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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF MARIN**

15 KERRY HURLEY and LILI-ANN BOYENS,  
16 on behalf of the State of California, as  
17 private attorneys general,

18 Plaintiffs,

19 vs.

20 LASERAWAY MEDICAL GROUP, INC., a  
21 Corporation; LASERAWAY, LLC, a Limited  
22 Liability Company; and DOES 1 through 50,  
23 inclusive,

24 Defendants.

Case No. **CIV2201120**

**FIRST AMENDED REPRESENTATIVE  
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code  
§ 2699, *et seq.* for violations of Labor  
Code §§ 201, 202, 203, 204 *et seq.*, 210,  
221, 226, 226(a), 226.7, 227.3, 246, 510,  
512, 558(a)(1)(2), 1194, 1197, 1197.1,  
1198, 2802, California Code of  
Regulations, Title 8, Section 11040,  
Subdivision 5(A)-(B), and the applicable  
Wage Order(s).

**ELECTRONICALLY FILED**

Superior Court of California

County of Marin

**07/09/2024**

James M. Kim, Clerk of the Court

By: K. Keeton, Deputy

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1 Plaintiffs Kerry Hurley and Lili-Ann Boyens (“PLAINTIFFS”), on behalf of the  
2 people of the State of California and as “aggrieved employees” acting as private attorneys  
3 general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.*  
4 (“PAGA”) only, allege on information and belief, except for their own acts and knowledge  
5 which are based on personal knowledge, the following:

## 6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants LaserAway Medical Group,  
8 Inc. and LaserAway, LLC (referred to as “DEFENDANTS”) seeking only to recover PAGA  
9 civil penalties for themselves, and on behalf of all current and former aggrieved employees  
10 that worked for DEFENDANTS. PLAINTIFFS do **not seek to recover anything other**  
11 **than penalties as permitted by California Labor Code § 2699**. To the extent that  
12 statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying  
13 general and/or special damages for those violations, but simply the civil penalties permitted  
14 by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on  
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise  
17 and sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for  
19 DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA –  
20 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.  
21 Nothing in this complaint should be construed as attempting to obtain any relief that would  
22 not be available in a PAGA-only action.

## 23 **THE PARTIES**

24 4. Defendant LaserAway Medical Group, Inc. is a Corporation that at all relevant  
25 times mentioned herein conducted and continues to conduct substantial business in the state  
26 of California.

27 5. Defendant LaserAway, LLC is a Limited Liability Company that at all relevant  
28

1 times mentioned herein conducted and continues to conduct substantial business in the state  
2 of California.

3 6. LaserAway Medical Group, Inc. and LaserAway, LLC were the joint  
4 employers of PLAINTIFFS and are therefore jointly responsible as employers for the  
5 conduct alleged herein, and are therefore collectively referred to herein as  
6 (“DEFENDANTS”).

7 7. DEFENDANTS own and operate aesthetic dermatology group clinics.

8 8. Plaintiff Hurley was employed by DEFENDANTS in California from June of  
9 2021 to October 26, 2021 and was at all times classified by DEFENDANTS as a non-  
10 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest  
11 periods and payment of minimum and overtime wages due for all time worked.

12 9. Plaintiff Boyens was employed by DEFENDANTS in California from July of  
13 2017 to March of 2021 and was at all times classified by DEFENDANTS as a non-exempt  
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods  
15 and payment of minimum and overtime wages due for all time worked.

16 10. PLAINTIFFS, and such persons that may be added from time to time who  
17 satisfy the requirements and exhaust the administrative procedures under the Private  
18 Attorney General Act, bring this Representative Action on behalf of the State of California  
19 with respect to themselves and all individuals who are or previously were employed by  
20 Defendants LaserAway Medical Group, Inc., and/or LaserAway, LLC in a non-exempt  
21 capacity in California (“AGGRIEVED EMPLOYEES”) at any time during the period from  
22 February 11, 2021 through March 24, 2024 (the "PAGA PERIOD").

23 11. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES  
24 presently or formerly employed by DEFENDANTS during the PAGA PERIOD, bring this  
25 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for  
26 DEFENDANTS’ violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,  
27 226, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,  
28 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the

1 applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED  
2 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

3 12. 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 PLAINTIFFS who therefore sue these Defendants by such fictitious  
6 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this  
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when  
8 they are ascertained. PLAINTIFFS are informed and believe, and based upon that  
9 information and belief allege, that the Defendants named in this Complaint, including DOES  
10 1 through 50, inclusive, are responsible in some manner for one or more of the events and  
11 happenings that proximately caused the injuries and damages hereinafter alleged.

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

#### 20 **FACTUAL BACKGROUND**

21 14. PLAINTIFFS and the AGGRIEVED EMPLOYEES are, and at all times  
22 pertinent hereto, have been classified as non-exempt employees by DEFENDANTS.  
23 DEFENDANTS hire employees who work as hourly employees who are paid on an hourly  
24 basis.

25 15. Upon information and belief, PLAINTIFFS and the AGGRIEVED  
26 EMPLOYEES are covered by California Industrial Welfare Commission Occupational  
27 Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).  
28

1           16.     PLAINTIFFS and the AGGRIEVED EMPLOYEES have been forced by  
2 DEFENDANTS to work over five (5) hours in one day without being provided a thirty (30)  
3 minute uninterrupted meal break and not being compensated one (1) hour of pay at their  
4 regular rate of compensation for each workday that a meal period was not provided or  
5 provided after five (5) hours, all in violation of California labor laws, regulations, and  
6 Industrial Welfare Commission Wage Orders. DEFENDANTS also failed to inform  
7 PLAINTIFFS and the AGGRIEVED EMPLOYEES of their right to take compliant meal  
8 periods by way of a lawful policy.

9           17.     During the PAGA PERIOD, DEFENDANTS have had a consistent policy of  
10 failing to provide all required rest periods of at least ten (10) minutes per four (4) hours  
11 worked or major fraction thereof and failing to pay such employees one (1) hour of pay at  
12 the employee's regular rate of compensation for each workday that the rest period was not  
13 provided, as required by California state wage and hour laws. DEFENDANTS also failed to  
14 inform PLAINTIFFS and the AGGRIEVED EMPLOYEES of their right to take compliant  
15 rest periods by way of a lawful policy.

16           18.     On a regular and consistent basis, PLAINTIFFS and the AGGRIEVED  
17 EMPLOYEES have not been properly reimbursed for business expenses necessary for the  
18 completion of their job duties. DEFENDANTS have failed to reimburse PLAINTIFFS and  
19 the AGGRIEVED EMPLOYEES the for the cost of using their personal cell phones and  
20 computers, which are necessary for them to discharge their duties. DEFENDANTS required  
21 that PLAINTIFFS and the AGGRIEVED EMPLOYEES use their own computers, download  
22 and pay for phone applications on their personal cell phones, be available by cell phone, and  
23 answer/use their personal cell phones consistently to perform their job duties. These cell  
24 phones and computers were not provided by DEFENDANTS and DEFENDANTS failed to  
25 reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for the costs associated with  
26 these necessary business expenditures in violation of Labor Code § 2802.

27           19.     DEFENDANTS failed to comply with Labor Code § 226(a). DEFENDANTS  
28 failed to issue PLAINTIFFS and the AGGRIEVED EMPLOYEES itemized wage

1 statements that show all applicable hourly rates in effect during the pay period and the  
2 corresponding number of hours worked at each hourly rate by the employee. Further,  
3 DEFENDANTS failed to issue PLAINTIFFS and the AGGRIEVED EMPLOYEES accurate  
4 itemized wage statements that include meal and rest premiums as a result of the claims  
5 alleged above and/or provide them at the accurate rate.

6 20. DEFENDANTS willfully failed to pay wages and compensation, when  
7 PLAINTIFFS and the AGGRIEVED EMPLOYEES quit or were discharged. This failure  
8 was willful, without legal justification, and interfered with PLAINTIFFS' and  
9 AGGRIEVED EMPLOYEES' rights.

