

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BASS MEDICAL GROUP, a California corporation; and DOES 1 through 30, Inclusive;

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KIRA CHAMBERS, an individual, on behalf of herself, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

MAY 25 2022

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
B. Pool, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER
(Número del Caso): **C22-01058**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **MAY 25 2022**
(Fecha)

Clerk, by _____, Deputy
(Secretario) **B. POOL** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

VIA FAX



ZAKAY LAW GROUP, APLC
 Shani O. Zakay (State Bar #277924)
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FILED
 MAY 25 2022
 K. BIEKER CLERK OF THE COURT
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF CONTRA COSTA
 By _____
 B. Pool, Deputy Clerk

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SUMMON ISSUED

THIS CASE IS ASSIGNED
 TO DEPT **39** FOR ALL
 PURPOSES.

Attorneys for Plaintiff KIRA CHAMBERS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF CONTRA COSTA**

C22-01058

KIRA CHAMBERS, an individual, on behalf
 of herself, and on behalf of all persons
 similarly situated,

Case No. _____

Plaintiff,

CLASS ACTION COMPLAINT FOR:

vs.

BASS MEDICAL GROUP, a California
 corporation; and DOES 1 through 30,
 Inclusive;

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FO

DEFENDANT.

VIA FAX

- REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff KIRA CHAMBERS ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former independent contractors alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a massage therapist in California for defendant BASS MEDICAL GROUP, a California corporation ("DEFENDANT"). PLAINTIFF alleges that DEFENDANT has violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANT has misclassified its California employees as independent contractors. In order to provide services to their patients, DEFENDANT hires California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's healthcare specialist services to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of

1 PLAINTIFF and other similarly situated California employees. As employer, DEFENDANT is legally
2 responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages
3 due to PLAINTIFF and all those similarly situated misclassified independent contractors as
4 DEFENDANT's employees, the cost of the employer's share of payments to the federal and state
5 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
6 and payments for workers' compensation insurance, plus penalties and interest.

7 THE PARTIES

8 2. DEFENDANT is a California corporation, that at all relevant times mentioned herein
9 conducted and continues to conduct substantial business in the State of California, County of Contra
10 Costa, and provides healthcare specialist services.

11 3. DEFENDANT utilizes independent contractors to provide its clients with a variety of
12 healthcare services.

13 4. The true names and capacities, whether individual, corporate, subsidiary, partnership,
14 associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to
15 PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ.
16 Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
17 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
18 believes, and based upon that information and belief allege, that the DEFENDANT named in this
19 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANT" and/or
20 "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings that
21 proximately caused the injuries and damages hereinafter alleged.

22 5. The agents, servants and/or employees of the DEFENDANT and each of them acting
23 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
24 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
25 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
26 Consequently, the acts of DEFENDANT are legally attributable to the other and all DEFENDANTS
27 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
28 proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

1 6. DEFENDANT was PLAINTIFF’s employer or persons acting on behalf of
2 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
3 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
4 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
5 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

6 7. DEFENDANT was PLAINTIFF’s employer or persons acting on behalf of
7 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
8 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
9 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
10 for each underpaid employee.

11 8. PLAINTIFF worked as a massage therapist for DEFENDANT from 2018 to February
12 of 2022 and was at all times during her employment classified by DEFENDANT as an independent
13 contractor.

14 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
15 individuals who worked for DEFENDANT in California as independent contractors (“CALIFORNIA
16 CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint
17 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
18 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
19 (\$5,000,000.00).

20 10. DEFENDANT’s uniform policies and practices alleged herein were unlawful, unfair
21 and deceptive business practices whereby DEFENDANT retained and continues to retain wages and
22 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

23 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
25 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT’s past
26 and current unlawful conduct, and all other appropriate legal and equitable relief.

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28 ///

1 **THE CONDUCT**

2 **A. Misclassification**

3 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers
4 as independent contractors, hired to perform work and services core to DEFENDANT’s businesses, in
5 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that
6 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
7 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
8 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
9 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
10 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
11 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
12 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
13 law.” Cal. Labor Code § 226.8.

14 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
15 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
16 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
17 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
18 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages besides
19 the non-negotiable hourly rate and/or flat rate, and they were not allowed to record their time while
20 they waited for DEFENDANT to give them work. Specifically, PLAINTIFF and other CALIFORNIA
21 CLASS members were only paid an hourly rate and/or flat rate per patient seen that DEFENDANT
22 unilaterally prescribed for each job. For example, DEFENDANT would assign PLAINTIFF at least
23 seven to eight (7-8) patients per day that resulted, from time to time, in PLAINTIFF working throughout
24 her shift without the legally-required meal and rest periods. DEFENDANT only paid PLAINTIFF a
25 flat rate per patient and failed to pay PLAINTIFF any compensation for overtime wages at the overtime
26 rate of one-and-a-half times the regular rate of pay for any time spent working in excess of eight (8)
27 hours in a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. The finite
28 set of tasks required to be performed by the workers is, when notified via cell phone, travel to

1 DEFENDANT's healthcare facility to perform jobs, including but not limited to, message therapy, all
2 in accordance with DEFENDANT's business practices and policies.

3 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
4 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
5 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
6 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
7 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
8 employees.

9 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
10 members as defined by DEFENDANT was executed by them through the performance of non-exempt
11 labor. Specifically, PLAINTIFF and other CALIFORNIA CLASS members performed non-exempt
12 tasks, including but not limited to, caring for patients by assessing their physical health, obtaining
13 physical index tests on patients, obtaining medical clearances, charting patients progress, and
14 performing message therapy on patients.

15 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
16 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
17 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
18 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
19 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
20 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
21 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
22 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
23 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
24 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
25 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
26 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
27 CLASS members as employees and thereby failed to pay them wages for all time worked,
28 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and

1 failed to reimburse these employees for the employer’s share of payroll taxes and mandatory insurance.

2 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
3 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
4 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
5 Members as independent contractors in violation of the California Labor Code and regulations
6 promulgated thereunder.

7 i. **Plaintiff and Other Members of the California Class Were Not Free from**
8 **the Control and Direction of Defendant**

9 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
10 other similarly situated misclassified California workers by, among other things, scheduling hours of
11 work, providing job site facility, enforcing a dress code and issuing written policies and procedures for
12 the performance of work and conduct in the workplace. Upon hire, the position was represented by
13 DEFENDANT to PLAINTIFF and the other workers as an independent contractor position in exchange
14 for an hourly rate and/or flat rate of pay for the time they spend providing labor and services to
15 DEFENDANT’s third-party clients and patients.

16 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
17 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
18 to exercise complete control over the work performed and the manner and means in which the work
19 was performed. DEFENDANT provided the patients and DEFENDANT provided the instructions as
20 to how to perform their work. Specifically, DEFENDANT issues policies and procedures regarding
21 every work-related task performed by PLAINTIFF and other CALIFORNIA CLASS members,
22 including control and direction regarding, caring for patients by assessing their physical health,
23 obtaining physical index tests on patients, obtaining medical clearances, charting patients’ progress,
24 performing massage therapy on patients, and submitting requests to DEFENDANT for time-off, all in
25 accordance with DEFENDANT’s business practices and policies.

