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E-FILED
7/17/2024 3:46 PM
Superior Court of California
County of Fresno
By: A. Yang, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

AMANDA VASQUEZ, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MICARE CALIFORNIA, P.C., a California
corporation; EMPLOYEE BENEFIT
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: 23CECG01242

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *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;

- 1 6) FAILURE TO REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO PROVIDE ACCURATE
8 ITEMIZED STATEMENTS IN
9 VIOLATION OF CAL. LAB. CODE § 226.
10 9) VIOLATION OF THE PRIVATE
11 ATTORNEYS GENERAL ACT [LABOR
12 CODE §§ 2698 ET SEQ]

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFF AMANDA VASQUEZ (“PLAINTIFF”), an individual, on behalf of herself
15 and all other similarly situated current and former employees, allege on information and belief,
16 except for her own acts and knowledge which are based on personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant MICARE CALIFORNIA, P.C. (“Defendant MiCare”) is a California
19 corporation that at all relevant times mentioned herein conducted and continues to conduct
20 substantial and regular business throughout California.

21 2. Defendant EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC
22 (“Defendant EBMS”) is a Delaware limited liability company that at all relevant times mentioned
23 herein conducted and continues to conduct substantial and regular business throughout California

24 3. Defendant MiCare and Defendant EBMS were the joint employers of PLAINTIFF
25 as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed
26 work for respectively and are therefore jointly responsible as employers for the conduct alleged
27 herein as “DEFENDANTS” and/or “DEFENDANT.”

28 4. DEFENDANTS own, operate and/or manage medical centers and/or health plan
administrators throughout the state of California, including the county of Fresno, where
PLAINTIFF worked.

5. PLAINTIFF was employed by DEFENDANT in California from February of 2022
to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the

1 legally required meal and rest periods and payment of minimum and overtime wages due for all
2 time worked.

3 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
4 defined as all persons who are or previously were employed by Defendant MiCare and/or
5 Defendant EBMS in California and classified as non-exempt employees (the “CALIFORNIA
6 CLASS”) at any time during the period beginning four (4) years prior to the filing of the original
7 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The
8 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
9 five million dollars (\$5,000,000.00).

10 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
11 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
12 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to
13 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged
14 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
15 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
16 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
17 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
18 other members of the CALIFORNIA CLASS who have been economically injured by
19 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable
20 relief.

21 8. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
26 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
27 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
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1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

3 9. The agents, servants and/or employees of the Defendants and each of them acting
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
8 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 Defendants' agents, servants and/or employees.

11 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
12 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
15 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
16 at all relevant times.

17 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
18 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

22 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
24 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

25 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
27 other members of the CALIFORNIA CLASS who has been economically injured by
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1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

4 14. 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 of PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
22 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
23 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
24 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
25 applicable hourly rates in effect during the pay periods and the corresponding amount of time
26 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
27 purposefully avoid the accurate and full payment for all time worked as required by California
28 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors

1 who comply with the law. To the extent equitable tolling operates to toll claims by the
2 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
3 accordingly.

4 **A. Meal Period Violations**

5 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
6 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer, including
8 all the time the employee is suffered or permitted to work. From time to time during the CLASS
9 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
10 without paying them for all the time they were under DEFENDANT's control. Specifically,
11 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
12 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
13 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
14 Members forfeited minimum wage and overtime compensation by regularly working without their
15 time being accurately recorded and without compensation at the applicable minimum wage and
16 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
17 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
18 records.

19 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
20 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
21 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
22 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
24 more than five (5) hours during some shifts without receiving a meal break. Further,
25 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
26 off-duty meal period for some workdays in which these employees are required by DEFENDANT
27 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
28 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-

duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty and on call. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive and/or respond to work-related communications during their off-duty meal periods. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

B. Rest Period Violations

19. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty and/or on call. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive and/or respond to work-related communications during their off-duty rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT’s managers.

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1 **C. Unreimbursed Business Expenses**

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

13 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
14 CALIFORNIA CLASS Members to use their personal cellular phones, purchase and maintain
15 their own uniforms, and purchase their own equipment as a result of and in furtherance of their
16 job duties, including but not limited to receiving and/or responding to work-related
17 communications and performing work-related duties. However, DEFENDANT unlawfully failed
18 to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for personal expenses
19 incurred for the use of their personal cellular phones, the purchase and maintenance of uniforms,
20 and the purchase of their own equipment. As a result, in the course of their employment with
21 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
22 unreimbursed business expenses that included, but were not limited to, costs related to the use of
23 their personal cellular phones, the purchase of and maintenance of uniforms, and the purchase of
24 their own equipment, all on behalf of and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 22. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
7 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
8 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
9 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
10 accurate wage statements which failed to show, among other things, all deductions, the total hours
11 worked and all applicable hourly rates in effect during the pay period and the corresponding
12 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
13 meal and rest periods.