10 21. As a result of the acts alleged herein, DEFENDANTS violated Labor Code  
11 §2699, *et seq.*

### 12 THE CONDUCT

13 22. Pursuant to the Industrial Welfare Commission Wage Orders,  
14 DEFENDANTS were required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES  
15 for all their time worked, meaning the time during which an employee is subject to the  
16 control of an employer, including all the time the employee is suffered or permitted to work.  
17 DEFENDANTS required PLAINTIFFS and the AGGRIEVED EMPLOYEES to work  
18 without paying them for all the time they are under DEFENDANTS' control. Among other  
19 things, DEFENDANTS required PLAINTIFFS to work while clocked out during what is  
20 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time  
21 interrupted by work assignments while clocked out for what should have been  
22 PLAINTIFFS' off-duty meal break. PLAINTIFFS and the AGGRIEVED EMPLOYEES  
23 also worked off the clock with respect to time spent undergoing mandatory drug testing or  
24 any other testing and/or examination required as a condition of employment.  
25 DEFENDANTS, as a matter of established company policy and procedure, administer a  
26 uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and the  
27 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANTS, so that during the  
28 course of their employment, PLAINTIFFS and the AGGRIEVED EMPLOYEES are paid

1 less than they would have been paid had they been paid for actual recorded time rather than  
2 “rounded” time. Additionally, DEFENDANTS engage in the practice of requiring  
3 PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that  
4 DEFENDANTS, as a condition of employment, required these employees to submit to  
5 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior  
6 to clocking into DEFENDANTS’ timekeeping system for the workday. Further,  
7 DEFENDANTS engage in the practice of requiring PLAINTIFFS and the AGGRIEVED  
8 EMPLOYEES to perform work off the clock in that PLAINTIFFS and the AGGRIEVED  
9 EMPLOYEES were required to communicate with DEFENDANTS’ supervisors outside of  
10 working hours regarding work-related issues. PLAINTIFFS and the AGGRIEVED  
11 EMPLOYEES were also not compensated for off the clock travel time between  
12 DEFENDANTS’ locations and pre-shift work activities performed while off the clock. As a  
13 result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime  
14 wage compensation, and off-duty meal breaks by working without their time being correctly  
15 recorded and without compensation at the applicable rates. DEFENDANTS’ policy and  
16 practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked,  
17 is evidenced by DEFENDANTS’ business records.

18 23. State law provides that employees must be paid overtime and meal and rest  
19 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and the  
20 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is  
21 tied to specific elements of an employee’s performance.

22 24. The second component of PLAINTIFFS’ and the AGGRIEVED  
23 EMPLOYEES’ compensation is DEFENDANTS’ non-discretionary incentive program that  
24 paid PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their  
25 performance for DEFENDANTS. The non-discretionary incentive program provided all  
26 employees paid on an hourly basis with incentive compensation when the employees met the  
27 various performance goals set by DEFENDANTS. However, when calculating the regular  
28 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and

1 the AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive  
2 compensation as part of the employees' "regular rate of pay" for purposes of calculating  
3 overtime pay and meal and rest break premium pay. Management and supervisors described  
4 the incentive program to potential and new employees as part of the compensation package.  
5 As a matter of law, the incentive compensation received by PLAINTIFFS and the  
6 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to  
7 do so has resulted in a underpayment of overtime compensation and meal and rest break  
8 premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES by DEFENDANTS.

9       25. As a result of their rigorous work schedules, PLAINTIFFS and the  
10 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off  
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS  
12 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as  
13 ordered by DEFENDANTS for more than five (5) hours during some shifts without  
14 receiving a meal break. Further, DEFENDANTS from time to time failed to provide  
15 PLAINTIFFS and the AGGRIEVED EMPLOYEES with a second off-duty meal period for  
16 some workdays in which these employees were required by DEFENDANTS to work ten  
17 (10) hours of work. DEFENDANTS also engaged in the practice of rounding the meal  
18 period times to avoid paying penalties to PLAINTIFFS and the AGGRIEVED  
19 EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeit meal  
20 breaks without additional compensation and in accordance with DEFENDANTS' corporate  
21 policy and practice.

22       26. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED  
23 EMPLOYEES were also required from time to time to work in excess of four (4) hours  
24 without being provided ten (10) minute rest periods. Further, these employees were denied  
25 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)  
26 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
27 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)

1 hours or more from time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were  
2 also not provided with one hour wages in lieu thereof. Additionally, the applicable  
3 California Wage Order requires employers to provide employees with off-duty rest periods,  
4 which the California Supreme Court defined as time during which an employee is relieved  
5 from all work related duties and free from employer control. In so doing, the Court held that  
6 the requirement under California law that employers authorize and permit all employees to  
7 take rest period means that employers must relieve employees of all duties and relinquish  
8 control over how employees spend their time which includes control over the locations  
9 where employees may take their rest period. Employers cannot impose controls that prohibit  
10 an employee from taking a brief walk - five minutes out, five minutes back. Here,  
11 DEFENDANTS' policy restricted PLAINTIFFS and the AGGRIEVED EMPLOYEES from  
12 unconstrained walks and is unlawful based on DEFENDANTS' rule which states  
13 PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises during  
14 their rest period.

15 27. During the PAGA PERIOD, DEFENDANTS failed to accurately record and  
16 pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these  
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
18 DEFENDANTS were required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES  
19 for all time worked, meaning the time during which an employee was subject to the control  
20 of an employer, including all the time the employee was permitted or suffered to permit this  
21 work. DEFENDANTS required these employees to work off the clock without paying them  
22 for all the time they were under DEFENDANTS' control. As such, DEFENDANTS knew  
23 or should have known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under  
24 compensated for all time worked. As a result, PLAINTIFFS and the AGGRIEVED  
25 EMPLOYEES forfeited time worked by working without their time being accurately  
26 recorded and without compensation at the applicable minimum wage and overtime wage  
27 rates. To the extent that the time worked off the clock does not qualify for overtime  
28

1 premium payment, DEFENDANTS fail to pay minimum wages for the time worked off-the-  
2 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

3       28. From time to time, DEFENDANTS also failed to provide PLAINTIFFS and  
4 the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed  
5 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226  
6 provides that every employer shall furnish each of his or her employees with an accurate  
7 itemized wage statement in writing showing, among other things, gross wages earned and all  
8 applicable hourly rates in effect during the pay period and the corresponding amount of time  
9 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid  
10 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates  
11 during the pay period and the total hours worked, and the applicable pay period in which the  
12 wages were earned pursuant to California Labor Code Section 226(a). The wage statements  
13 DEFENDANTS provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to  
14 identify such information. More specifically, the wage statements failed to identify the  
15 accurate total hours worked each pay period. When the hours shown on the wage statements  
16 were added up, they did not equal the actual total hours worked during the pay period in  
17 violation of Cal. Lab. Code 226(a)(2). Further, PLAINTIFFS and the AGGRIEVED  
18 EMPLOYEES were issued itemized wage statements that did not accurately include meal  
19 and rest period premiums as a result of the claims alleged herein and when they were, they  
20 were not at the accurate rate. Aside, from the violations listed above in this paragraph,  
21 DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the  
22 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from  
23 time to time provided PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage  
24 statements which violated Cal. Lab. Code § 226.

25       29. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
26 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if  
27 the wages are paid not more than seven (7) calendar days following the close of the payroll  
28 period. Cal. Lab. Code § 210 provides:

1 in [I]n addition to, and entirely independent and apart from, any other penalty provided  
2 this article, every person who fails to pay the wages of each employee as provided in  
3 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial  
4 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
each subsequent violation, or any willful or intentional violation, two hundred dollars  
(\$200) for each failure to pay each employee, plus 25 percent of the amount  
unlawfully withheld.