26 20. California Labor Code § 3357 defines “employee” as “every person in the service of an
27 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
28 written, whether lawfully or unlawfully employed.” Additionally, to the California Labor Code’s

1 presumption that workers are employees, the California Supreme Court has determined the most
2 significant factor to be considered in distinguishing an independent contractor from an employee is
3 whether the *employer or principal has control or the right to control the work both as to the work*
4 *performed and the manner and means in which the work is performed.* DEFENDANT heavily
5 controlled both the work performed and the manner and means in which the PLAINTIFF and other
6 workers performed their work in that:

7 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
8 involved in a distinct business, but instead were provided with instructions as to how to
9 perform their work and the manner and means in which the work was to be performed
10 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

11 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were
12 continuously provided with training and supervision, including following
13 DEFENDANT's company documents, and received training from DEFENDANT as to
14 how and in what way to perform the services;

15 (c) DEFENDANT set the requirements as to what policies and procedures all of the
16 workers were to follow, including but not limited to, flat rates and/or hourly rates and
17 location of assignment;

18 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
19 opportunity for profit or loss because DEFENDANT only paid these workers a flat rate
20 and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks
21 were to be performed;

22 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
23 services and labor which are part of the core of DEFENDANT's principal business and
24 is closely integrated with and essential to the employer's business of services and labor
25 to their patients;

26 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
27 work themselves and did not hire others to perform their work for them;

28 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the

1 authority to make employment-related personnel decisions;

2 (h) PLAINTIFF and other members of the CALIFORNIA CLASS were provided
3 with schedules to follow and patients to treat in accordance with DEFENDANT'S
4 instructions;

5 (i) PLAINTIFF and other members of the CALIFORNIA CLASS performed their
6 work in a particular order and sequence in accordance with DEFENDANTS' company
7 policies; and,

8 (j) DEFENDANT had the "right" to control every critical aspect of DEFENDANT
9 labor operation in that DEFENDANT provided the client or patient, assigned where
10 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned
11 the hourly rate or flat rate, enforced a dress code, and step by step instructions to
12 PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process
13 of working at DEFENDANTS' facility. PLAINTIFF and other workers provided
14 services and labor for DEFENDANTS' patients and were not actually in business for
15 themselves.

16 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
17 **Outside the Usual Course of Defendant's Business**

18 21. DEFENDANT willfully misclassified PLAINTIFF and other members of the
19 CALIFORNIA CLASS who provided DEFENDANT with healthcare services for DEFENDANT's
20 clients. In other words, PLAINTIFF and other similarly situated California workers provided
21 DEFENDANT with work and services within the usual course of DEFENDANT's business.

22 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
23 CALIFORNIA CLASS as a provider of specialized healthcare services. As a result, DEFENDANT
24 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
25 CLASS as a provider of specialized healthcare services. Therefore, the performance of caring for
26 patients by assessing their physical health, obtaining physical index tests on patients, obtaining medical
27 clearances, charting patients progress, and performing message therapy on patients' by PLAINTIFF
28 and other members of the CALIFORNIA CLASS is not outside DEFENDANT'S usual course of

1 business.

2 iii. **Plaintiff and Other Members of the California Class Were Not Engaged in**
3 **an Independently Established Trade, Occupation, or Business of the Same**
4 **Nature as the Work Performed for Defendant**

5 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
6 engaged in a customarily independently established trade, occupation or business as the same nature of
7 the work performed.

8 **B. Meal Period Violations**

9 24. In California, an employer may not employ an employee for a work period of more than
10 five hours per day without providing the employee with a duty-free meal period of not less than thirty
11 minutes, except that if the total work period per day of the employee is no more than six hours, the
12 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
13 meal period of not less than thirty minutes is required if an employee works more than ten hours per
14 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
15 may be waived by mutual consent of the employer and employee only if the first meal period was not
16 waived. Labor Code Section 512.

17 25. If an employer fails to provide an employee a duty-free meal period in accordance with
18 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
19 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
20 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

21 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
22 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
23 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
24 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
25 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
26 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
27 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
28 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of

1 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
2 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
3 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
4 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

5 **C. Rest Period Violations**

6 27. The applicable IWC Wage Order requires that employers must authorize and permit
7 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
8 each work period. The rest period is based on the total hours worked daily and must be at the minimum
9 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
10 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
11 "major fraction" of four. A rest period is not required for employees whose total daily work time is less
12 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
13 must pay for such periods.

14 28. If an employer fails to provide an employee a rest period in accordance with an applicable
15 IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular
16 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
17 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
18 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
19 was not provided during that workday.

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

1 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
2 rest periods by DEFENDANT and DEFENDANT’S managers.

3 **D. Failure to Pay Minimum, Regular and Overtime Wages**

4 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
5 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
6 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
7 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
8 the time during which an employee was subject to the control of an employer, including all the time
9 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
10 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
11 under DEFENDANT’S control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
12 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
13 these employees overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time
14 worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum
15 wages and overtime wage compensation by working without their time being correctly recorded and
16 without compensation at the applicable rates. DEFENDANT’S policy and practice not to pay
17 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
18 DEFENDANT’S business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
19 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
20 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

21 **E. Failure to Reimburse Necessary and Required Business Expenses**

22 31. Under California Labor Code Section 2802, employers are required to indemnify
23 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
24 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
27 employee, at the time of obeying the directions, believed them to be unlawful."

28 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate

1 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
2 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
3 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
4 behalf of DEFENDANT.

5 33. From time-to-time during the CLASS PERIOD, in the course of their employment
6 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
7 DEFENDANT to use personal cellular phones as a result of and in furtherance of their job duties as
8 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
9 associated with the use of the personal cellular phones for DEFENDANT's benefit. Further, from time
10 to time during the CLASS PERIOD, in the course of their employment PLAINTIFF and other
11 CALIFORNIA CLASS members as a business expense, were required by DEFENDANT to use their
12 personal expenses in order to pay rent to DEFENDANT for using DEFENDANT'S healthcare
13 facilities. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members
14 were required to use their personal cell phones to contact patients and as such it is mandatory to have
15 a cell phone. Further, in order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA
16 CLASS Members were required to use their personal expenses in order to pay rent to DEFENDANT
17 for using DEFENDANT's healthcare facilities in order to perform work for DEFENDANT. As a result,
18 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
19 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
20 to, costs related to the use of their personal cellular phones and personal expenses incurred for rent
21 payments on behalf of and for the benefit of DEFENDANT.

