. Defendant, as a
22 matter of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
23 statements to employees, in violation of Labor Code section 226(a).

24 36. As a result of the sick pay underpayment, the wage statements issued to Plaintiff and
25 the Class failed to identify the correct gross wages earned, net wages earned, and accurate rates of
26 pay, in violation of Labor Code section 226(a).

27 37. The issuance of inaccurate wage statements caused injury to Plaintiff and the Class
28 under Labor Code section 226(e), as they cannot accurately verify and/or calculate their wages.

1 38. Such a pattern, practice and uniform administration of corporate policy as described
2 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified
3 herein, in a civil action, for all damages or penalties pursuant to Labor Code section 226, including
4 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
5 Code section 226.

6 **THIRD CAUSE OF ACTION**

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

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

9 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
10 fully set forth herein.

11 40. Plaintiff brings this cause of action as a proxy for the State of California and in this
12 capacity seeks penalties on behalf of all Aggrieved Employees in the State of California from
13 October 20, 2021, through the present, for Defendant's violations of Labor Code sections 201, 202,
14 203, 204, 226, and 246, arising from Defendant's policy and practice of: (1) failing to pay
15 employees sick pay at the correct regular rate of pay that included all non-discretionary
16 remuneration, in violation of Labor Code sections 201, 202, 203, 204 and 246; and (2) failing to
17 provide accurate itemized wage statements, in violation of Labor Code sections 226(a).

18 41. Plaintiff and Aggrieved Employees earned sick pay and non-discretionary incentive
19 wages, including shift premiums/differentials, during the same workweek. However, the non-
20 discretionary incentive wages were not factored into the regular rate of pay for the purposes of
21 paying sick pay, as required by Labor Code section 246. More specifically, as a matter of policy
22 and practice, Defendant paid sick pay at the employee's base hourly rate of pay. This resulted in the
23 underpayment of sick pay wages to Plaintiff and Aggrieved Employees and resulted in derivative
24 violations of California Labor Code sections 201, 202, 203 and 204 because Defendant did not pay,
25 or timely pay, Plaintiff and Aggrieved Employees all owing and unpaid wages for work performed
26 by them during their employment and at the end of their employment.

27 42. As a result of the sick pay underpayment, the wage statements issued to Plaintiff and
28 Aggrieved Employees failed to identify the correct gross wages earned, net wages earned, and

1 accurate rates of pay, in violation of Labor Code section 226(a).

2 43. On or about October 20, 2022, Plaintiff sent written notice to the California Labor &
3 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections 201,
4 202, 203, 204, 226, and 246, pursuant to the PAGA. In addition to the LWDA, Plaintiff also sent
5 the notice to Defendant via certified mail pursuant to Labor Code section 2699.3.

6 11. As of the date of the filing of this Complaint, the LWDA has not responded to
7 Plaintiff’s written notice nor indicated that it intends to investigate the Labor Code violations
8 provided for in the written notice.

9 44. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and
10 all applicable civil penalties for Defendant’s violations of Labor Code sections 201, 202, 203, 204,
11 226, and 246, and for the time period described above, on behalf of herself and other Aggrieved
12 Employees.

13 **PRAYER FOR RELIEF**

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

- 16 1. For an order certifying the proposed Class;
17 2. For an order appointing Plaintiff as the representative of the Class as described
18 herein;
19 3. For an order appointing counsel for Plaintiff as class counsel;
20 4. Upon the First Cause of Action, for damages and/or penalties pursuant to California
21 Labor Code sections 201, 202 and 203, and for costs and attorneys’ fees;
22 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
23 California Labor Code section 226, and for costs and attorneys’ fees;
24 6. Upon the Third 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 7. On all causes of action, for attorneys’ fees and costs as provided by California Labor
27 Code sections 218.5 and 201, 202, 203, 226, and 2698 *et seq.*, and Code of Civil Procedure section
28 1021.5; and

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

DATED: April 21, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and the Class

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On April 21, 2023, I served the following document(s) described as: **FIRST AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

David H. Stern Alex E. Spjute Jennifer F. Delarosa Baker & Hostetler LLP 11601 Wilshire Boulevard, Suite 1400 Los Angeles, California 90025-0509	<i>Attorneys for Defendant Bio-Medical Applications of California, Inc.</i> dstern@bakerlaw.com aspjute@bakerlaw.com jdelarosa@bakerlaw.com
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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 21, 2023, at Los Angeles, California.



Erika Mejia