5 30. DEFENDANTS from time to time failed to pay PLAINTIFFS and the  
6 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in  
7 accordance with Cal. Lab. Code § 204(d).

8 31. DEFENDANTS underpaid sick pay wages to PLAINTIFFS and the  
9 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in  
10 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt  
11 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate  
12 of pay, DEFENDANTS underpaid sick pay to PLAINTIFFS and the AGGRIEVED  
13 EMPLOYEES at their base rates of pay.

14 32. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt  
15 employees be calculated by dividing the employee's total wages, not including overtime  
16 premium pay, by the employee's total hours worked in the full pay periods of the prior 90  
17 days of employment.

18 33. DEFENDANTS violated Cal. Lab. Code Section 246 by failing to pay sick pay  
19 at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely  
20 earned non-discretionary incentive wages which increased their regular rate of pay.  
21 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and  
22 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as  
23 required under Cal. Lab. Code Section 246.

24 34. As a pattern and practice, DEFENDANTS regularly failed to pay  
25 PLAINTIFFS and the AGGRIEVED EMPLOYEES their correct wages and accordingly  
26 owe waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS  
27 are informed and believe and based thereon allege that such failure to pay sick pay at regular  
28 rate was willful, such that PLAINTIFFS and the AGGRIEVED EMPLOYEES whose

1 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code  
2 Sections 201-203.

3 35. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
4 to collect or receive from an employee any part of wages theretofore paid by said employer  
5 to said employee." DEFENDANTS failed to pay all compensation due to PLAINTIFFS and  
6 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to  
7 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the  
8 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED  
9 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable  
10 pay period and upon termination.

11 36. DEFENDANTS intentionally and knowingly failed to reimburse and  
12 indemnify PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business  
13 expenses incurred by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct  
14 consequence of discharging their duties on behalf of DEFENDANTS. Under California  
15 Labor Code Section 2802, employers are required to indemnify employees for all expenses  
16 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly  
17 states that "an employer shall indemnify his or her employee for all necessary expenditures  
18 or losses incurred by the employee in direct consequence of the discharge of his or her  
19 duties, or of his or her obedience to the directions of the employer, even though unlawful,  
20 unless the employee, at the time of obeying the directions, believed them to be unlawful."

21 37. In the course of their employment PLAINTIFFS and the AGGRIEVED  
22 EMPLOYEES as a business expense, were required by DEFENDANTS to use their own  
23 personal cellular phones and computers as a result of and in furtherance of their job duties as  
24 employees for DEFENDANTS but are not reimbursed or indemnified by DEFENDANTS  
25 for the cost associated with the use of their personal cellular phones and computers for  
26 DEFENDANTS' benefit. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES  
27 were required by DEFENDANTS to use their own computers, download and pay for phone  
28 applications on their personal cell phones, be available by cell phone, and answer/use their

1 personal cell phones consistently to perform their job duties. These cell phones and  
2 computers were not provided by DEFENDANTS and, as a result, in the course of their  
3 employment with DEFENDANTS, PLAINTIFFS and the AGGRIEVED EMPLOYEES  
4 incurred unreimbursed business expenses which included, but were not limited to, costs  
5 related to the use of their personal cellular phones and computers all on behalf of and for the  
6 benefit of DEFENDANTS in violation of Labor Code §2802.

7 38. All of the conduct and violations alleged herein occurred during the PAGA  
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
9 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations  
10 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*  
11 2018.

#### 12 **JURISDICTION AND VENUE**

13 39. This Court has jurisdiction over this Action pursuant to California Code of  
14 Civil Procedure, Section 410.10.

15 40. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
16 Sections 395 and 395.5, because Plaintiff Hurley worked in this County for DEFENDANTS  
17 and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and  
18 facilities in this County and/or conducts substantial business in this County, and (ii)  
19 committed the wrongful conduct herein alleged in this County against Plaintiff Hurley and  
20 other AGGRIEVED EMPLOYEES.

#### 21 **FIRST CAUSE OF ACTION**

#### 22 **For Violation of the Private Attorneys General Act**

23 **[Cal. Lab. Code §§ 2698, *et seq.*]**

24 **(By PLAINTIFFS and Against All Defendants)**

25 41. PLAINTIFFS reallege and incorporate by this reference, as though fully set  
26 forth herein, the prior paragraphs of this Complaint.  
27  
28

1           42.     PAGA is a mechanism by which the State of California itself can enforce state  
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of  
3 the state's labor law enforcement agencies. An action to recover civil penalties under  
4 PAGA is fundamentally a law enforcement action designed to protect the public and not to  
5 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,  
6 but to create a means of "deputizing" citizens as private attorneys general to enforce the  
7 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the  
8 public interest to allow aggrieved employees, acting as private attorneys general to recover  
9 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA  
10 claims cannot be subject to arbitration.

11           43.     PLAINTIFFS, and such persons that may be added from time to time who  
12 satisfy the requirements and exhaust the administrative procedures under the Private  
13 Attorney General Act, bring this Representative Action on behalf of the State of California  
14 with respect to themselves and all individuals who are or previously were employed by  
15 Defendants LaserAway Medical Group, Inc., and/or LaserAway, LLC in a non-exempt  
16 capacity in California ("AGGRIEVED EMPLOYEES") at any time during the period from  
17 February 11, 2021 through March 24, 2024 (the "PAGA PERIOD").

18           44.     On February 11, 2022, Plaintiff Hurley gave written notice by electronic mail  
19 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to  
20 the employer of the specific provisions of this code alleged to have been violated as required  
21 by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference  
22 herein. On March 7, 2024, Plaintiff Hurley gave amended written notice by electronic mail  
23 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to  
24 the employer of the specific provisions of this code alleged to have been violated as required  
25 by Labor Code § 2699.3. See **Exhibit #2**, attached hereto and incorporated by this reference  
26 herein. On March 9, 2022, Plaintiff Boyens gave written notice by electronic mail to the  
27 Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
28 employer of the specific provisions of this code alleged to have been violated as required by

1 Labor Code § 2699.3. See **Exhibit #3**, attached hereto and incorporated by this reference  
2 herein. On February 22, 2024, Plaintiff Boyens gave amended written notice by electronic  
3 mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail  
4 to the employer of the specific provisions of this code alleged to have been violated as  
5 required by Labor Code § 2699.3. See **Exhibit #4**, attached hereto and incorporated by this  
6 reference herein. The statutory waiting period for PLAINTIFFS to add these allegations to  
7 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now  
8 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies  
9 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 45. The policies, acts and practices heretofore described were and are an unlawful  
11 business act or practice because DEFENDANTS (a) failed to provide PLAINTIFFS and the  
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly  
13 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,  
14 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse for required  
15 expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor Code  
16 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226, 226(a), 226.7,  
17 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of  
18 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage  
19 Order(s), and thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFFS  
20 hereby seek recovery of only civil penalties as prescribed by the Labor Code Private  
21 Attorney General Act of 2004 as the representatives of the State of California for the illegal  
22 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

### 23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and  
25 severally, as follows:

26  
27  
28 <sup>1</sup>Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code §558(a)(3).

1. On behalf of the State of California and with respect to all AGGRIEVED  
EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private  
Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the  
law, including, but not limited to, pursuant to Labor Code §2699.