14 24. Further, from time to time, DEFENDANT included Bereavement, PTO, and
15 Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code
16 §226(a)(2), notwithstanding the fact that Bereavement, PTO, and Holiday hours are not
17 considered hours worked. DEFENDANTS' inclusion of Bereavement, PTO, and Holiday hours
18 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other
19 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

20 25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
21 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
22 Cal. Lab. Code § 226.

23 26. As a result, DEFENDANT issued PLAINTIFF and other members of the
24 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
25 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
26 payroll error due to clerical or inadvertent mistake.

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1 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
3 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
4 for all hours worked.

5 28. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, time spent prepping patient rooms, helping patients, and
8 helping other employees. This resulted in PLAINTIFF and other members of the CALIFORNIA
9 CLASS to have to work while off-the-clock.

10 29. DEFENDANT directed and directly benefited from the undercompensated off-the-
11 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

12 30. DEFENDANT controlled the work schedules, duties, and protocols, applications,
13 assignments, and employment conditions of PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 31. DEFENDANT was able to track the amount of time PLAINTIFF and the other
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
18 wages earned and owed for all the work they performed.

19 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
20 exempt employees, subject to the requirements of the California Labor Code.

21 33. DEFENDANT's policies and practices deprived PLAINTIFF and the other
22 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
23 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
24 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
25 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
26 pay.

27 34. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

1 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
3 benefit for the time spent working while off-the-clock, including but not limited to, time spent
4 prepping patient rooms, helping patients, and helping other employees. DEFENDANT's uniform
5 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
6 for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business
7 records.

8 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
9 **and Redeemed Sick Pay**

10 36. From time to time during the CLASS PERIOD, DEFENDANT failed and
11 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
12 Members for their overtime and double time hours worked, meal and rest period premiums, and
13 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
14 forfeited wages due to them for working overtime without compensation at the correct overtime
15 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
16 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
17 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
18 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

19 37. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
21 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
22 employee's performance.

23 38. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
27 paid on an hourly basis with bonus compensation when the employees met the various
28 performance goals set by DEFENDANTS.

1 39. However, from time to time, when calculating the regular rate of pay in those pay
2 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
3 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
4 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
5 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked
6 rather than just all non-overtime hours worked. Management and supervisors described the
7 incentive/bonus program to potential and new employees as part of the compensation package.
8 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
9 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
10 in a systematic underpayment of overtime and double time compensation, meal and rest period
11 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
12 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
13 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
14 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
15 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
16 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
17 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
18 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

19 40. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
24 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
25 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
26 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
27 CLASS PERIOD should be adjusted accordingly.

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1 **G. Violations for Untimely Payment of Wages**

2 41. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 **H. Unlawful Deductions**

8 42. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
9 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
10 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
11 violated Labor Code § 221.

12 **I. Timekeeping Manipulation**

13 43. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
14 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
15 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
16 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
17 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
18 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
19 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
20 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
21 missed rest breaks.

22 44. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
23 time-to-time, forfeited time worked by working without their time being accurately recorded and
24 without compensation at the applicable pay rates.

25 45. The mutability of the timekeeping system also allowed DEFENDANT to alter
26 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
27 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
28 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees

1 were not at all times provided an off-duty meal break. This practice is a direct result of
2 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
3 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

4 46. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
5 forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit
6 for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and
7 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
8 hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
9 records.

10 **J. Unlawful Rounding Practices**

11 47. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
12 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
13 CALIFORNIA CLASS Members for the actual time these employees worked each day,
14 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
15 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
16 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
17 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
18 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
19 these employees for all their time worked, including the applicable overtime compensation for
20 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
21 time to time, forfeited compensation for their time worked by working without their time being
22 accurately recorded and without compensation at the applicable overtime rates.

23 48. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
24 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
25 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
26 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
27 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
28 off-duty meal break.

49. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and were not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which they were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF for required business expenses related to, the use of her personal cellular phones, the purchase and maintenance of her uniforms, and the purchase of her own work equipment, on behalf of and in furtherance of her employment with DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

50. PLAINTIFF brings this Class Action on behalf of herself, and a California class defined as all persons who are or previously were employed by Defendant MiCare and/or Defendant EBMS in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of the original Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

51. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate

1 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 52. The members of the class are so numerous that joinder of all class members is
4 impractical.

5 53. Common questions of law and fact regarding DEFENDANT's conduct, including
6 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
7 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
8 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
9 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
10 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
11 wage and overtime, exist as to all members of the class and predominate over any questions
12 affecting solely any individual members of the class. Among the questions of law and fact
13 common to the class are:

- 14 a. Whether DEFENDANT maintained legally compliant meal period policies and
15 practices;
- 16 b. Whether DEFENDANT maintained legally compliant rest period policies and
17 practices;
- 18 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members accurate premium payments for missed meal and rest periods;
- 20 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate overtime wages;
- 22 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members at least minimum wage for all hours worked;
- 24 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
25 CLASS Members for required business expenses;
- 26 g. Whether DEFENDANT issued legally compliant wage statements;

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1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;

9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 54. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

14 55. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
15 PLAINTIFF have the same interests as the other members of the class.

