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County of Alameda

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By: Cheryl Clark, Deputy Clerk

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

Julieann Alvarado (State Bar #334727)

5440 Morehouse Dr., Ste 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

julieann@zakaylaw.com

Attorneys for Plaintiff MARINA ZAKHRABOVA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARINA ZAKHRABOVA, an individual, on
behalf of herself, and on behalf of all other
aggrieved employees,

PLAINTIFFS,

vs.

LASERAWAY MEDICAL GROUP, INC.;
and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: 22CV011653

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698, et
seq.

1 Plaintiff MARINA ZAKHRABOVA (“PLAINTIFF”) on behalf of the people of the State
2 of California and as “aggrieved employees” acting as a private attorney general under the Labor
3 Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against LASERAWAY MEDICAL GROUP, INC.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of all
9 current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not**
10 **seek to recover anything other than penalties as permitted by California Labor Code §**
11 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does
12 not seek underlying general and/or special damages for those violations in this action, but simply
13 the civil penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is
14 not abandoning her right to pursue her individual claims for, *inter alia*, DEFENDANT’s alleged
15 wage violations, and/or general or special damages arising from those violations, and she fully
16 intends to, at a future date, pursue claims for those individual claims and damages.

17 2. California has enacted the PAGA to permit an individual to bring an action on
18 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
19 nature of this action.

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

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THE PARTIES

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2 4. Defendant LASERAWAY MEDICAL GROUP, INC. (“DEFENDANT”) is a
3 California corporation that at all relevant times mentioned herein conducted and continues to
4 conduct substantial and regular business in the state of California, county of Alameda.

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

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

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

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

6 9. PLAINTIFF has been employed by DEFENDANT in California since January of
7 2021 was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
8 basis, and entitled to the legally required meal and rest periods and payment of minimum and
9 overtime wages due for all time worked.

10 10. PLAINTIFF, and such persons that may be added from time to time who satisfy the
11 requirements and exhaust the administrative procedures under the Private Attorney General Act,
12 bring this Representative Action on behalf of the State of California with respect to herself and all
13 individuals who are or previously were employed by DEFENDANTS as non-exempt employees
14 in California (the "AGGRIEVED EMPLOYEES") during the time period of March 11, 2021 until
15 the present (the "PAGA PERIOD").

16 11. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
17 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
18 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of
19 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,
20 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, & 2804 and
21 the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
22 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

23 **JURISDICTION AND VENUE**

24 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10.

26 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times
28 maintained offices and facilities in this County and/or conducts substantial business in this County,

1 and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and
2 the AGGRIEVED EMPLOYEES.

3 **THE CONDUCT**

4 14. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
6 matter of company policy, practice and procedure, intentionally, knowingly and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed
9 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed
10 compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate
12 PLAINTIFF and other AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed
13 to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and
14 failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate
15 itemized wage statements showing, among other things, all applicable hourly rates in effect during
16 the pay periods and the corresponding amount of time worked at each hourly rate.
17 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
18 and full payment for all time worked as required by California law which allows DEFENDANT
19 to illegally profit and gain an unfair advantage over competitors who comply with the law. To the
20 extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
21 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

22 **A. Meal Period Violations**

23 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
24 were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including all
26 the time the employee is suffered or permitted to work. From time-to-time during the PAGA
27 PERIOD, DEFENDANTS required PLAINTIFF AGGRIEVED EMPLOYEES to work without
28 paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of

1 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
2 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be
3 PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
4 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
5 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result,
6 the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
7 wages by regularly working without their time being accurately recorded and without
8 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
9 policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
10 worked is evidenced by DEFENDANTS' business records.

11 16. and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty
13 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
14 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
15 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
16 The nature of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does
17 not qualify for limited and narrowly construed "on-duty" meal period exception. When they were
18 provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time
19 to time, required to remain on duty, and on call. Further, from time to time, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or on the premises
21 during what was supposed to be their off-duty meal periods. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance
23 with DEFENDANTS' strict corporate policy and practice.