Dated: July 9, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW  
LLP

By: /s/ Nicholas De Blouw

Norman B. Blumenthal  
Kyle R. Nordrehaug  
Nicholas J. De Blouw

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## **EXHIBIT 1**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA  
LA JOLLA, CALIFORNIA 92037**

**Web Site: [www.bamlawca.com](http://www.bamlawca.com)**

**San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago**

**Phone: (858) 551-1223**

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**WRITERS E-MAIL:  
[Nick@bamlawca.com](mailto:Nick@bamlawca.com)**

**WRITERS EXT:  
1004**

February 11, 2022  
CA2554

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Laseraway Medical Group, Inc.  
Certified Mail #70211970000003066866  
Paracorp Incorporated  
2804 Gateway Oaks Dr., Suite 100  
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Laseraway Medical Group, Inc. in California and classified as non-exempt employees during the time period of February 11, 2021 until a date as determined by the Court. Our offices represent Plaintiff Kerry Hurley (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Laseraway Medical Group, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from June of 2021 to October 26, 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other

Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF MARIN**

KERRY HURLEY an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

LASERAWAY MEDICAL GROUP, INC., a  
Corporation; and DOES 1 through 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;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Kerry Hurley (“PLAINTIFF”), an individual, on behalf of herself and all other  
2 similarly situated current and former employees alleges on information and belief, except for  
3 her own acts and knowledge which are based on personal knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Laseraway Medical Group, Inc. (“DEFENDANT”) is a Corporation  
7 that at all relevant times mentioned herein conducted and continues to conduct substantial  
8 business in the state of California.

9 2. DEFENDANT owns and operates aesthetic dermatology group clinics.

10 3. PLAINTIFF was employed by DEFENDANT in California from June of 2021 to  
11 October 26, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,  
12 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment  
13 of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
15 defined as all individuals who are or previously were employed by DEFENDANT in California  
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the  
17 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
18 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
20 (\$5,000,000.00).

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

1 the other members of the CALIFORNIA CLASS who have been economically injured by  
2 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and  
3 equitable relief.

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

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

### 21 22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
25 meaning the time during which an employee is subject to the control of an employer, including  
26 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF  
27 and CALIFORNIA CLASS Members to work without paying them for all the time they are  
28 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to

1 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.  
2 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what  
3 should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established  
4 company policy and procedure, administers a uniform practice of rounding the actual time  
5 worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the  
6 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and  
7 CALIFORNIA CLASS Members are paid less than they would have been paid had they been  
8 paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages  
9 in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work  
10 off the clocking that DEFENDANT, as a condition of employment, required these employees  
11 to submit to mandatory temperature checks and symptom questionnaires for COVID-19  
12 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a  
13 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage,  
14 overtime wage compensation, and off-duty meal breaks by working without their time being  
15 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy  
16 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time  
17 worked, is evidenced by DEFENDANT's business records.

18 9. State and federal law provides that employees must be paid overtime and meal and  
19 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and  
20 other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that  
21 is tied to specific elements of an employee's performance.

22 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
23 Members' compensation is DEFENDANT's non-discretionary incentive program that paid  
24 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
25 performance for DEFENDANT. The non-discretionary incentive program provided all  
26 employees paid on an hourly basis with incentive compensation when the employees met the  
27 various performance goals set by DEFENDANT. However, when calculating the regular rate  
28 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other

1 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation  
2 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and  
3 meal and rest break premium pay. Management and supervisors described the incentive  
4 program to potential and new employees as part of the compensation package. As a matter of  
5 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS  
6 Members must be included in the "regular rate of pay." The failure to do so has resulted in a  
7 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and  
8 other CALIFORNIA CLASS Members by DEFENDANT.

9 11. As a result of their rigorous work schedules, PLAINTIFF and other  
10 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off  
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
12 other CALIFORNIA CLASS Members were required from time to time to perform work as  
13 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a  
14 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and  
15 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in  
16 which these employees were required by DEFENDANT to work ten (10) hours of work.  
17 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying  
18 penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other  
19 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
20 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

1 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage  
2 Order requires employers to provide employees with off-duty rest periods, which the California  
3 Supreme Court defined as time during which an employee is relieved from all work related  
4 duties and free from employer control. In so doing, the Court held that the requirement under  
5 California law that employers authorize and permit all employees to take rest period means that  
6 employers must relieve employees of all duties and relinquish control over how employees  
7 spend their time which includes control over the locations where employees may take their rest  
8 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -  
9 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and  
10 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on  
11 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members  
12 cannot leave the work premises during their rest period.

13 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately  
14 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount  
15 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
16 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members  
17 for all time worked, meaning the time during which an employee was subject to the control of  
18 an employer, including all the time the employee was permitted or suffered to permit this work.  
19 DEFENDANT required these employees to work off the clock without paying them for all the  
20 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have  
21 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under  
22 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS  
23 Members forfeited time worked by working without their time being accurately recorded and  
24 without compensation at the applicable minimum wage and overtime wage rates. To the extent  
25 that the time worked off the clock does not qualify for overtime premium payment,  
26 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of  
27 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

28 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage  
2 statements which failed to show, among other things, the correct gross and net wages earned.  
3 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees  
4 with an accurate itemized wage statement in writing showing, among other things, gross wages  
5 earned and all applicable hourly rates in effect during the pay period and the corresponding  
6 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-  
7 CLASS Members were paid on an hourly basis. As such, the wage statements should reflect  
8 all applicable hourly rates during the pay period and the total hours worked, and the applicable  
9 pay period in which the wages were earned pursuant to California Labor Code Section 226(a).  
10 The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR  
11 SUB-CLASS Members failed to identify such information. More specifically, the wage  
12 statements failed to identify the accurate total hours worked each pay period. When the hours  
13 shown on the wage statements were added up, they did not equal the actual total hours worked  
14 during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed  
15 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage  
16 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
17 DEFENDANT from time to time provided PLAINTIFF and the other members of the  
18 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code §  
19 226.

20 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
21 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the  
22 wages are paid not more than seven (7) calendar days following the close of the payroll period.  
23 Cal. Lab. Code § 210 provides:

24 [I]n addition to, and entirely independent and apart from, any other penalty provided in  
25 this article, every person who fails to pay the wages of each employee as provided in  
26 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial  
27 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
28 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)  
for each failure to pay each employee, plus 25 percent of the amount unlawfully  
withheld.

16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the

1 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll  
2 period in accordance with Cal. Lab. Code § 204(d).

3 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA  
4 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.  
5 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-  
6 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT  
7 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base  
8 rates of pay.

9 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt  
10 employees be calculated by dividing the employee's total wages, not including overtime  
11 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days  
12 of employment.

13 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at  
14 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-  
15 discretionary incentive wages which increased their regular rate of pay. However, when sick pay  
16 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA  
17 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code  
18 Section 246.

19 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and  
20 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting  
21 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and  
22 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,  
23 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has  
24 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

25 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
26 to collect or receive from an employee any part of wages theretofore paid by said employer to  
27 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other  
28 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation

1 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose  
2 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA  
3 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at  
4 each applicable pay period and upon termination. PLAINTIFF and members of the  
5 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages  
6 according to proof, related penalties, interest, attorney fees and costs.

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

17 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
18 Members as a business expense, were required by DEFENDANT to use their own personal  
19 cellular phones as a result of and in furtherance of their job duties as employees for  
20 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated  
21 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,  
22 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use  
23 their personal cellular phones. As a result, in the course of their employment with  
24 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
25 unreimbursed business expenses which included, but were not limited to, costs related to the use  
26 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

27 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
28 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order

1 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to  
2 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty  
3 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for  
4 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the  
5 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for  
6 the legally required off-duty meal periods. DEFENDANT also failed to pay PLAINTIFF all of  
7 her earned commissions due to her when she left employment with DEFENDANT in October  
8 of 2021. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required  
9 meal periods is evidenced by DEFENDANT's business records. The amount in controversy  
10 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 11 **JURISDICTION AND VENUE**

12 25. 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  
15 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
17 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
18 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
19 in this County and/or conducts substantial business in this County, and (ii) committed the  
20 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

#### 21 **THE CALIFORNIA CLASS**

22 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as  
25 all individuals who are or previously were employed by DEFENDANT in California and  
26 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
27  
28

1 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
2 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
3 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
4 (\$5,000,000.00).