16 56. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 57. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 58. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.

22 59. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

26 60. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

62. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

64. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

/ / /

1 65. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
4 as follows:

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 use or employment by any person of any practice which constitutes unfair competition, as
9 defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 66. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
16 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
17 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
18 constitute unfair competition, including restitution of wages wrongfully withheld.

19 67. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
20 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
21 or substantially injurious to employees, and were without valid justification or utility for which
22 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
23 Business & Professions Code, including restitution of wages wrongfully withheld.

24 68. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated meal and rest periods and the required amount of compensation for missed meal and
27 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
28 necessary business expenses incurred, due to a systematic business practice that cannot be
justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 70. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
10 required by Cal. Lab. Code §§ 226.7 and 512.

11 71. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 72. PLAINTIFF further demands on behalf of and on behalf of each CALIFORNIA
17 CLASS member, one (1) hour of pay for each workday in which a rest period was not timely
18 provided as required by law.

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

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

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

8 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future. PLAINTIFF and the other
12 members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that
13 will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein
14 alleged presently continue to occur unabated. As a result of the unlawful and unfair business
15 practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 have suffered and will continue to suffer irreparable legal and economic harm unless
17 DEFENDANT is restrained from continuing to engage in these unlawful and unfair business
18 practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

21 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

22 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants**

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

26 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
27 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
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1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
2 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

5 80. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

10 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
11 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
12 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

19 84. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately calculated the correct time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

25 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.

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1 86. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
3 failure to pay all earned wages.

4 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
6 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
7 suffered and will continue to suffer an economic injury in amounts which are presently unknown
8 to them, and which will be ascertained according to proof at trial.

9 88. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 90. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

11 91. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
15 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
16 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
17 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
18 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

21 94. Cal. Lab. Code § 510 provides that employees in California shall not be employed
22 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
23 they receive additional compensation beyond their regular wages in amounts specified by law.

24 95. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum and overtime compensation and interest thereon, together with the costs of
26 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.

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1 96. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

4 97. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 98. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

17 99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
19 overtime compensation for their time worked for DEFENDANT.

20 100. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
24 agreement that would preclude the causes of action contained herein this Complaint. Rather,
25 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
26 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
27 California.

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1 101. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
3 a failure to pay all earned wages.

4 102. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
5 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
6 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
7 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
8 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

11 103. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
13 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS have suffered and will continue to suffer an economic injury in amounts which are
15 presently unknown to them, and which will be ascertained according to proof at trial.

16 104. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANT systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
21 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
22 overtime worked.

23 105. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of
2 these employees.

3 106. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
5 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
7 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
8 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
9 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
10 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,
11 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
12 entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 107. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 108. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
21 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
22 required by the applicable Wage Order and Labor Code. The nature of the work performed by
23 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
24 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
25 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
26 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
27 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
28 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business

1 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
2 Members with a second off-duty meal period in some workdays in which these employees were
3 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
4 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
5 and in accordance with DEFENDANT's strict corporate policy and practice.

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

11 110. As a proximate result of the aforementioned violations, PLAINTIFF and
12 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
13 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

16 **(Cal. Lab. Code §§ 226.7 & 512)**

17 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

21 112. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
3 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
4 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
6 periods is evidenced by DEFENDANT's business records.

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

12 114. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
14 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Reimburse Employees For Required Expenses**

17 **(Cal. Lab. Code §§ 2802)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

22 116. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

28 117. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
members for required expenses incurred in the discharge of their job duties for DEFENDANT's

1 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
2 for expenses which included, but were not limited to, personal expenses incurred for the use of
3 their personal cellular phones, the purchase and maintenance of their uniforms, and the purchase
4 of their own equipment, as a result of and in furtherance of their job duties, including but not
5 limited to receiving and/or responding to work-related communications and performing work-
6 related duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required by DEFENDANTS to use their personal cellular phones, purchase and maintain their
8 own uniforms, and purchase of their own equipment to execute their essential job duties on behalf
9 of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
10 PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from using their
11 personal cellular phones, purchasing and maintaining their own uniforms, and purchasing their
12 own equipment for DEFENDANT within the course and scope of their employment for
13 DEFENDANT. These expenses were necessary to complete their principal job duties.
14 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
15 Although these expenses were necessary expenses incurred by PLAINTIFF and the
16 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF
17 and the CALIFORNIA CLASS members for these expenses as an employer is required to do
18 under the laws and regulations of California.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Provide Accurate Itemized Statements**

3 **(Cal. Lab. Code § 226)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 120. Cal. Labor Code § 226 provides that an employer must furnish employees with an
9 “accurate itemized” statement in writing showing:

- 10 a. Gross wages earned,
- 11 b. (2) total hours worked by the employee, except for any employee whose
12 compensation is solely based on a salary and who is exempt from payment of
13 overtime under subdivision (a) of Section 515 or any applicable order of the
14 Industrial Welfare Commission,
- 15 c. the number of piece-rate units earned and any applicable piece rate if the employee
16 is paid on a piece-rate basis,
- 17 d. all deductions, provided that all deductions made on written orders of the employee
18 may be aggregated and shown as one item,
- 19 e. net wages earned,
- 20 f. the inclusive dates of the period for which the employee is paid,
- 21 g. the name of the employee and his or her social security number, except that by
22 January 1, 2008, only the last four digits of his or her social security number of an
23 employee identification number other than social security number may be shown
24 on the itemized statement,
- 25 h. the name and address of the legal entity that is the employer, and
- 26 i. all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.