24 **B. Rest Period Violations**

25 17. From time-to-time during the PAGA PERIOD, PLAINTIFF and other
26 AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4)
27 hours without being provided ten (10) minute rest periods as a result of their rigorous work
28 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these

1 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
2 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
3 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
4 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
5 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
6 other AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and/or on
7 call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour
8 wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other AGGRIEVED
9 EMPLOYEES were required to remain on duty, on call, and/or on the premises during what was
10 supposed to be their off-duty rest periods. As a result of their rigorous work schedules and
11 DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
12 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
13 managers.

14 **C. Unreimbursed Business Expenses**

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

26 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
27 other AGGRIEVED EMPLOYEES to use their personal cell phone and personal internet plan as
28 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use

1 of their own personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could not
2 complete their essential job duties, including but not limited to sending and receiving work-related
3 communications from DEFENDANTS and completing various work-related tasks. However,
4 DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED
5 EMPLOYEES for their use of their personal cell phones. As a result, in the course of their
6 employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES
7 incurred unreimbursed business expenses, but were not limited to, costs related to the use of their
8 personal cellular phones, all on behalf of and for the benefit of DEFENDANT

9 **D. Wage Statement Violations**

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

18 21. From time to time during the PAGA PERIOD, when PLAINTIFF and other
19 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal
20 and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to
21 provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
22 statements which failed to show, among other things, the total hours worked and all applicable
23 hourly rates in effect during the pay period and the corresponding amount of time worked at each
24 hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

25 22. In addition to the violations described above, DEFENDANTS, from time to time,
26 failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that
27 comply with Cal. Lab. Code § 226.
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1 23. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
2 AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further,
3 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
4 unintentional payroll error due to clerical or inadvertent mistake.

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

6 24. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
7 continues to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all
8 hours worked.

9 25. During the PAGA PERIOD, from time-to-time DEFENDANTS required
10 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform work pre-shift, post-shift, and
11 during a scheduled meal break while off the clock. This resulted in PLAINTIFF and other members
12 of the AGGRIEVED EMPLOYEES having to work while off-the-clock.

13 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
14 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
16 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES.

18 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
20 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all
21 the work they performed, including pre-shift, post-shift, and during meal period off-the-clock
22 work.

23 29. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
24 employees, subject to the requirements of the California Labor Code.

25 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed for
27 the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED
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1 EMPLOYEES typically worked over 40 hours in a workweek, and more than eight (8) hours per
2 day, DEFENDANTS' policies and practices also deprived them of overtime pay.

3 31. DEFENDANTS knew or should have known that PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

5 32. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
6 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the
7 time spent performing work before and after shifts, receiving and responding to work-related
8 communications on personal cell phones outside of their scheduled shifts and working while
9 clocked out for meal periods. DEFENDANTS' uniform policy and practice to not pay
10 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
11 applicable law is evidenced by DEFENDANTS' business records.

12 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
13 **and Sick Pay**

14 33. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue
15 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
16 their overtime and double time hours worked, meal and rest period premiums, and sick pay. As a
17 result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for
18 working overtime without compensation at the correct overtime and double time rates, meal and
19 rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay
20 the AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal
21 and rest period premiums, and sick pay in accordance with applicable law is evidenced by
22 DEFENDANTS' business records.

23 34. State law provides that employees must be paid overtime at one-and-one-half times
24 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
25 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 35. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF

1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
3 basis with bonus compensation when the employees met the various performance goals set by
4 DEFENDANTS.

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

22 37. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
24 matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
26 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
27 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct
28 overtime and double time compensation, meal and rest period premiums, and sick pay as required

1 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll claims
3 by AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted
4 accordingly.