5 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
7 accordingly.

8 29. DEFENDANT, as a matter of company policy, practice and procedure, and in  
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
11 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks  
12 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT  
13 enjoyed the benefit of this work, required employees to perform this work and permits or suffers  
14 to permit this work.

15 30. DEFENDANT has the legal burden to establish that each and every  
16 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as  
17 required by California laws. The DEFENDANT, however, as a matter of policy and procedure  
18 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in  
19 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid  
20 as required by law. This common business practice is applicable to each and every  
21 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,  
22 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as  
23 causation, damages, and reliance are not elements of this claim.

24 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
25 CLASS Members is impracticable.

26 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
27 law by:

28 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.

1 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or  
2 deceptively having in place company policies, practices and procedures  
3 that failed to record and pay PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS for all time worked, including minimum wages  
5 owed and overtime wages owed for work performed by these employees;  
6 and,

- 7 (b) Committing an act of unfair competition in violation of the UCL, by  
8 failing to provide the PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 12 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
13 that the joinder of all such persons is impracticable and the disposition of  
14 their claims as a class will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
16 that are raised in this Complaint are common to the CALIFORNIA  
17 CLASS will apply to every member of the CALIFORNIA CLASS;
- 18 (c) The claims of the representative PLAINTIFF are typical of the claims of  
19 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the  
20 other members of the CALIFORNIA CLASS, was classified as a non-  
21 exempt employee paid on an hourly basis who was subjected to the  
22 DEFENDANT's deceptive practice and policy which failed to provide the  
23 legally required meal and rest periods to the CALIFORNIA CLASS and  
24 thereby underpaid compensation to PLAINTIFF and CALIFORNIA  
25 CLASS. PLAINTIFF sustained economic injury as a result of  
26 DEFENDANT's employment practices. PLAINTIFF and the members of  
27 the CALIFORNIA CLASS were and are similarly or identically harmed  
28 by the same unlawful, deceptive and unfair misconduct engaged in by

1 DEFENDANT; and,

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

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

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

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

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

- 25 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
26 act on grounds generally applicable to the CALIFORNIA CLASS, making  
27 appropriate class-wide relief with respect to the CALIFORNIA CLASS  
28 as a whole in that DEFENDANT failed to pay all wages due to members

of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

2) Class certification will obviate the need for unduly duplicative litigation that would 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 DEFENDANT; and/or,

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

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

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

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

19 (a) The questions of law and fact common to the CALIFORNIA CLASS  
20 predominate over any question affecting only individual CALIFORNIA  
21 CLASS Members because the DEFENDANT's employment practices are  
22 applied with respect to the CALIFORNIA CLASS;

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

- 1 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
2 impractical to bring all members of the CALIFORNIA CLASS before the  
3 Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be  
5 able to obtain effective and economic legal redress unless the action is  
6 maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and  
8 equitable relief for the acts of unfair competition, statutory violations and  
9 other improprieties, and in obtaining adequate compensation for the  
10 damages and injuries which DEFENDANT's actions have inflicted upon  
11 the CALIFORNIA CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of  
13 DEFENDANT are sufficient to adequately compensate the members of  
14 the CALIFORNIA CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
16 to the CALIFORNIA CLASS, thereby making final class-wide relief  
17 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 18 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
19 the business records of DEFENDANT; and,
- 20 (i) Class treatment provides manageable judicial treatment calculated to bring  
21 a efficient and rapid conclusion to all litigation of all wage and hour  
22 related claims arising out of the conduct of DEFENDANT as to the  
23 members of the CALIFORNIA CLASS.

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

**THE CALIFORNIA LABOR SUB-CLASS**

37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California and classified as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

39. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been intentionally subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

1           41. Common questions of law and fact exist as to members of the CALIFORNIA  
2 LABOR SUB-CLASS, including, but not limited, to the following:

- 3           (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
4 compensation due to members of the CALIFORNIA LABOR SUB-  
5 CLASS for missed meal and rest breaks in violation of the California  
6 Labor Code and California regulations and the applicable California Wage  
7 Order;  
8           (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other  
9 members of the CALIFORNIA LABOR SUB-CLASS with accurate  
10 itemized wage statements;  
11           (c) Whether DEFENDANT has engaged in unfair competition by the  
12 above-listed conduct;  
13           (d) The proper measure of damages and penalties owed to the members of the  
14 CALIFORNIA LABOR SUB-CLASS; and,  
15           (e) Whether DEFENDANT's conduct was willful.

16           42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
17 under California law by:

- 18           (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the  
19 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-  
20 CLASS all wages due for overtime worked, for which DEFENDANT is  
21 liable pursuant to Cal. Lab. Code § 1194;  
22           (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to  
23 accurately pay PLAINTIFF and the members of the CALIFORNIA  
24 LABOR SUB-CLASS the correct minimum wage pay for which  
25 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;  
26           (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate  
28 itemized statement in writing showing the corresponding correct amount

1 of wages earned by the employee;

2 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
4 CLASS with all legally required off-duty, uninterrupted thirty (30) minute  
5 meal breaks and the legally required off-duty rest breaks;

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

12 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and  
13 the CALIFORNIA LABOR SUB-CLASS members with necessary  
14 expenses incurred in the discharge of their job duties.

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

17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are  
18 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS  
19 Members is impracticable and the disposition of their claims as a class  
20 will benefit the parties and the Court;

21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
22 that are raised in this Complaint are common to the CALIFORNIA  
23 LABOR SUB-CLASS and will apply to every member of the  
24 CALIFORNIA LABOR SUB-CLASS;

25 (c) The claims of the representative PLAINTIFF are typical of the claims of  
26 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,  
27 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
28 was a non-exempt employee paid on an hourly basis who was subjected

1 to the DEFENDANT's practice and policy which failed to pay the correct  
2 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.  
3 PLAINTIFF sustained economic injury as a result of DEFENDANT's  
4 employment practices. PLAINTIFF and the members of the  
5 CALIFORNIA LABOR SUB-CLASS were and are similarly or  
6 identically harmed by the same unlawful, deceptive, and unfair  
7 misconduct engaged in by DEFENDANT; and,

- 8 (d) The representative PLAINTIFF will fairly and adequately represent and  
9 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has  
10 retained counsel who are competent and experienced in Class Action  
11 litigation. There are no material conflicts between the claims of the  
12 representative PLAINTIFF and the members of the CALIFORNIA  
13 LABOR SUB-CLASS that would make class certification inappropriate.  
14 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously  
15 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 18 (a) Without class certification and determination of declaratory, injunctive,  
19 statutory and other legal questions within the class format, prosecution of  
20 separate actions by individual members of the CALIFORNIA LABOR  
21 SUB-CLASS will create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual  
23 members of the CALIFORNIA LABOR SUB-CLASS which  
24 would establish incompatible standards of conduct for the parties  
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
  - 26 2) Adjudication with respect to individual members of the  
27 CALIFORNIA LABOR SUB-CLASS which would as a practical  
28 matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to  
2 protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
4 or refused to act on grounds generally applicable to the CALIFORNIA  
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect  
6 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
7 DEFENDANT fails to pay all wages due. Including the correct wages for  
8 all time worked by the members of the CALIFORNIA LABOR SUB-  
9 CLASS as required by law;

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

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

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

26 A. Inconsistent or varying adjudications with respect to  
27 individual members of the CALIFORNIA LABOR SUB-  
28 CLASS, which would establish incompatible standards of

conduct for the DEFENDANT; and/or,

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

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

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

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

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

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

1                   retaliation or adverse impact on their employment;

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

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

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

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

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

20          (h)    The members of the CALIFORNIA LABOR SUB-CLASS are readily  
21                  ascertainable from the business records of DEFENDANT. The  
22                  CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
23                  CLASS Members who worked for DEFENDANT in California at any  
24                  time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

25          (i)    Class treatment provides manageable judicial treatment calculated to bring  
26                  a efficient and rapid conclusion to all litigation of all wage and hour  
27                  related claims arising out of the conduct of DEFENDANT as to the  
28                  members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 46. 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 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.  
9 Code § 17021.