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1 21. When DEFENDANT did not accurately record PLAINTIFF'S and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
3 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
4 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
5 CLASS Members with complete and accurate wage statements which failed to show, among other
6 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
9 and rest periods.

10 22. Further, from time to time, DEFENDANT included Bereavement, PTO, and
11 Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code
12 §226(a)(2), notwithstanding the fact that Bereavement, PTO, and Holiday hours are not
13 considered hours worked. DEFENDANTS' inclusion of Bereavement, PTO, and Holiday hours
14 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other
15 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

16 23. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
17 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
18 requirements of California Labor Code Section 226.

19 24. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
20 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
21 CLASS. These damages include, but are not limited to, costs expended calculating the correct
22 wages for all missed meal and rest breaks and the amount of employment taxes which were not
23 properly paid to state and federal tax authorities. These damages are difficult to estimate.
24 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
25 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
26 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
27 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
28

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
2 of the CALIFORNIA CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

7 125. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

10 126. Cal. Lab. Code § 200 provides that:

11 As used in this article:

- 12 (d) "Wages" includes all amounts for labor performed by employees of every
13 description, whether the amount is fixed or ascertained by the standard of time,
14 task, piece, Commission basis, or other method of calculation.
15 (e) "Labor" includes labor, work, or service whether rendered or performed under
16 contract, subcontract, partnership, station plan, or other agreement if the to be
17 paid for is performed personally by the person demanding payment.

18 127. 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."

21 128. 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 her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention
25 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
26 Notwithstanding any other provision of law, an employee who quits without providing a
27 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
28 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.

29 129. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
Members' employment contract.

30 130. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
quits, the wages of the employee shall continue as a penalty from the due date thereof at

1 the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

3 131. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who
5 missed meal and rest breaks, as required by law.

6 132. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
7 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to
8 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
9 employees who terminated employment during the CLASS PERIOD and demands an accounting
10 and payment of all wages due, plus interest and statutory costs as allowed by law.

11 **EIGHTH CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **(Cal. Lab. Code §§ 2698 et seq.)**

14 **(Alleged by PLAINTIFF against all Defendants)**

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

17 134. 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 does 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 means
22 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
23 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
24 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
25 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

26 135. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
28 Act, bring this Representative Action on behalf of the State of California with respect to herself

1 and all non-exempt employees who worked for Defendant in California during the time period of
2 March 31, 2022, until the present (the "AGGRIEVED EMPLOYEES").

3 136. On March 31, 2023, PLAINTIFF gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
5 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
6 attached hereto and incorporated by this reference herein. The statutory waiting period for
7 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
8 2699.3, Plaintiffs may now commence a representative civil action under PAGA pursuant to
9 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

11 137. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
13 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
14 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
15 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
16 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
17 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
18 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
19 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and
20 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFFS hereby seek
21 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
22 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
26 severally, as follows:

27 1. On behalf of the CALIFORNIA CLASS:

28 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

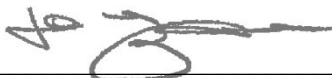
1 3. On behalf of the State of California and with respect to all AGGRIEVED
2 EMPLOYEYES: Recovery of civil penalties as prescribe by the Labor Code Private
3 Attorneys General Act of 2004;

4 4. On all claims:

- 5 a. An award of interest, including prejudgment interest at the legal rate;
6 b. Such other and further relief as the Court deems just and equitable; and
7 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
8 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

9
10 DATED: July 17, 2024

JCL LAW FIRM, APC

11 By: 

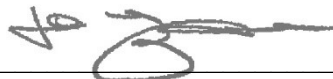
12 Jean-Claude Lapuyade
13 Attorney for PLAINTIFF
14
15
16

17 **DEMAND FOR A JURY TRIAL**

18 PLAINTIFF demands a jury trial on issues triable to a jury.
19

20 DATED: July 17, 2024

JCL LAW FIRM, APC

21 By: 

22 Jean-Claude Lapuyade
23 Attorney for PLAINTIFF
24
25
26
27
28

EXHIBIT 1

March 31, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

MICARE CALIFORNIA, P.C.