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

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

11 **H. Unlawful Deductions**

12 39. DEFENDANTS, from time-to-time unlawfully deducted wages from
13 PLAINTIFF and AGGRIEVED EMPLOYEES' pay without explanations and without
14 authorization to do so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a
15 result, DEFENDANTS violated Labor Code § 221.

16 40. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
21 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
22 with a rest break, they required PLAINTIFF to remain on-duty and on-call, for the rest break.
23 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
24 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
25 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
26 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed
27 to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse
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1 PLAINTIFF for her business expenses incurred on behalf of, and in furtherance of her
2 employment, with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
3 the minimum, overtime and double time compensation still owed to her or any penalty wages
4 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
5 does not exceed the sum or value of \$75,000.

6 **FIRST CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 2698 et seq.]**

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

10 37. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

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

21 44. PLAINTIFF, and such persons that may be added from time to time who satisfy the
22 requirements and exhaust the administrative procedures under the Private Attorney General Act,
23 bring this Representative Action on behalf of the State of California with respect to herself and all
24 and all non-exempt and exempt employees who worked for Defendant in California during the
25 time period of March 11, 2021 until the present (the "AGGRIEVED EMPLOYEES").

26 45. On March 11, 2022, PLAINTIFF gave written notice by certified mail to the Labor
27 and Workforce Development Agency (the "Agency") and the employer of the specific
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1 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
2 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
3 for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
4 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
5 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
6 EMPLOYEES as herein defined.

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

21 47. Some or all of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
24 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
25 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
26 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
27 Code violation committed by an employer—to **pursue penalties for all the Labor Code**

1 **violations committed by that employer.”]**, Emphasis added, reh'g denied (June 13, 2018).)

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

4 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law,
5 including pursuant to Labor Code § 2699, *et seq.*;

6 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under
7 the Private Attorneys General Act; and

8 For such other relief as the Court deems just and proper.

9
10 Dated: May 19, 2022

ZAKAY LAW GROUP, APLC

11 

12 Shani O. Zakay, Esq.
13 Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #47001

March 11, 2022

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

Online Filing

LASERAWAY MEDICAL GROUP, INC.

c/o PARACORP INCORPORATED

2804 Gateway Oaks Dr. #100

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3322

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 MARINA ZAKHRABOVA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant LASERAWAY MEDICAL GROUP, INC. (“Defendant”). Plaintiff has been employed by Defendant in California since January of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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 and exempt employees 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 are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against 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.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff MARINA ZAKHRABOVA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARINA ZAKHRABOVA, an individual(s),
on behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

LASERAWAY MEDICAL GROUP, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant LASERAWAY MEDICAL GROUP, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Alameda.

2. DEFENDANT provides aesthetic dermatological services in the State of California, including Alameda County, where PLAINTIFF worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

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

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

15 7. PLAINTIFF has been employed by DEFENDANT in California since January of
16 2021 was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
17 basis, and entitled to the legally required meal and rest periods and payment of minimum and
18 overtime wages due for all time worked.

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

25 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
27 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
28 lawfully compensate these employees.

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

10 **A. Meal Period Violations**

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

27 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
28 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other

1 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
2 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
3 other CALIFORNIA CLASS Members were required from time to time to perform work as
4 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
5 meal break. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
6 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
7 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
8 Members were, from time to time, required to remain on duty, and on call. Further, from time to
9 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
10 on call, and/or on the premises during what was supposed to be their off-duty meal periods.
11 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
12 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
13 practice.

14 **B. Rest Period Violations**

15 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS members were also required from time to time to work in excess of four
17 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
18 requirements and DEFENDANTS’ inadequate staffing. Further, for the same reasons these
19 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
20 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
21 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
22 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
23 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
24 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
25 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
26 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
27 CLASS Members were required to remain on duty, on call, and/or on the premises during what
28 was supposed to be their off-duty rest periods. As a result of their rigorous work schedules and

1 DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
2 were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
3 managers.