10 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair  
15 competition may be enjoined in any court of competent jurisdiction. The court  
16 may make such orders or judgments, including the appointment of a receiver, as  
17 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.

18 Cal. Bus. & Prof. Code § 17203.

19 49. By the conduct alleged herein, DEFENDANT has engaged and continues to  
20 engage in a business practice which violates California law, including but not limited to, the  
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California  
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,  
23 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for  
24 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &  
25 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
26 unfair competition, including restitution of wages wrongfully withheld.

27 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and  
28 unfair in that these practices violate public policy, were immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to employees, and were without valid justification or  
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
4 withheld.

5 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
6 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated  
7 meal and rest periods, the required amount of compensation for missed meal and rest periods  
8 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse  
9 al necessary business expenses incurred, and failed to provide Fair Labor Standards Act  
10 overtime wages due for overtime worked as a result of failing to include non-discretionary  
11 incentive compensation into their regular rates of pay for purposes of computing the proper  
12 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.  
13 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§  
14 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant  
15 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

16 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
17 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
18 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
19 DEFENDANT.

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

24 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
25 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty  
26 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
27 for each workday in which a second off-duty meal period was not timely provided for each ten  
28 (10) hours of work.

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

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

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

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

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

24           60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
28 other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
2 engage in these unlawful and unfair business practices.

3  
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

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

8 **and Against All Defendants)**

9 61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
11 paragraphs of this Complaint.

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

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

19 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
20 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
21 the minimum so fixed is unlawful.

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

24 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of  
26 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and  
27 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
28 CALIFORNIA LABOR SUB-CLASS.

1           67. DEFENDANT's unlawful wage and hour practices manifested, without  
2 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of  
3 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the  
4 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

5           68. In committing these violations of the California Labor Code, DEFENDANT  
6 inaccurately calculated the correct time worked and consequently underpaid the actual time  
7 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
8 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
9 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
10 requirements and other applicable laws and regulations.

11           69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
13 receive the correct minimum wage compensation for their time worked for DEFENDANT.

14           70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
15 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
16 Members to work without paying them for all the time they were under DEFENDANT's  
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other  
18 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they  
19 were entitled to, constituting a failure to pay all earned wages.

20           71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS for the true time they worked, PLAINTIFF and the other members of the  
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
24 injury in amounts which are presently unknown to them and which will be ascertained  
25 according to proof at trial.

26           72. DEFENDANT knew or should have known that PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time  
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and  
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members  
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

12 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
13 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
14 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
15 by the California Labor Code and/or other applicable statutes. To the extent minimum wage  
16 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
17 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§  
18 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
19 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
20 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
21 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA  
22 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

23 **THIRD CAUSE OF ACTION**

24 **For Failure To Pay Overtime Compensation**

25 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

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

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

19 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
20 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by  
21 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,  
22 including overtime work.

23 81. DEFENDANT's unlawful wage and hour practices manifested, without  
24 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of  
25 implementing a policy and practice that failed to accurately record overtime worked by  
26 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate  
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any  
2 workweek.

3 82. In committing these violations of the California Labor Code, DEFENDANT  
4 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
5 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted  
6 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation  
7 of the California Labor Code, the Industrial Welfare Commission requirements and other  
8 applicable laws and regulations.

9 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
10 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
11 receive full compensation for overtime worked.

12 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
13 from the overtime requirements of the law. None of these exemptions are applicable to the  
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not  
16 subject to a valid collective bargaining agreement that would preclude the causes of action  
17 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself  
18 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-  
19 negotiable, non-waiveable rights provided by the State of California.

20 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
21 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime  
22 worked that they are entitled to, constituting a failure to pay all earned wages..

23 86. DEFENDANT failed to accurately pay the PLAINTIFF and the other members  
24 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which  
25 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,  
26 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR  
27 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT  
28 failed to accurately record and pay as evidenced by DEFENDANT's business records and

1 witnessed by employees.

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

8 88. DEFENDANT knew or should have known that PLAINTIFF and the other  
9 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime  
10 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,  
11 to not pay employees for their labor as a matter of company policy, practice and procedure, and  
12 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members  
13 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
2 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
3 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA  
4 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5  
6 **FOURTH CAUSE OF ACTION**

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

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

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

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

14 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
15 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
16 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
17 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR  
18 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
19 duties for the legally required off-duty meal periods. As a result of their rigorous work  
20 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
21 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
22 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
23 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
24 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to  
25 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period  
26 in some workdays in which these employees were required by DEFENDANT to work ten (10)  
27 hours of work from time to time. As a result, PLAINTIFF and other members of the  
28 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

7 94. As a proximate result of the aforementioned violations, PLAINTIFF and  
8 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
9 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
10 suit.

11  
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest  
2 periods by DEFENDANT and DEFENDANT's managers.

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

8 98. As a proximate result of the aforementioned violations, PLAINTIFF and  
9 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
10 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
11 suit.

## 12 **SIXTH CAUSE OF ACTION**

### 13 **For Failure to Provide Accurate Itemized Statements**

14 **[Cal. Lab. Code § 226]**

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

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

20 100. Cal. Labor Code § 226 provides that an employer must furnish employees with  
21 an "accurate itemized" statement in writing showing:

- 22 (1) gross wages earned,  
23 (2) total hours worked by the employee, except for any employee whose  
24 compensation is solely based on a salary and who is exempt from payment of  
25 overtime under subdivision (a) of Section 515 or any applicable order of the  
26 Industrial Welfare Commission,  
27 (3) the number of piecerate units earned and any applicable piece rate if the employee  
28 is paid on a piece-rate basis,  
(4) all deductions, provided that all deductions made on written orders of the  
employee may be aggregated and shown as one item,  
(5) net wages earned,  
(6) the inclusive dates of the period for which the employee is paid,  
(7) 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 or an

1 employee identification number other than a social security number may be shown on  
2 the itemized statement,  
3 (8) the name and address of the legal entity that is the employer, and  
4 (9) all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

6 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
7 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate  
8 wage statements which failed to show, among other things, the correct gross and net wages  
9 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her  
10 employees with an accurate itemized wage statement in writing showing, among other  
11 things, gross wages earned and all applicable hourly rates in effect during the pay period and  
12 the corresponding amount of time worked at each hourly rate. Aside, from the violations  
13 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized  
14 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a  
15 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code  
17 § 226.

18 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.  
19 Code § 226, causing injury and damages to PLAINTIFF and the other members of the  
20 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
21 expended calculating the correct wages for all missed meal and rest breaks and the amount  
22 of employment taxes which were not properly paid to state and federal tax authorities.  
23 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty  
25 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred  
26 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §  
27 226, in an amount according to proof at the time of trial (but in no event more than four  
28 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the  
CALIFORNIA LABOR SUB-CLASS herein).

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1 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
2 LABOR SUB-CLASS members for these expenses as an employer is required to do under  
3 the laws and regulations of California.

4 106. PLAINTIFF therefore demands reimbursement for expenditures or losses  
5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge  
6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,  
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8  
9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Wages When Due**

11 **[ Cal. Lab. Code §§ 201, 202, 203]**

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

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

17 105. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of  
20 every description, whether the amount is fixed or ascertained by the  
21 standard of time, task, piece, Commission basis, or other method of calculation.

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

26 106. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer  
27 discharges an employee, the wages earned and unpaid at the time of discharge are due and  
28 payable immediately."