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3652 8950

EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC

c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3652 8967

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3652 8974

IMAGINE 360 ADMINISTRATORS, LLC

c/o C T Corporation System
330 N. Brand Blvd, Ste. 700
Glendale, CA 91203

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3652 8981

IMAGINE 360 LLC

c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3652 8998

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff AMANDA VASQUEZ ("Plaintiff"), and other aggrieved

employees in a proposed lawsuit against Defendant MICARE CALIFORNIA, P.C. (“Defendant MiCare”), Defendant EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC (“Defendant EBMS”), Defendant IMAGINE 360 ADMINISTRATORS, LLC (“Defendant Imagine 360 Administrators”) and Defendant IMAGINE 360 LLC (“Defendant Imagine 360”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California from February of 2022 to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendants failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant MiCare and/or Defendant EBMS and/or Defendant Imagine 360 Administrators and/or Defendant Imagine 360 in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of

other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to be 'JCL', with a large, stylized loop at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
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ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
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shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

AMANDA VASQUEZ, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MICARE CALIFORNIA, P.C., a California
corporation; EMPLOYEE BENEFIT
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; IMAGINE
360 ADMINISTRATORS, LLC, a Texas
limited liability company; IMAGINE 360
LLC, a Delaware limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 5) FAILURE TO PROVIDE REQUIRED
2 REST PERIODS IN VIOLATION OF CAL.
3 LAB. CODE §§ 226.7 & 512 AND THE
4 APPLICABLE IWC WAGE ORDER;
5 6) FAILURE TO REIMBURSE EMPLOYEES
6 FOR REQUIRED EXPENSES IN
7 VIOLATION OF CAL. LAB. CODE § 2802;
8 7) FAILURE TO PROVIDE WAGES WHEN
9 DUE IN VIOLATION OF CAL. LAB.
10 CODE §§ 201, 202 AND 203;
11 8) FAILURE TO PROVIDE ACCURATE
12 ITEMIZED STATEMENTS IN
13 VIOLATION OF CAL. LAB. CODE § 226.

14 **DEMAND FOR A JURY TRIAL**

15 PLAINTIFF AMANDA VASQUEZ (“PLAINTIFF”), an individual, on behalf of herself
16 and all other similarly situated current and former employees, allege on information and belief,
17 except for her own acts and knowledge which are based on personal knowledge, the following:

18 **PRELIMINARY ALLEGATIONS**

19 1. Defendant MICARE CALIFORNIA, P.C. (“Defendant MiCare”) is a California
20 corporation that at all relevant times mentioned herein conducted and continues to conduct
21 substantial and regular business throughout California.

22 2. Defendant EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC
23 (“Defendant EBMS”) is a Delaware limited liability company that at all relevant times mentioned
24 herein conducted and continues to conduct substantial and regular business throughout California

25 3. Defendant IMAGINE 360 ADMINISTRATORS, LLC (“Defendant Imagine 360
26 Administrators”) is a Texas limited liability company that at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business throughout California.

28 4. Defendant IMAGINE 360 LLC (“Defendant Imagine 360”) is a Delaware limited
liability company that at all relevant times mentioned herein conducted and continues to conduct
substantial and regular business throughout California.

5. Defendant MiCare, Defendant EBMS, Defendant Imagine 360 Administrators and
Defendant Imagine 360 were the joint employers of PLAINTIFF as evidenced by the documents

1 issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are
2 therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS”
3 and/or “DEFENDANT.”

4 6. DEFENDANTS own, operate and/or manage medical centers and/or health plan
5 administrators throughout the state of California, including the county of Fresno, where
6 PLAINTIFF worked.

7 7. PLAINTIFF was employed by DEFENDANT in California from February of 2022
8 to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the
9 legally required meal and rest periods and payment of minimum and overtime wages due for all
10 time worked.

11 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
12 defined as all persons who are or previously were employed by Defendant MiCare and/or
13 Defendant EBMS and/or Defendant Imagine 360 Administrators and/or Defendant Imagine 360
14 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
15 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
16 date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the
17 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
18 (\$5,000,000.00).

19 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to
22 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged
23 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
24 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
25 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
27 other members of the CALIFORNIA CLASS who have been economically injured by
28

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 10. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
5 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
6 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
10 inclusive, are responsible in some manner for one or more of the events and happenings that
11 proximately caused the injuries and damages hereinafter alleged.

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

20 12. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
21 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
22 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
24 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
25 at all relevant times.

26 13. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
27 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 14. DEFENDANT's uniform policies and practices alleged herein were unlawful,
4 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
5 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

6 15. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
8 other members of the CALIFORNIA CLASS who has been economically injured by
9 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
10 relief.

11 **JURISDICTION AND VENUE**

12 16. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
14 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
15 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 18. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
28 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,

1 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
2 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
3 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
4 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
5 applicable hourly rates in effect during the pay periods and the corresponding amount of time
6 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
7 purposefully avoid the accurate and full payment for all time worked as required by California
8 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
9 who comply with the law. To the extent equitable tolling operates to toll claims by the
10 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
11 accordingly.