22 **F. Wage Statement Violations**

23 34. California Labor Code Section 226 requires an employer to furnish its employees an
24 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
25 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
26 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and only the last four digits of the employee's social security number or an employee
28 identification number other than a social security number, (8) the name and address of the legal entity

1 that is the employer and, (9) 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.

3 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
4 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the
5 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
6 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
7 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
8 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
9 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
10 last four digits of the employee's social security number or an employee identification number other
11 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

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

18 **G. Unfair Competition**

19 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
20 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
21 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
22 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
23 CALIFORNIA CLASS members as employees. The proper classification of these employees is
24 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
25 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
26 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
27 promulgated thereunder as herein alleged.

28 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an

1 independent contractor and thus did not receive pay for all time worked, including minimum and
2 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
3 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
4 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
5 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
6 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
7 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
8 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
9 does not exceed the sum or value of \$75,000.

10 THE CALIFORNIA CLASS

11 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
13 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
14 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
15 Members is under five million dollars (\$5,000,000.00).

16 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
17 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

18 41. All CALIFORNIA CLASS members who performed and continue to perform this work
19 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
20 DEFENDANT's policy and practice that required them to perform work without compensation as
21 required by law.

22 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
23 the CALIFORNIA CLASS members under California law, without limitation, in the following
24 manners:

25 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
27 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
28 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business

1 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
2 insurance and workers' compensation insurance;

3 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
5 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
6 members as independent contractors;

7 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
9 policy, practice and procedure that accurately determined the amount of working time spent by
10 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

11 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
12 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with all legally required meal and rest breaks;

14 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
15 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
16 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
17 duties; and,

18 (f) Committing an act of unfair competition in violation of the UCL, by violating
19 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
20 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
21 unpaid overtime to the benefit of DEFENDANT.

22 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
23 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
24 CLASS PERIOD. These questions include, but are not limited, to the following:

25 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
26 misclassified as independent contractors by DEFENDANT;

27 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
28 all the protections of the California Labor Code that apply when properly classified as non-exempt

1 employees;

2 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
3 this Complaint was and is unlawful;

4 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
5 employment taxes as required by state and federal tax laws;

6 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
7 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
8 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
9 provisions of California State law;

10 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
11 CLASS members with accurate records of all time worked;

12 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
13 conduct; and,

14 (h) Whether DEFENDANT's conduct was willful.

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

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

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

23 (c) The claims of the representative PLAINTIFF are typical of the claims of each
24 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
25 classified as an independent contractor upon hiring based on the defined corporate policies and practices
26 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
27 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
28 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or

1 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
2 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
3 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
4 insurance, and reimbursement for business expenses based on the defined corporate policies and
5 practices, and unfairly failed to pay these employees who were improperly classified as independent
6 contractors; and,

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

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

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

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

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

24 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
25 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
26 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
27 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
28 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as

1 independent contractors, and thereby denied these employees' wages and payments for business
2 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

3 (i) With respect to the First Cause of Action, the final relief on behalf of the
4 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
5 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
6 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
7 declared to constitute unfair competition.

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

13 (i) The interest of the CALIFORNIA CLASS members in individually
14 controlling the prosecution or defense of separate actions;

15 (ii) The extent and nature of any litigation concerning the controversy already
16 commenced by or against members of the CALIFORNIA CLASS;

17 (iii) In the context of wage litigation because as a practical matter a substantial
18 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
19 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
20 with a subsequent employer, the Class Action is the only means to assert their claims through a
21 representative;

22 (iv) The desirability or undesirability of concentration the litigation of the
23 claims in the particular forum;

24 (v) The difficulties likely to be encountered in the management of a Class
25 Action; and,

26 (vi) The basis of DEFENDANT'S policies and practices applied to all the
27 CALIFORNIA CLASS members.

28 46. The Court should permit this Action to be maintained as a Class Action pursuant to Cal.

1 Code of Civ. Proc. § 382 because:

2 (a) The questions of law and fact common to the CALIFORNIA CLASS
3 predominate over any question affecting only individual members;

4 (b) A Class Action is superior to any other available method for the fair and efficient
5 adjudication of the claims of the members of the CALIFORNIA CLASS;

6 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
7 bring all CALIFORNIA CLASS members before the Court;

8 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
9 effective and economic legal redress unless the action is maintained as a Class Action;

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

14 (f) There is a community of interest in ensuring that the combined assets and
15 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
16 CLASS members for any injuries sustained;

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

20 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
21 business records of DEFENDANT; and,

22 (i) Class treatment provides manageable judicial treatment calculated to bring an
23 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
24 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

25 47. DEFENDANT maintain records from which the Court can ascertain and identify by
26 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
27 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
28 leave to amend the complaint to include any additional job titles of similarly situated employees when

1 they have been identified.

2 **THE CALIFORNIA LABOR SUB-CLASS**

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

11 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
12 of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”)
13 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
14 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
16 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
17 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
19 should be adjusted accordingly.

20 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
21 title each of DEFENDANT’S employees who as CALIFORNIA LABOR SUB-CLASS Members
22 have been systematically, intentionally and uniformly misclassified as independent contractors as a
23 matter of DEFENDANT’S corporate policy, practices and procedures. PLAINTIFF will seek leave to
24 amend the complaint to include these additional job titles when they have been identified.

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

27 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
28 California law by:

1 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
2 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
3 correct minimum wages for which DEFENDANT is liable;

4 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
5 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
6 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
7 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

8 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
9 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
10 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

11 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
13 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
14 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
15 of time worked at each hourly rate by the employee;

16 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
17 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
18 their job duties; and,

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

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

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

1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
2 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
3 to every member of the CALIFORNIA LABOR SUB-CLASS;

4 (c) The claims of the representative PLAINTIFF are typical of the claims of each
5 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
6 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
7 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
8 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
9 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
10 violations of the laws of California; and,

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

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

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

27 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
28 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making

1 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
2 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
3 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
4 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
5 independent contractors, and thereby denied these employees the protections afforded to them under
6 the California Labor Code;

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

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

17 ii) Class certification will obviate the need for unduly duplicative litigation
18 that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
21 of conduct for the DEFENDANT; and/or,

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

26 iii) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of
28 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with

1 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims
2 through a representative; and,

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

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

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

12 b) A Class Action is superior to any other available method for the fair and efficient
13 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
14 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
15 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
16 impact on their employment;

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

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

22 (e) There is a community of interest in obtaining appropriate legal and equitable
23 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
24 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
25 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

4 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT; and,

6 (i) Class treatment provides manageable judicial treatment calculated to bring a
7 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
8 conduct of DEFENDANT.

9 **JURISDICTION AND VENUE**

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

14 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
15 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
16 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
17 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
18 CALIFORNIA LABOR SUB-CLASS.

19 **FIRST CAUSE OF ACTION**

20 **For Unlawful, Unfair and Deceptive Business Practices**

21 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT)**

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

25 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
26 17021.