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

If an employee not having a written contract for a definite period quits his  
or her employment, his or her wages shall become due and payable not  
later than 72 hours thereafter, unless the employee has given 72 hours  
previous notice of his or her intention to quit, in which case the employee  
is entitled to his or her wages at the time of quitting. Notwithstanding any  
other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so  
2 requests and designates a mailing address. The date of the mailing shall  
3 constitute the date of payment for purposes of the requirement to provide  
4 payment within 72 hours of the notice of quitting.

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

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

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

14 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages  
16 owed as required by law.

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

### 24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for 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  
DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
4 for restitution of the sums incidental to DEFENDANT's violations due to  
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

7 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of  
8 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
9 pursuant to Cal. Code of Civ. Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including compensatory  
11 damages for minimum and overtime compensation due PLAINTIFF and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
13 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
14 statutory rate;

15 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
16 in which a violation occurs and one hundred dollars (\$100) per each member of  
17 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
18 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
19 an award of costs for violation of Cal. Lab. Code § 226;

20 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
21 the applicable IWC Wage Order;

22 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
23 1197;

24 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA  
25 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
26 costs of suit.; and,

27 G) The wages of all terminated employees in the CALIFORNIA LABOR  
28 SUB-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.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

ry 8, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: Norman B. Blumenthal  
Attorneys for Plaintiff

Norman B. Blumenthal  
Attorneys for Plaintiff

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**DEMAND FOR A JURY TRIAL**

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

Dated: February 8, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiff

## **EXHIBIT 2**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2255 CALLE CLARA  
LA JOLLA, CALIFORNIA 92037

Web Site: [www.bamlawca.com](http://www.bamlawca.com)

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:  
[piya@bamlawca.com](mailto:piya@bamlawca.com)

WRITERS EXT:  
1005

March 7, 2024  
CA2602

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

LaserAway Medical Group, Inc.  
LaserAway, LLC  
Certified Mail #9589071052700408542888  
Michael S. Kun  
EPSTEIN BECKER & GREEN, P.C.  
1925 Century Park East, Suite 500  
Los Angeles, CA 90067

Re: **AMENDED NOTICE FOR LWDA CASE NO. LWDA-CM-867802-22**

Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Laseraway Medical Group, Inc. in California and classified as non-exempt employees during the time period of February 11, 2021 until a date as determined by the Court. Our offices represent Plaintiff Kerry Hurley (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Laseraway Medical Group, Inc. and LaserAway, LLC (“Defendant”).

Plaintiff sent a PAGA Notice on February 11, 2022 to defendant Laseraway Medical Group, Inc. and the LWDA. The purposes of this amended notice is to add LaserAway, LLC as an additional defendant.

Plaintiff was employed by Defendant in California as a non-exempt employee from June of 2021 to October 26, 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees

for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. See *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 et seq., Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, was attached to the original correspondence sent to the LWDA on February 11, 2022. This information provided 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 that Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Piya Mukherjee

Piya Mukherjee, Esq.

## **EXHIBIT 3**

# KINGSLEY & KINGSLEY

| L A W Y E R S |

March 9, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
*Via Electronic Submission: <https://dir.tfaforms.net/308>*

LASERAWAY MEDICAL GROUP, INC.  
307 S. Robertson Boulevard  
Beverly Hills, CA 90211  
*Via Certified Mailing No.: 7019 2970 0001 4016 5646*

LASERAWAY MEDICAL GROUP, INC.  
c/o Agent for Service of Process  
Matthew Marzucco  
Paracorp Incorporated  
2804 Gateway Oaks Dr #100  
Sacramento, CA 95833  
*Via Certified Mailing No.: 7019 2970 0001 4016 5639*

LASERAWAY MEDICAL GROUP, INC.  
c/o Agent for Service of Process  
Matthew Marzucco  
Paracorp Incorporated  
PO Box 160568  
Sacramento, CA 95816-0568  
*Via Certified Mailing No.: 7019 2970 0001 4016 5622*

Re: LILI-ANN BOYENS v. LASERAWAY MEDICAL GROUP, INC.  
*California Labor Code § 2699 Penalties*

Gentlepersons:

This office represents LILI-ANN BOYENS (“Plaintiff”) and a proposed group of current and former employees working for LASERAWAY MEDICAL GROUP, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

March 9, 2022

Page 2 of 4

are employed or have been employed by LASERAWAY MEDICAL GROUP, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant is required to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

March 9, 2022

Page 3 of 4

compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate when rest premiums are provided, in violation of Labor Code § 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees for the cost of using their personal cell phones and computers, necessary for them to discharge their duties. Defendant required that Plaintiff and the aggrieved employees use their own personal computers, download and pay for phone applications on their personal cell phones, be available by cell phone, and answer/use their personal cell phones consistently to perform their job duties. These cell phones and computers were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with these necessary business expenditures in violation of Labor Code § 2802.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) by failing to issue Plaintiff and all aggrieved employees wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiff and all aggrieved employees are issued itemized wage statements that do not accurately include meal and rest premiums as a result of the claims alleged herein and when they are provided, they are not provided at the proper rate. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§204(d) and 210. An employer may not attribute commission wages paid in one pay period to other pay periods in order to satisfy California's compensation requirements. (*Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668.) Here, Defendant pays Plaintiff and all aggrieved employees commissions on a monthly basis despite the fact that commissions are earned in each pay period worked by an employee and should be paid during that pay period. As such, Plaintiff and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

March 9, 2022

Page 4 of 4

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.”

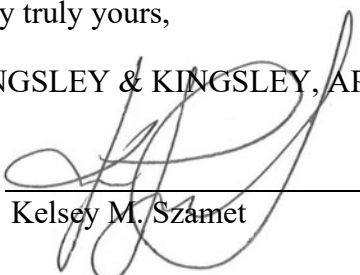
Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204(d), 210, 226, 226(a), 226.7, 512, 1198.5 and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

CC: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513 via Electronic Mail Transmission: [wza@abramsonlabor.com](mailto:wza@abramsonlabor.com); [dani@abramsonlabor.com](mailto:dani@abramsonlabor.com)

## **EXHIBIT 4**

# KINGSLEY & KINGSLEY

| L A W Y E R S |

February 22, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
*Via Electronic Submission:* <https://dir.tfaforms.net/310>

LASERAWAY MEDICAL GROUP, INC.  
307 S. Robertson Boulevard  
Beverly Hills, CA 90211  
*Via Certified Mailing No.: 7022 3330 0002 1335 9223*

LASERAWAY MEDICAL GROUP, INC.  
c/o Agent for Service of Process  
Matthew Marzucco  
Paracorp Incorporated  
2804 Gateway Oaks Dr #100  
Sacramento, CA 95833  
*Via Certified Mailing No.: 7022 3330 0002 1335 9230*

LASERAWAY MEDICAL GROUP, INC.  
c/o Agent for Service of Process  
Matthew Marzucco  
Paracorp Incorporated  
PO Box 160568  
Sacramento, CA 95816-0568  
*Via Certified Mailing No.: 7022 3330 0002 1335 9247*

LASERAWAY MEDICAL GROUP, INC.  
c/o Counsel for Defendants  
Michael S. Kun  
Kevin D. Sullivan  
1925 Century Park East, Suite 500  
Los Angeles, CA 90067-2506  
*Via Email:* [mkun@ebglaw.com](mailto:mkun@ebglaw.com); [ksullivan@ebglaw.com](mailto:ksullivan@ebglaw.com)  
*Via Certified Mailing No.: 7022 3330 0002 1335 9254*

Re: LILI-ANN BOYENS v. LASERAWAY MEDICAL GROUP, INC.  
*California Labor Code § 2699 Penalties*

KERRY HURLEY v. LASERAWAY MEDICAL GROUP, INC.  
*California Labor Code § 2699 Penalties*

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

February 22, 2024

Page 2 of 3

Gentlepersons:

This office represents KERRY HURLEY and LILI-ANN BOYENS (“Plaintiffs”) and a proposed group of current and former employees working for LASERAWAY MEDICAL GROUP, INC. (“Defendant”) in the State of California. This letter shall serve as a supplement to Plaintiff Hurley’s letter of February 11, 2022, and Plaintiff Boyens’ PAGA letter sent on March 9, 2022. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant’s aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by LASERAWAY MEDICAL GROUP, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

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. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

Defendant maintained a wage practice of paying Plaintiffs and the aggrieved employees without regard to the correct amount of time they work. Defendant’s policy and practice was to unlawfully and intentionally deny timely payment of wages due to Plaintiffs and the aggrieved employees. Defendant’s unlawful wage and hour practices manifested, without limitation, applicable to the aggrieved employees as a whole, as a result of implementing a policy and practice that denies accurate compensation to Plaintiffs and the aggrieved employees in regard to minimum wage pay. In committing these violations of the California Labor Code, Defendant

## LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

February 22, 2024

Page 3 of 4

inaccurately calculated the correct time worked and consequently underpaid the actual time worked by Plaintiffs and the aggrieved employees.