12 **A. Meal Period Violations**

13 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. From time to time during the CLASS
17 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
18 without paying them for all the time they were under DEFENDANT's control. Specifically,
19 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
20 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
21 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
22 Members forfeited minimum wage and overtime compensation by regularly working without their
23 time being accurately recorded and without compensation at the applicable minimum wage and
24 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
25 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
26 records.

27 20. From time to time during the CLASS PERIOD, as a result of their rigorous work
28 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other

1 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
2 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
3 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
4 more than five (5) hours during some shifts without receiving a meal break. Further,
5 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
6 off-duty meal period for some workdays in which these employees are required by DEFENDANT
7 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
8 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
9 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
10 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
11 duty and on call. Further, from time to time, DEFENDANT required PLAINTIFF and other
12 CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive
13 and/or respond to work-related communications during their off-duty meal periods.
14 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
15 legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and
16 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
17 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

18 **B. Rest Period Violations**

19 21. From time to time during the CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
21 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
22 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
23 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
24 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
25 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
27 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
28 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.

1 Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA
2 CLASS Members to maintain cordless communication devices in order to receive and/or respond
3 to work-related communications during their off-duty rest periods. PLAINTIFF and other
4 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
5 a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF
6 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
7 periods by DEFENDANT and DEFENDANT's managers.

8 **C. Unreimbursed Business Expenses**

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

20 23. In the course of their employment, DEFENDANT required PLAINTIFF and other
21 CALIFORNIA CLASS Members to use their personal cellular phones, purchase and maintain
22 their own uniforms, and purchase their own equipment as a result of and in furtherance of their
23 job duties, including but not limited to receiving and/or responding to work-related
24 communications and performing work-related duties. However, DEFENDANT unlawfully failed
25 to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for personal expenses
26 incurred for the use of their personal cellular phones, the purchase and maintenance of uniforms,
27 and the purchase of their own equipment. As a result, in the course of their employment with
28 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred

unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cellular phones, the purchase of and maintenance of uniforms, and the purchase of their own equipment, all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

24. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

25. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

26. Further, from time to time, DEFENDANT included Bereavement, PTO, and Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that Bereavement, PTO, and Holiday hours are not considered hours worked. DEFENDANTS' inclusion of Bereavement, PTO, and Holiday hours into the total hours worked in itemized wage statements issued to PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

1 27. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

4 28. As a result, DEFENDANT issued PLAINTIFF and other members of the
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
6 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
7 payroll error due to clerical or inadvertent mistake.

8 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9 29. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 30. During the CLASS PERIOD, from time-to-time DEFENDANT required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, time spent prepping patient rooms, helping patients, and
15 helping other employees. This resulted in PLAINTIFF and other members of the CALIFORNIA
16 CLASS to have to work while off-the-clock.

17 31. DEFENDANT directed and directly benefited from the undercompensated off-the-
18 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

19 32. DEFENDANT controlled the work schedules, duties, and protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and the other members of the
21 CALIFORNIA CLASS.

22 33. DEFENDANT was able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed.

26 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
27 exempt employees, subject to the requirements of the California Labor Code.
28

1 35. DEFENDANT's policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
6 pay.

7 36. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

9 37. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
10 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
11 benefit for the time spent working while off-the-clock, including but not limited to, time spent
12 prepping patient rooms, helping patients, and helping other employees. DEFENDANT's uniform
13 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
14 for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business
15 records.

16 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
17 **and Redeemed Sick Pay**

18 38. From time to time during the CLASS PERIOD, DEFENDANT failed and
19 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
20 Members for their overtime and double time hours worked, meal and rest period premiums, and
21 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
22 forfeited wages due to them for working overtime without compensation at the correct overtime
23 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
24 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
25 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
26 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

27 39. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 40. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus compensation when the employees met the various
8 performance goals set by DEFENDANTS.

9 41. However, from time to time, when calculating the regular rate of pay in those pay
10 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
11 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
12 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
13 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
14 rather than just all non-overtime hours worked. Management and supervisors described the
15 incentive/bonus program to potential and new employees as part of the compensation package.
16 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
17 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
18 in a systematic underpayment of overtime and double time compensation, meal and rest period
19 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
20 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
21 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
22 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
23 not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as
24 articulated herein, by failing to include the incentive compensation as part of the "regular rate of
25 pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
26 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

27 42. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
5 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Violations for Untimely Payment of Wages**

9 43. Pursuant to California Labor Code section 204, PLAINTIFF and the
10 CALIFORNIA CLASS members were entitled to timely payment of wages during their
11 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
12 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
13 meal period premium wages, and rest period premium wages within permissible time period.

14 **H. Unlawful Deductions**

15 44. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
18 violated Labor Code § 221.

19 **I. Timekeeping Manipulation**

20 45. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
21 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
22 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
24 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
26 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
27 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
28 missed rest breaks.