27 60. Section 17200 of the California Business & Professions Code defines unfair competition
28 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of

1 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
2 equitable relief with respect to unfair competition as follows:

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

11 California Business & Professions Code § 17203.

12 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
13 business practice which violates California law, including but not limited to the applicable Industrial
14 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
15 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
16 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
17 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
18 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment
19 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
20 compensation insurance.

21 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
22 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
23 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
24 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
25 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
26 afford adequate and complete relief.

27 63. All the acts described herein as violations of, among other things, the California Labor
28 Code, California Code of Regulations and the Industrial Welfare Commission Wage Orders, were

1 unlawful, were in violation of public policy, were immoral, unethical, oppressive, and unscrupulous,
2 and were likely to deceive employees, and thereby constitute deceptive, unfair and unlawful business
3 practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

4 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
5 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
6 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
7 insurance and other benefits as required by California law, when in fact these representations were false
8 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
9 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

26 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
28 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period

1 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
2 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

3 70. PLAINTIFF further demands on behalf of herself and each member of the
4 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
5 provided as required by law.

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

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

17 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
18 do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
20 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

1 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
2 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
3 business practices.

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 and Against All DEFENDANT)**

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

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

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

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

20 80. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
21 including minimum wage compensation and interest thereon, together with the costs of suit.

22 81. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
23 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
24 As set forth herein, DEFENDANT’S policy and practice was to unlawfully and intentionally deny
25 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
26 SUB-CLASS.

27 82. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of

1 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

8 84. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
10 correct minimum wage compensation for their time worked for DEFENDANT.

11 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
13 entitled to, constituting a failure to pay all earned wages.

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

19 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
21 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
22 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
23 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

25 88. In performing the acts and practices herein alleged in violation of California labor laws,
26 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
27 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
2 the consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of these
4 employees.

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure to Pay Overtime Wages**

18 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

20 90. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
23 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
24 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
25 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
26 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
27 DEFENDANT'S business records and witnessed by DEFENDANT'S employees.

28 92. By virtue of DEFENDANT'S unlawful failure to pay compensation to PLAINTIFF and

1 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
3 economic in amounts which are presently unknown to them and which can be ascertained according to
4 proof at trial.

5 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
6 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
7 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
8 corporate policy, practice and procedure.

9 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
10 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
11 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
12 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
13 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
14 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
15 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
16 recover statutory costs.

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **DEFENDANT)**

6 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
8 Complaint.

9 97. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time,
10 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the
11 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
12 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-
13 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the
14 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
15 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of
16 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide
17 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
18 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a
19 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
20 forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict
21 corporate policy and practice.

22 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
23 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
24 Members who were not provided a meal period, in accordance with the applicable Wage Order, one
25 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
26 period was not provided.

27 99. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek

1 all wages earned and due, interest, penalties, expenses and costs of suit.

2 **FIFTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code §§ 226.7 & 512]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

6 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
8 Complaint.

9 101. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
10 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
11 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for
12 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
13 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
14 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
15 other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in
16 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
18 and DEFENDANT'S managers.

19 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
20 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
21 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
22 additional hour of compensation at each employee's regular rate of pay for each workday that rest
23 period was not provided.

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

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

15 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
16 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
17 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
18 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
19 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
20 (7) the name of the employee and only the last four digits of the employee's social security number or
21 an employee identification number other than a social security number, (8) the name and address of the
22 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee.

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

28 108. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,

1 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
2 These damages include, but are not limited to, costs expended calculating the true amount of time
3 worked and the amount of employment taxes which were not properly paid to state and federal tax
4 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
5 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
6 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
7 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
8 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
9 SUB-CLASS herein).

10 **SEVENTH CAUSE OF ACTION**

11 **For Failure to Reimburse Employees for Required Expenses**

12 **[Cal. Lab. Code § 2802]**

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

14 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
15 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

16 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
23 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
24 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. Specifically,
25 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
26 for expenses which included, but were not limited to, the cost associated with the use of their personal
27 cellular phones for DEFENDANT'S benefit. Further, from time to time during the CLASS PERIOD,
28 in the course of their employment PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS

1 members as a business expense, were required by DEFENDANT to use their personal expenses in order
2 to pay rent to DEFENDANT for using DEFENDANT’S healthcare facilities. In order to work for
3 DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required
4 to use their cell phone to contact patients and as such it is mandatory to have a cell phone. Further, in
5 order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
6 Members were required to use their personal expenses in order to pay rent to DEFENDANT for using
7 DEFENDANT’s healthcare facilities in order to perform work for DEFENDANT. As a result, in the
8 course of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
9 LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not limited
10 to, the costs related to the use of their personal cellular phones and personal expenses for the payment
11 of rent all on behalf of and for the benefit of DEFENDANT. This expense is necessary to complete
12 their principal job duties. DEFENDANT is estopped by DEFENDANT’S conduct to assert any waiver
13 of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
14 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
15 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer
16 is required to do under the laws and regulations of California.

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

21 **EIGHTH CAUSE OF ACTION**

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

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

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

25 113. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

28 114. Cal. Lab. Code § 200 states that:

1 As used in this article:

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

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

10 115. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
11 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

12 116. Cal. Lab. Code § 202 states, in relevant part, that:

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

23 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
24 CLASS Members' employment contract.

25 118. Cal. Lab. Code § 203 states:

26 If an employer willfully fails to pay, without abatement or reduction, in
27 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
28 employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid
2 or until an action therefor is commenced; but the wages shall not continue
3 for more than 30 days.

4 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
5 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
6 not timely tender payment of all wages owed as required by law.

7 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
8 the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty
9 days of pay as penalty for not paying all wages due at time of termination for all individuals in the
10 CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR
11 SUB-CLASS PERIOD plus interest and statutory costs as allowed.

12 **NINTH CAUSE OF ACTION**

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

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

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

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

18 122. PAGA is a mechanism by which the State of California itself can enforce state labor
19 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The purpose
22 of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens
23 as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
24 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
25 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1).
26 Accordingly, PAGA claims cannot be subject to arbitration.

27 123. PLAINTIFF, and such persons that may be added from time to time who satisfy the
28 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring

1 this Representative Action on behalf of the State of California with respect to herself and all non-
2 exempt and exempt employees who worked for Defendant in California during the time period of
3 March 15, 2021 until the present (the "AGGRIEVED EMPLOYEES").

4 124. On March 15, 2022, PLAINTIFF gave written notice by certified mail to the Labor and
5 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
6 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
7 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add
8 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may
9 now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
10 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

2 B) An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

4 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
5 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
6 CALIFORNIA CLASS; and,

7 D) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
8 for restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF and to the other
9 members of the CALIFORNIA CLASS.