Defendant requires Plaintiffs and the aggrieved employees to work without paying them for all the time they are under Defendant's control. Among other things, Defendant requires Plaintiffs to work while clocked out during what is supposed to be Plaintiffs' off-duty meal break. Plaintiffs from time to time were interrupted by work assignments while clocked out for what should be Plaintiffs' off-duty meal break. Plaintiffs and the aggrieved employees also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment.

Defendant, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by Plaintiffs and the aggrieved employees, always to the benefit of Defendant, so that during the course of their employment, Plaintiffs and the aggrieved employees are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, Defendant engages in the practice of requiring Plaintiffs and the aggrieved employees to perform work off the clock in that Defendant, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into Defendant's timekeeping system for the workday. As a result, Plaintiffs and the aggrieved employees forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. Defendant's policy and practice not to pay Plaintiffs and the aggrieved employees for all time worked, is evidenced by Defendant's business records.

As a direct result of Defendant's unlawful wage practices as alleged herein, Plaintiffs and the aggrieved employees did not receive the correct minimum wage compensation for their time worked for Defendant. During the relevant time period, Defendant required, permitted or suffered Plaintiffs and the aggrieved employees to work without paying them for all the time they were under Defendant's control. Plaintiffs and the aggrieved employees were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages. Defendant knew or should have known that Plaintiffs and the aggrieved employees were under compensated for their time worked. Defendant elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and Defendant perpetrated this scheme by refusing to pay Plaintiffs and the aggrieved employees the correct minimum wages for their time worked. Plaintiffs and the aggrieved employees 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.

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

February 22, 2024

Page 4 of 5

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. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

During the relevant time period, Plaintiffs and the aggrieved employees were required, permitted or suffered by Defendant to work for Defendant and were not paid for all the time they worked, including overtime work. Defendant's unlawful wage and hour practices manifested, without limitation, applicable to Plaintiffs and the aggrieved employees as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by Plaintiffs and the aggrieved employees and denied accurate compensation to Plaintiff and the aggrieved employees for overtime worked, including, the overtime 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. In committing these violations of the California Labor Code, Defendant inaccurately recorded overtime worked and consequently underpaid the overtime worked by Plaintiff and the aggrieved employees. Defendant acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations. As a direct result of Defendant's unlawful wage practices as alleged herein, Plaintiffs and the aggrieved employees did not receive full compensation for overtime worked.

Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to the Plaintiff and the aggrieved employees. Further, Plaintiffs and the aggrieved employees were not subject to a valid collective bargaining agreement. Rather, Plaintiffs bring this Action on behalf of themselves and the aggrieved employees based on Defendant's violations of nonnegotiable, non-waivable rights provided by the State of California.

During the relevant time period, Plaintiffs and the aggrieved employees have been paid less for overtime worked that they are entitled to, constituting a failure to pay all earned wages. Defendant failed to accurately pay Plaintiffs and the aggrieved employees overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though Plaintiffs and the aggrieved employees were required to work, and did in fact work, overtime as to which Defendant failed to accurately record and pay as evidenced by Defendant's business records and witnessed by employees. Defendant knew or should have known that Plaintiffs and the aggrieved employees were under compensated for all overtime worked. Defendant elected, either through intentional malfeasance

or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and Defendant perpetrated this scheme by refusing to pay Plaintiffs and the aggrieved employees for overtime worked.

State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their “regular rate of pay.” Plaintiffs and the aggrieved employees are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee’s performance.

The second component of Plaintiffs’ and the aggrieved employees’ compensation is Defendant’s non-discretionary incentive program that paid Plaintiffs and the aggrieved employees incentive wages based on their performance for Defendant. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by Defendant. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to Plaintiffs and the aggrieved employees, Defendant failed to include the incentive compensation as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiffs and the aggrieved employees must be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment of overtime compensation and meal and rest break premiums to Plaintiffs and the aggrieved employees by Defendant.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate.

## LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

February 22, 2024

Page 6 of 7

Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant is required to provide Plaintiffs and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiffs and the aggrieved employees with compliant rest periods. Further, Plaintiffs and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate when rest premiums are provided, in violation of Labor Code § 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiffs and aggrieved employees for the cost of using their personal cell phones and computers, necessary for them to discharge their duties. Defendant required that Plaintiffs and the aggrieved employees use their own personal computers, download and pay for phone applications on their personal cell phones, be available by cell phone, and answer/use their personal cell phones consistently to perform their job duties. These cell phones and computers were not provided by Defendant and Defendant failed to reimburse Plaintiffs and the aggrieved employees for the costs associated with these necessary business expenditures in violation of Labor Code § 2802.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) by failing to issue Plaintiffs and all aggrieved employees wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiffs and all aggrieved employees are issued itemized wage statements that do not accurately include meal and rest premiums as a result of the claims alleged herein and when they are provided, they are not provided at the proper rate. As such, Plaintiffs are aggrieved employees within the meaning of PAGA and Defendant violated Labor Code §226(a) with respect to Plaintiffs and all aggrieved employees.

Defendant underpaid sick pay wages to Plaintiffs and the aggrieved employees by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, Plaintiffs and other non-exempt employees earn nondiscretionary remuneration. Rather than pay

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

February 22, 2024

Page 7 of 8

sick pay at the regular rate of pay, Defendant underpaid sick pay to Plaintiffs and the aggrieved employees at their base rates of pay.

Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. Plaintiffs and the aggrieved employees routinely earned nondiscretionary incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for Plaintiffs and the aggrieved employees, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

Defendant failed to pay Plaintiffs and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§204(d) and 210. An employer may not attribute commission wages paid in one pay period to other pay periods in order to satisfy California's compensation requirements. (*Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668.) Here, Defendant pays Plaintiffs and all aggrieved employees commissions on a monthly basis despite the fact that commissions are earned in each pay period worked by an employee and should be paid during that pay period. As such, Plaintiffs and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes.

Labor Code § 203 provides that if "an employer willfully fails to pay...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."

Here, Plaintiffs and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiffs are aggrieved employees and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Defendant failed to pay all compensation due to Plaintiff and the aggrieved employees, made unlawful deductions from compensation payable to Plaintiff and the aggrieved employees, failed to disclose all aspects of the deductions from compensation payable to Plaintiff and the aggrieved employees, and thereby failed to pay these employees all wages due at each applicable pay period and upon termination.

Plaintiff Boyens also brings a claim on behalf of herself only for a violation of Labor Code §§226

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

February 22, 2024

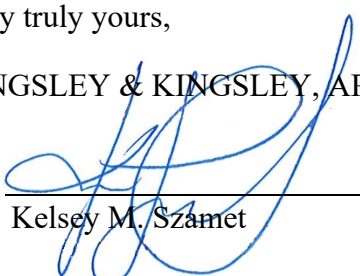
Page 8 of 8

and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff Boyens is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204(d), 210, 221, 226, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5 and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

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