1 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

4 47. The mutability of the timekeeping system also allowed DEFENDANT to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
6 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
8 were not at all times provided an off-duty meal break. This practice is a direct result of
9 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
10 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

11 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit
13 for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
15 hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
16 records.

17 **J. Unlawful Rounding Practices**

18 49. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
22 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28 time to time, forfeited compensation for their time worked by working without their time being

1 accurately recorded and without compensation at the applicable overtime rates.

2 50. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
3 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
4 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
5 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
7 off-duty meal break.

8 51. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and were not fully relieved of duty for her rest and meal periods.
10 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
12 provide PLAINTIFF with a second off-duty meal period each workday in which they were
13 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
14 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
15 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
16 was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
17 breaks without additional compensation and in accordance with DEFENDANT'S strict corporate
18 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
19 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
20 PLAINTIFF for required business expenses related to, the use of her personal cellular phones,
21 the purchase and maintenance of her uniforms, and the purchase of her own work equipment, on
22 behalf of and in furtherance of her employment with DEFENDANT. To date, DEFENDANT
23 has not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
24 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy
25 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

26 **CLASS ACTION ALLEGATIONS**

27 52. PLAINTIFF brings this Class Action on behalf of herself, and a California class
28 defined as all persons who are or previously were employed by Defendant MiCare and/or

1 Defendant EBMS and/or Defendant Imagine 360 Administrators and/or Defendant Imagine 360
2 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
3 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
4 date as determined by the Court (the “CLASS PERIOD”).

5 53. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
6 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
7 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
8 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
9 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
10 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

11 54. The members of the class are so numerous that joinder of all class members is
12 impractical.

13 55. Common questions of law and fact regarding DEFENDANT’s conduct, including
14 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
15 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
16 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
17 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
18 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
19 wage and overtime, exist as to all members of the class and predominate over any questions
20 affecting solely any individual members of the class. Among the questions of law and fact
21 common to the class are:

- 22 a. Whether DEFENDANT maintained legally compliant meal period policies and
23 practices;
- 24 b. Whether DEFENDANT maintained legally compliant rest period policies and
25 practices;
- 26 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members accurate premium payments for missed meal and rest periods;
28

- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

57. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF have the same interests as the other members of the class.

58. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

59. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

60. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

61. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

62. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

63. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

64. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

66. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

67. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as 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. (Cal. Bus. & Prof. Code § 17203).

68. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

69. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

70. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally

1 mandated meal and rest periods and the required amount of compensation for missed meal and
2 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
3 necessary business expenses incurred, due to a systematic business practice that cannot be
4 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
5 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
6 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
7 restitution of wages wrongfully withheld.

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

12 72. By the conduct alleged herein, DEFENDANT's practices were also unfair and
13 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
14 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
15 required by Cal. Lab. Code §§ 226.7 and 512.

16 73. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
18 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
19 each workday in which a second off-duty meal period was not timely provided for each ten (10)
20 hours of work.

21 74. PLAINTIFF further demands on behalf of and on behalf of each CALIFORNIA
22 CLASS member, one (1) hour of pay for each workday in which a rest period was not timely
23 provided as required by law.

24 75. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
26 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
27 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
28

detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

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

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

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

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

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

1 79. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 80. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
5 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
6 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
7 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

10 82. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.

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

15 84. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
16 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
17 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
18 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 85. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
21 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
22 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
23 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

24 86. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time
26 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
27 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
28

1 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
2 laws and regulations.

3 87. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
5 minimum wage compensation for their time worked for DEFENDANT.

6 88. During the CLASS PERIOD, PLAINTIFF and the other members of the
7 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
8 failure to pay all earned wages.

9 89. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
10 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
11 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
12 suffered and will continue to suffer an economic injury in amounts which are presently unknown
13 to them, and which will be ascertained according to proof at trial.

14 90. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA CLASS were under-compensated for their time worked.
16 DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
18 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
19 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
20 for their time worked.

21 91. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
23 and provide them with the requisite compensation, DEFENDANT acted and continues to act
24 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
26 consequences to them, and with the despicable intent of depriving them of their property and legal
27 rights, and otherwise causing them injury in order to increase company profits at the expense of
28 these employees.

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

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

94. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

96. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

1 97. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum and overtime compensation and interest thereon, together with the costs of
3 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
4 than those fixed by the Industrial Welfare Commission is unlawful.

5 98. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
6 were required by DEFENDANT to work for DEFENDANTS and were not paid for all the time
7 they worked, including overtime work.

8 99. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
10 implementing a uniform policy and practice that failed to accurately record overtime worked by
11 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
12 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
13 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
14 (12) hours in a workday, and/or forty (40) hours in any workweek.

15 100. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
17 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
18 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
19 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
20 regulations.

21 101. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
23 overtime compensation for their time worked for DEFENDANT.

24 102. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to
26 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
27 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
28 agreement that would preclude the causes of action contained herein this Complaint. Rather,

1 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
2 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
3 California.