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

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

14 B) Compensatory damages, according to proof at trial, including compensation due
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
16 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

17 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
18 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
19 commenced, in accordance with Cal. Lab. Code § 203;

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

24 E) Meal and rest period compensation pursuant to California Labor Code Section
25 226.7 and the applicable IWC Wage Order;

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

28 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

EXHIBIT 1



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March 15, 2022

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

BASS MEDIAL GROUP

c/o Donald Bouey

1615 Bonanza Street

Walnut Creek, CA 94596

Sent Via Certified Mail & Receipt No. 7021 1970 0001 4068 3445

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

Dear Sir/Madam:

Our offices represent Plaintiff KIRA CHAMBERS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant BASS MEDICAL GROUP (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff worked for Defendant in California from 2018 to February of 2022. Plaintiff was classified by Defendant as an independent contractor, however the job duties performed by Plaintiff and other aggrieved employees did not entitle Defendant to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiff or any of the other workers who were classified as independent contractors. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. 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.

As a consequence of the aforementioned violations, 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). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees, exempt employees, and individuals classified as independent contractors who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) 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.

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff KIRA CHAMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

KIRA CHAMBERS, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BASS MEDICAL GROUP, a California
corporation; and DOES 1 through 30,
Inclusive;

DEFENDANT.

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

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8. FAILURE TO PROVIDE WAGES WHEN DUE
IN VIOLATION OF CAL. LAB. CODE §§ 201,
202 AND 203.

DEMAND FOR JURY TRIAL

Plaintiff KIRA CHAMBERS ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former independent contractors alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a massage therapist in California for defendant BASS MEDICAL GROUP, a California corporation ("DEFENDANT"). PLAINTIFF alleges that DEFENDANT has violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANT has misclassified its California employees as independent contractors. In order to provide services to their patients, DEFENDANT hires California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's healthcare specialist services to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other similarly situated California employees. As employer, DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those similarly situated misclassified independent contractors as

1 DEFENDANT's employees, the cost of the employer's share of payments to the federal and state
2 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
3 and payments for workers' compensation insurance, plus penalties and interest.

4 THE PARTIES

5 2. DEFENDANT is a California corporation, that at all relevant times mentioned herein
6 conducted and continues to conduct substantial business in the State of California, County of Contra
7 Costa, and provides healthcare specialist services.

8 3. DEFENDANT utilizes independent contractors to provide its clients with a variety of
9 healthcare services.

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

19 5. The agents, servants and/or employees of the DEFENDANT and each of them acting
20 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
21 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
22 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
23 Consequently, the acts of DEFENDANT are legally attributable to the other and all DEFENDANTS
24 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
25 proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

26 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
27 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
28 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

1 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
2 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

3 7. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
4 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
5 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
6 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
7 for each underpaid employee.

8 8. PLAINTIFF worked as a massage therapist for DEFENDANT from 2018 to February
9 of 2022 and was at all times during her employment classified by DEFENDANT as an independent
10 contractor.

11 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
12 individuals who worked for DEFENDANT in California as independent contractors ("CALIFORNIA
13 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
14 and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in
15 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
16 (\$5,000,000.00).

17 10. DEFENDANT's uniform policies and practices alleged herein were unlawful, unfair
18 and deceptive business practices whereby DEFENDANT retained and continues to retain wages and
19 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

20 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
21 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
22 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past
23 and current unlawful conduct, and all other appropriate legal and equitable relief.

24 **THE CONDUCT**

25 **A. Misclassification**

26 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers
27 as independent contractors, hired to perform work and services core to DEFENDANT's businesses, in
28 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that

1 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
2 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
3 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
4 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
5 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
6 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
7 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
8 law.” Cal. Labor Code § 226.8.

9 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
10 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
11 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
12 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
13 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages besides
14 the non-negotiable hourly rate and/or flat rate, and they were not allowed to record their time while
15 they waited for DEFENDANT to give them work. Specifically, PLAINTIFF and other CALIFORNIA
16 CLASS members were only paid an hourly rate and/or flat rate per patient seen that DEFENDANT
17 unilaterally prescribed for each job. For example, DEFENDANT would assign PLAINTIFF at least
18 seven to eight (7-8) patients per day that resulted, from time to time, in PLAINTIFF working throughout
19 her shift without the legally-required meal and rest periods. DEFENDANT only paid PLAINTIFF a
20 flat rate per patient and failed to pay PLAINTIFF any compensation for overtime wages at the overtime
21 rate of one-and-a-half times the regular rate of pay for any time spent working in excess of eight (8)
22 hours in a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. The finite
23 set of tasks required to be performed by the workers is, when notified via cell phone, travel to
24 DEFENDANT’s healthcare facility to perform jobs, including but not limited to, message therapy, all
25 in accordance with DEFENDANT’s business practices and policies.

26 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
27 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
28 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members

1 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
2 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
3 employees.

4 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
5 members as defined by DEFENDANT was executed by them through the performance of non-exempt
6 labor. Specifically, PLAINTIFF and other CALIFORNIA CLASS members performed non-exempt
7 tasks, including but not limited to, caring for patients by assessing their physical health, obtaining
8 physical index tests on patients, obtaining medical clearances, charting patients progress, and
9 performing message therapy on patients.

10 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
11 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
12 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
13 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
14 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
15 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
16 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
17 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
18 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
19 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
20 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
21 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
22 CLASS members as employees and thereby failed to pay them wages for all time worked,
23 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
24 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

25 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
26 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
27 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
28 Members as independent contractors in violation of the California Labor Code and regulations

1 promulgated thereunder.

2 i. **Plaintiff and Other Members of the California Class Were Not Free from**
3 **the Control and Direction of Defendant**

4 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
5 other similarly situated misclassified California workers by, among other things, scheduling hours of
6 work, providing job site facility, enforcing a dress code and issuing written policies and procedures for
7 the performance of work and conduct in the workplace. Upon hire, the position was represented by
8 DEFENDANT to PLAINTIFF and the other workers as an independent contractor position in exchange
9 for an hourly rate and/or flat rate of pay for the time they spend providing labor and services to
10 DEFENDANT's third-party clients and patients.

11 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
12 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
13 to exercise complete control over the work performed and the manner and means in which the work
14 was performed. DEFENDANT provided the patients and DEFENDANT provided the instructions as
15 to how to perform their work. Specifically, DEFENDANT issues policies and procedures regarding
16 every work-related task performed by PLAINTIFF and other CALIFORNIA CLASS members,
17 including control and direction regarding, caring for patients by assessing their physical health,
18 obtaining physical index tests on patients, obtaining medical clearances, charting patients' progress,
19 performing massage therapy on patients, and submitting requests to DEFENDANT for time-off, all in
20 accordance with DEFENDANT's business practices and policies.

21 20. California Labor Code § 3357 defines "employee" as "every person in the service of an
22 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
23 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
24 presumption that workers are employees, the California Supreme Court has determined the most
25 significant factor to be considered in distinguishing an independent contractor from an employee is
26 whether the *employer or principal has control or the right to control the work both as to the work*
27 *performed and the manner and means in which the work is performed.* DEFENDANT heavily
28 controlled both the work performed and the manner and means in which the PLAINTIFF and other

1 workers performed their work in that:

2 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
3 involved in a distinct business, but instead were provided with instructions as to how to
4 perform their work and the manner and means in which the work was to be performed
5 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

6 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were
7 continuously provided with training and supervision, including following
8 DEFENDANT's company documents, and received training from DEFENDANT as to
9 how and in what way to perform the services;

10 (c) DEFENDANT set the requirements as to what policies and procedures all of the
11 workers were to follow, including but not limited to, flat rates and/or hourly rates and
12 location of assignment;

13 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
14 opportunity for profit or loss because DEFENDANT only paid these workers a flat rate
15 and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks
16 were to be performed;

17 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
18 services and labor which are part of the core of DEFENDANT's principal business and
19 is closely integrated with and essential to the employer's business of services and labor
20 to their patients;

21 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
22 work themselves and did not hire others to perform their work for them;

23 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the
24 authority to make employment-related personnel decisions;

25 (h) PLAINTIFF and other members of the CALIFORNIA CLASS were provided
26 with schedules to follow and patients to treat in accordance with DEFENDANT'S
27 instructions;

28 (i) PLAINTIFF and other members of the CALIFORNIA CLASS performed their

1 work in a particular order and sequence in accordance with DEFENDANTS' company
2 policies; and,

3 (j) DEFENDANT had the "right" to control every critical aspect of DEFENDANT
4 labor operation in that DEFENDANT provided the client or patient, assigned where
5 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned
6 the hourly rate or flat rate, enforced a dress code, and step by step instructions to
7 PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process
8 of working at DEFENDANTS' facility. PLAINTIFF and other workers provided
9 services and labor for DEFENDANTS' patients and were not actually in business for
10 themselves.

11 **ii. Plaintiff and Other Members of the California Class Did Not Perform Work**
12 **Outside the Usual Course of Defendant's Business**

13 21. DEFENDANT willfully misclassified PLAINTIFF and other members of the
14 CALIFORNIA CLASS who provided DEFENDANT with healthcare services for DEFENDANT's
15 clients. In other words, PLAINTIFF and other similarly situated California workers provided
16 DEFENDANT with work and services within the usual course of DEFENDANT's business.

17 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
18 CALIFORNIA CLASS as a provider of specialized healthcare services. As a result, DEFENDANT
19 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
20 CLASS as a provider of specialized healthcare services. Therefore, the performance of caring for
21 patients by assessing their physical health, obtaining physical index tests on patients, obtaining medical
22 clearances, charting patients progress, and performing message therapy on patients' by PLAINTIFF
23 and other members of the CALIFORNIA CLASS is not outside DEFENDANT'S usual course of
24 business.

25 **iii. Plaintiff and Other Members of the California Class Were Not Engaged in**
26 **an Independently Established Trade, Occupation, or Business of the Same**
27 **Nature as the Work Performed for Defendant**

28 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not

1 engaged in a customarily independently established trade, occupation or business as the same nature of
2 the work performed.

3 **B. Meal Period Violations**

4 24. In California, an employer may not employ an employee for a work period of more than
5 five hours per day without providing the employee with a duty-free meal period of not less than thirty
6 minutes, except that if the total work period per day of the employee is no more than six hours, the
7 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
8 meal period of not less than thirty minutes is required if an employee works more than ten hours per
9 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
10 may be waived by mutual consent of the employer and employee only if the first meal period was not
11 waived. Labor Code Section 512.

12 25. If an employer fails to provide an employee a duty-free meal period in accordance with
13 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
14 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
15 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

16 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
17 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
18 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
19 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
20 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
21 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
22 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
23 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
24 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
25 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
26 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
27 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

28 ///

1 **C. Rest Period Violations**

2 27. The applicable IWC Wage Order requires that employers must authorize and permit
3 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
4 each work period. The rest period is based on the total hours worked daily and must be at the minimum
5 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
6 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
7 “major fraction” of four. A rest period is not required for employees whose total daily work time is less
8 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
9 must pay for such periods.

10 28. If an employer fails to provide an employee a rest period in accordance with an applicable
11 IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular
12 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
13 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
14 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
15 was not provided during that workday.

16 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
17 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
18 CLASS members were also required to work in excess of four (4) hours without being provided ten
19 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
20 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
21 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
22 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
23 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
24 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
26 rest periods by DEFENDANT and DEFENDANT’S managers.

27 **D. Failure to Pay Minimum, Regular and Overtime Wages**

28 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately

1 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
2 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
3 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
4 the time during which an employee was subject to the control of an employer, including all the time
5 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
6 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
7 under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
8 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
9 these employees overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time
10 worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum
11 wages and overtime wage compensation by working without their time being correctly recorded and
12 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
13 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
14 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
15 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
16 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

17 **E. Failure to Reimburse Necessary and Required Business Expenses**

18 31. Under California Labor Code Section 2802, employers are required to indemnify
19 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
20 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
23 employee, at the time of obeying the directions, believed them to be unlawful."

24 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate
25 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
26 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
27 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
28 behalf of DEFENDANT.

1 33. From time-to-time during the CLASS PERIOD, in the course of their employment
2 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
3 DEFENDANT to use personal cellular phones as a result of and in furtherance of their job duties as
4 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
5 associated with the use of the personal cellular phones for DEFENDANT's benefit. Further, from time
6 to time during the CLASS PERIOD, in the course of their employment PLAINTIFF and other
7 CALIFORNIA CLASS members as a business expense, were required by DEFENDANT to use their
8 personal expenses in order to pay rent to DEFENDANT for using DEFENDANT'S healthcare
9 facilities. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members
10 were required to use their personal cell phones to contact patients and as such it is mandatory to have
11 a cell phone. Further, in order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA
12 CLASS Members were required to use their personal expenses in order to pay rent to DEFENDANT
13 for using DEFENDANT's healthcare facilities in order to perform work for DEFENDANT. As a result,
14 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
15 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
16 to, costs related to the use of their personal cellular phones and personal expenses incurred for rent
17 payments on behalf of and for the benefit of DEFENDANT.

18 **F. Wage Statement Violations**

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

27 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
28 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the

1 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
2 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
3 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
4 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
5 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
6 last four digits of the employee's social security number or an employee identification number other
7 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
8 all applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee.

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

14 **G. Unfair Competition**

15 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
16 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
17 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
18 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
19 CALIFORNIA CLASS members as employees. The proper classification of these employees is
20 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
21 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
22 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
23 promulgated thereunder as herein alleged.

24 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
25 independent contractor and thus did not receive pay for all time worked, including minimum and
26 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
27 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
28 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited

1 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
3 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
4 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
5 does not exceed the sum or value of \$75,000.

6 THE CALIFORNIA CLASS

7 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
9 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
10 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
11 Members is under five million dollars (\$5,000,000.00).