4 103. During the CLASS PERIOD, PLAINTIFF and the other members of the
5 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
6 a failure to pay all earned wages.

7 104. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
8 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
9 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
10 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
11 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
12 failed to accurately record and pay as evidenced by DEFENDANT's business records and
13 witnessed by employees.

14 105. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
15 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
16 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
17 CLASS have suffered and will continue to suffer an economic injury in amounts which are
18 presently unknown to them, and which will be ascertained according to proof at trial.

19 106. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA CLASS were undercompensated for their time worked.
21 DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
23 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
24 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
25 overtime worked.

26 107. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
28 and provide them with the requisite compensation, DEFENDANT acted and continues to act

1 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal
4 rights, and otherwise causing them injury in order to increase company profits at the expense of
5 these employees.

6 108. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
7 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
9 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
10 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
11 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
12 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
13 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,
14 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
15 entitled to seek and recover statutory costs.

16 **FOURTH CAUSE OF ACTION**

17 **Failure To Provide Required Meal Periods**

18 **(Cal. Lab. Code §§ 226.7 & 512)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 109. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 110. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
24 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
25 required by the applicable Wage Order and Labor Code. The nature of the work performed by
26 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
27 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
28 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not

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

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

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

17 **FIFTH CAUSE OF ACTION**

18 **Failure To Provide Required Rest Periods**

19 **(Cal. Lab. Code §§ 226.7 & 512)**

20 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

24 114. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
25 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
26 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
27 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
28 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and

1 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
2 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
3 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
5 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
6 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
7 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
9 periods is evidenced by DEFENDANT's business records.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Reimburse Employees For Required Expenses**

20 **(Cal. Lab. Code §§ 2802)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

25 118. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

119. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of their personal cellular phones, the purchase and maintenance of their uniforms, and the purchase of their own equipment, as a result of and in furtherance of their job duties, including but not limited to receiving and/or responding to work-related communications and performing work-related duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular phones, purchase and maintain their own uniforms, and purchase of their own equipment to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from using their personal cellular phones, purchasing and maintaining their own uniforms, and purchasing their own equipment for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

120. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by them and the CALIFORNIA CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

123. When DEFENDANT did not accurately record PLAINTIFF’S and other CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA

1 CLASS Members with complete and accurate wage statements which failed to show, among other
2 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
3 and all applicable hourly rates in effect during the pay period and the corresponding amount of
4 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
5 and rest periods.

6 124. Further, from time to time, DEFENDANT included Bereavement, PTO, and
7 Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code
8 §226(a)(2), notwithstanding the fact that Bereavement, PTO, and Holiday hours are not
9 considered hours worked. DEFENDANTS' inclusion of Bereavement, PTO, and Holiday hours
10 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other
11 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

12 125. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
13 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
14 requirements of California Labor Code Section 226.

15 126. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
16 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
17 CLASS. These damages include, but are not limited to, costs expended calculating the correct
18 wages for all missed meal and rest breaks and the amount of employment taxes which were not
19 properly paid to state and federal tax authorities. These damages are difficult to estimate.
20 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
21 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
22 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
23 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
24 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
25 of the CALIFORNIA CLASS herein).

26 **EIGHTH CAUSE OF ACTION**

27 **Failure To Pay Wages When Due**

28 **(Cal. Lab. Code § 203)**

1 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

2 127. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
4 Complaint.

5 128. Cal. Lab. Code § 200 provides that:

6 As used in this article:

- 7 (d) "Wages" includes all amounts for labor performed by employees of every
8 description, whether the amount is fixed or ascertained by the standard of time,
9 task, piece, Commission basis, or other method of calculation.
10 (e) "Labor" includes labor, work, or service whether rendered or performed under
11 contract, subcontract, partnership, station plan, or other agreement if the to be
12 paid for is performed personally by the person demanding payment.

13 129. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
14 an employee, the wages earned and unpaid at the time of discharge are due and payable
15 immediately."

16 130. Cal. Lab. Code § 202 provides, in relevant part, that:

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

26 131. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
27 Members' employment contract.

28 132. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
quits, the wages of the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

133. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
terminated, and DEFENDANT has not tendered payment of wages to these employees who
missed meal and rest breaks, as required by law.

134. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

1 the applicable IWC Wage Order;

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

7 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
8 penalty from the due date thereof at the same rate until paid or until an action
9 therefore is commenced, in accordance with Cal. Lab. Code § 203.

10 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
11 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

12 3. On all claims:

13 a. An award of interest, including prejudgment interest at the legal rate;

14 b. Such other and further relief as the Court deems just and equitable; and

15 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
16 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

17
18 DATED: March 31, 2023

ZAKAY LAW GROUP, APLC

19
20 By: 

Shani O. Zakay

Attorney for PLAINTIFF

21
22 **DEMAND FOR A JURY TRIAL**

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

24
25 DATED: March 31, 2023

ZAKAY LAW GROUP, APLC

26
27 By: 

Shani O. Zakay

Attorney for PLAINTIFF