12 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
13 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

14 41. All CALIFORNIA CLASS members who performed and continue to perform this work
15 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
16 DEFENDANT's policy and practice that required them to perform work without compensation as
17 required by law.

18 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
19 the CALIFORNIA CLASS members under California law, without limitation, in the following
20 manners:

21 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
22 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
23 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
24 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
25 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
26 insurance and workers' compensation insurance;

27 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
28 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,

1 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
2 members as independent contractors;

3 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
5 policy, practice and procedure that accurately determined the amount of working time spent by
6 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

7 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
9 CALIFORNIA CLASS with all legally required meal and rest breaks;

10 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
11 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
12 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
13 duties; and,

14 (f) Committing an act of unfair competition in violation of the UCL, by violating
15 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
16 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
17 unpaid overtime to the benefit of DEFENDANT.

18 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
19 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
20 CLASS PERIOD. These questions include, but are not limited, to the following:

21 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
22 misclassified as independent contractors by DEFENDANT;

23 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
24 all the protections of the California Labor Code that apply when properly classified as non-exempt
25 employees;

26 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
27 this Complaint was and is unlawful;

28 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal

1 employment taxes as required by state and federal tax laws;

2 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
3 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
4 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
5 provisions of California State law;

6 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
7 CLASS members with accurate records of all time worked;

8 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
9 conduct; and,

10 (h) Whether DEFENDANT's conduct was willful.

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

13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
14 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
15 parties and the Court;

16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
18 CALIFORNIA CLASS member;

19 (c) The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
21 classified as an independent contractor upon hiring based on the defined corporate policies and practices
22 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
23 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
24 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
25 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
26 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
27 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
28 insurance, and reimbursement for business expenses based on the defined corporate policies and

1 practices, and unfairly failed to pay these employees who were improperly classified as independent
2 contractors; and,

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

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

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

14 (i) Inconsistent or varying adjudications with respect to individual members
15 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
16 opposing the CALIFORNIA CLASS; and/or,

17 (ii) Adjudication with respect to individual members of the CALIFORNIA
18 CLASS which would as a practical matter be dispositive of the interests of the other members not party
19 to the adjudication or substantially impair or impeded their ability to protect their interests.

20 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
21 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
22 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
23 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
24 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
25 independent contractors, and thereby denied these employees' wages and payments for business
26 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

27 (i) With respect to the First Cause of Action, the final relief on behalf of the
28 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the

1 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
2 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
3 declared to constitute unfair competition.

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

9 (i) The interest of the CALIFORNIA CLASS members in individually
10 controlling the prosecution or defense of separate actions;

11 (ii) The extent and nature of any litigation concerning the controversy already
12 commenced by or against members of the CALIFORNIA CLASS;

13 (iii) In the context of wage litigation because as a practical matter a substantial
14 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
15 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to assert their claims through a
17 representative;

18 (iv) The desirability or undesirability of concentration the litigation of the
19 claims in the particular forum;

20 (v) The difficulties likely to be encountered in the management of a Class
21 Action; and,

22 (vi) The basis of DEFENDANT'S policies and practices applied to all the
23 CALIFORNIA CLASS members.

24 46. The Court should permit this Action to be maintained as a Class Action pursuant to Cal.
25 Code of Civ. Proc. § 382 because:

26 (a) The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual members;

28 (b) A Class Action is superior to any other available method for the fair and efficient

1 adjudication of the claims of the members of the CALIFORNIA CLASS;

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

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

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

10 (f) There is a community of interest in ensuring that the combined assets and
11 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
12 CLASS members for any injuries sustained;

13 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to
14 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
15 CLASS as a whole;

16 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
17 business records of DEFENDANT; and,

18 (i) Class treatment provides manageable judicial treatment calculated to bring an
19 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
20 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

21 47. DEFENDANT maintain records from which the Court can ascertain and identify by
22 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
23 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
24 leave to amend the complaint to include any additional job titles of similarly situated employees when
25 they have been identified.

26 **THE CALIFORNIA LABOR SUB-CLASS**

27 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
28 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA

1 CLASS who are or previously were employed by DEFENDANT in California as independent
2 contractors (the “CALIFORNIA LABOR SUB-CLASS) at any time during the period three (3) years
3 prior to the filing of the Complaint and ending on the date as determined by the Court (the
4 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc § 382. The
5 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
6 under five million dollars (\$5,000,000.00).

7 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
8 of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”)
9 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
10 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
11 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
12 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
13 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
14 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
15 should be adjusted accordingly.

16 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
17 title each of DEFENDANT’S employees who as CALIFORNIA LABOR SUB-CLASS Members
18 have been systematically, intentionally and uniformly misclassified as independent contractors as a
19 matter of DEFENDANT’S corporate policy, practices and procedures. PLAINTIFF will seek leave to
20 amend the complaint to include these additional job titles when they have been identified.

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

23 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
24 California law by:

25 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
26 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
27 correct minimum wages for which DEFENDANT is liable;

28 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing

1 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
2 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

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

7 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
9 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
10 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
11 of time worked at each hourly rate by the employee;

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

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

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

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

25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
26 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
27 to every member of the CALIFORNIA LABOR SUB-CLASS;

28 (c) The claims of the representative PLAINTIFF are typical of the claims of each

1 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
2 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
3 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
4 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
5 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
6 violations of the laws of California; and,

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

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

15 (a) Without class certification and determination of declaratory, injunctive,
16 statutory and other legal questions within the class format, prosecution of separate actions by individual
17 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
18 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
19 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
20 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
21 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
22 party to the adjudication or substantially impair or impede their ability to protect their interests.

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
24 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
25 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
26 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
27 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
28 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as

1 independent contractors, and thereby denied these employees the protections afforded to them under
2 the California Labor Code;

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

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

13 ii) Class certification will obviate the need for unduly duplicative litigation
14 that would create the risk of:

15 A. Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
17 of conduct for the DEFENDANT; and/or,

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

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

27 iv) A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will obviate the need for unduly and

1 unnecessary duplicative litigation that is likely to result in the absence of certification of this action
2 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

8 b) A Class Action is superior to any other available method for the fair and efficient
9 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
10 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
11 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
12 impact on their employment;

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

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

18 (e) There is a community of interest in obtaining appropriate legal and equitable
19 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
20 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
21 upon the CALIFORNIA LABOR SUB-CLASS;

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

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

28 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily

1 ascertainable from the business records of DEFENDANT; and,

2 (i) Class treatment provides manageable judicial treatment calculated to bring a
3 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
4 conduct of DEFENDANT.

5 **JURISDICTION AND VENUE**

6 56. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Action is
8 brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated employees of
9 DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

10 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
11 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
12 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
13 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
14 CALIFORNIA LABOR SUB-CLASS.

15 **FIRST CAUSE OF ACTION**

16 **For Unlawful, Unfair and Deceptive Business Practices**

17 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

18 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT)**

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

21 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
22 17021.

23 60. Section 17200 of the California Business & Professions Code defines unfair competition
24 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
25 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
26 equitable relief with respect to unfair competition as follows:

27 Any person who engages, has engaged, or proposes to engage in unfair
28 competition may be enjoined in any court of competent jurisdiction. The

1 court may take such orders or judgments, including the appointment of a
2 receiver, as may be necessary to prevent the use or employment by any
3 person of any practice which constitutes unfair competition, as defined in
4 this chapter, or as may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by
6 means of such unfair competition.

7 California Business & Professions Code § 17203.

8 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
9 business practice which violates California law, including but not limited to the applicable Industrial
10 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
11 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
12 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
13 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
14 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment
15 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
16 compensation insurance.

17 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
18 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
19 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
20 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
21 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
22 afford adequate and complete relief.

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

28 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent

1 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
2 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
3 insurance and other benefits as required by California law, when in fact these representations were false
4 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
5 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

22 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
24 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
25 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
26 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

27 70. PLAINTIFF further demands on behalf of herself and each member of the
28 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely

1 provided as required by law.

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

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

13 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
14 do, seek such relief as may be necessary to restore to them the money and property which
15 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
16 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

28 ///

1 **SECOND CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

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

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

8 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
9 a claim for DEFENDANT’S willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate and
11 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

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

14 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
16 minimum so fixed is unlawful.

17 80. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
18 including minimum wage compensation and interest thereon, together with the costs of suit.

19 81. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
20 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
21 As set forth herein, DEFENDANT’S policy and practice was to unlawfully and intentionally deny
22 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
23 SUB-CLASS.

24 82. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
26 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

28 83. In committing these violations of the California Labor Code, DEFENDANT inaccurately

1 calculate the correct time worked and consequently underpays the actual time worked by PLAINTIFF
2 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
3 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
4 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

5 84. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
7 correct minimum wage compensation for their time worked for DEFENDANT.

8 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
10 entitled to, constituting a failure to pay all earned wages.

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

16 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
17 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
18 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
20 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

1 employees.

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

13 **THIRD CAUSE OF ACTION**

14 **For Failure to Pay Overtime Wages**

15 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

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

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

19 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
20 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
21 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
22 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
23 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
24 DEFENDANT’S business records and witnessed by DEFENDANT’S employees.

25 92. By virtue of DEFENDANT’S unlawful failure to pay compensation to PLAINTIFF and
26 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
28 economic in amounts which are presently unknown to them and which can be ascertained according to

1 proof at trial.

2 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
3 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
4 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
5 corporate policy, practice and procedure.

6 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
7 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
8 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
9 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
10 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
11 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
12 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
13 recover statutory costs.

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

22 **FOURTH CAUSE OF ACTION**

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

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

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **DEFENDANT)**

27 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 97. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time,
3 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the
4 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
5 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-
6 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the
7 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
8 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of
9 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide
10 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
11 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a
12 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
13 forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict
14 corporate policy and practice.

15 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
16 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
17 Members who were not provided a meal period, in accordance with the applicable Wage Order, one
18 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
19 period was not provided.

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

23 **FIFTH CAUSE OF ACTION**

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

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

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

27 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 101. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
3 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
4 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for
5 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
6 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
7 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
8 other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in
9 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
10 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
11 and DEFENDANT’S managers.

12 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
13 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
14 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
15 additional hour of compensation at each employee’s regular rate of pay for each workday that rest
16 period was not provided.

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

20 **SIXTH CAUSE OF ACTION**

21 **For Failure to Provide Accurate Itemized Statements**

22 **[Cal. Lab. Code § 226]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

26 105. California Labor Code Section 226 requires an employer to furnish its employees an
27 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
28 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages

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

6 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
7 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
8 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
9 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
10 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
11 (7) the name of the employee and only the last four digits of the employee's social security number or
12 an employee identification number other than a social security number, (8) the name and address of the
13 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the employee.

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

19 108. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,
20 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
21 These damages include, but are not limited to, costs expended calculating the true amount of time
22 worked and the amount of employment taxes which were not properly paid to state and federal tax
23 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
24 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
25 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
26 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
27 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
28 SUB-CLASS herein).

1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

5 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
6 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

7 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

13 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
14 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
15 required expenses incurred in the discharge of their job duties for DEFENDANT’S benefit. Specifically,
16 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
17 for expenses which included, but were not limited to, the cost associated with the use of their personal
18 cellular phones for DEFENDANT’S benefit. Further, from time to time during the CLASS PERIOD,
19 in the course of their employment PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
20 members as a business expense, were required by DEFENDANT to use their personal expenses in order
21 to pay rent to DEFENDANT for using DEFENDANT’S healthcare facilities. In order to work for
22 DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required
23 to use their cell phone to contact patients and as such it is mandatory to have a cell phone. Further, in
24 order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were required to use their personal expenses in order to pay rent to DEFENDANT for using
26 DEFENDANT’s healthcare facilities in order to perform work for DEFENDANT. As a result, in the
27 course of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
28 LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not limited

1 to, the costs related to the use of their personal cellular phones and personal expenses for the payment
2 of rent all on behalf of and for the benefit of DEFENDANT. This expense is necessary to complete
3 their principal job duties. DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver
4 of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
6 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer
7 is required to do under the laws and regulations of California.

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

12 **EIGHTH CAUSE OF ACTION**

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

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

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

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

19 114. Cal. Lab. Code § 200 states that:

20 As used in this article:

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

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

1 115. Cal. Lab. Code § 201 states, in relevant part, that “If an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

3 116. Cal. Lab. Code § 202 states, in relevant part, that:

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

14 117. There was no definite term in PLAINTIFF’s or any other CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 118. Cal. Lab. Code § 203 states:

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

23 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
24 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
25 not timely tender payment of all wages owed as required by law.

26 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
27 the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty
28 days of pay as penalty for not paying all wages due at time of termination for all individuals in the

1 CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR
2 SUB-CLASS PERIOD plus interest and statutory costs as allowed.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

9 B) An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

11 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
12 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and,

14 D) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF and to the other
16 members of the CALIFORNIA CLASS.

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

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

21 B) Compensatory damages, according to proof at trial, including compensation due
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
23 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

24 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
25 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
26 commenced, in accordance with Cal. Lab. Code § 203;

27 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
28 in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA

1 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty
2 of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

3 E) Meal and rest period compensation pursuant to California Labor Code Section
4 226.7 and the applicable IWC Wage Order;

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

7 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

8 3. On all claims:

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

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

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

13
14 Dated: March 15, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

15
16 By: 
17 Jean-Claude Lapuyade
18 Attorneys for PLAINTIFF

19 **DEMAND FOR JURY TRIAL**

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

21
22 Dated: March 15, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

23
24 By: 
25 Jean-Claude Lapuyade
26 Attorneys for PLAINTIFF

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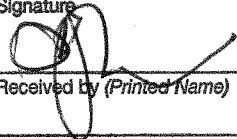
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