4 **C. Unreimbursed Business Expenses**

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

16 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
17 other CALIFORNIA CLASS Members to use their personal cell phone and personal internet plan
18 as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the
19 use of their own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members
20 could not complete their essential job duties, including but not limited to sending and receiving
21 work-related communications from DEFENDANTS and completing various work-related tasks.
22 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
23 CLASS Members for their use of their personal cell phones. As a result, in the course of their
24 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members
25 incurred unreimbursed business expenses, but were not limited to, costs related to the use of their
26 personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

27
28 ///

1 **D. Wage Statement Violations**

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

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

18 22. In addition to the violations described above, DEFENDANTS, from time to time,
19 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
20 that comply with Cal. Lab. Code § 226.

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

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

26 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
27 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
28 CLASS for all hours worked.

1 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
3 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
4 other members of the CALIFORNIA CLASS having to work while off-the-clock.

5 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
8 assignments, and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

10 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
13 wages earned and owed for all the work they performed, including pre-shift, post-shift, and during
14 meal period off-the-clock work.

15 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
16 exempt employees, subject to the requirements of the California Labor Code.

17 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
18 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
19 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
20 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
21 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

22 31. DEFENDANTS knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

24 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
25 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
26 for the time spent performing work before and after shifts, receiving and responding to work-
27 related communications on personal cell phones outside of their scheduled shifts and working
28 while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not pay

1 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
2 accordance with applicable law is evidenced by DEFENDANTS’ business records.

3 **F. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
4 **Sick Pay**

5 33. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
6 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
7 members for their overtime and double time hours worked, meal and rest period premiums, and
8 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
9 due them for working overtime without compensation at the correct overtime and double time
10 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and
11 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
12 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
13 law is evidenced by DEFENDANTS’ business records.

14 34. State law provides that employees must be paid overtime at one-and-one-half times
15 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
16 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
17 employee’s performance.

18 35. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
19 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
20 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
21 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
22 basis with bonus compensation when the employees met the various performance goals set by
23 DEFENDANTS.

24 36. However, from-time-to-time, when calculating the regular rate of pay, in those pay
25 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
26 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
27 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
28 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked

1 rather than just all non-overtime hours worked. As a matter of law, the compensation received
2 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
3 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
4 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
5 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
6 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
7 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek.
9 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
10 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
11 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
12 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
13 204.

14 37. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice and procedure, intentionally and knowingly failed to
17 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
18 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
19 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
20 payment of the correct overtime and double time compensation, meal and rest period premiums,
21 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
22 gain an unfair advantage over competitors who complied with the law. To the extent equitable
23 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
24 the CLASS PERIOD should be adjusted accordingly.

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

26 38. Pursuant to California Labor Code section 204, PLAINTIFF and the
27 CALIFORNIA CLASS members were entitled to timely payment of wages during their
28 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

1 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

3 **H. Unlawful Deductions**

4 39. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
5 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so
6 or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS
7 violated Labor Code § 221.

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

25 **I. CLASS ACTION ALLEGATIONS**

26 41. PLAINTIFF brings the First through Eighth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
28 and former non-exempt California employees ("CALIFORNIA CLASS") during the period

1 beginning four years prior to the filing of the Complaint and ending on a date determined by the
2 Court (“CLASS PERIOD”).

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

10 43. The members of the class are so numerous that joinder of all class members is
11 impractical.

12 44. Common questions of law and fact regarding DEFENDANTS’ conduct, including
13 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
14 provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure
15 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum
16 wage and overtime, exist as to all members of the class and predominate over any questions
17 affecting solely any individual members of the class. Among the questions of law and fact
18 common to the class are:

- 19 a. Whether DEFENDANTS maintained legally compliant meal period policies and
20 practices;
- 21 b. Whether DEFENDANTS maintained legally compliant rest period policies and
22 practices;
- 23 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
24 CLASS Members accurate premium payments for missed meal and rest periods;
- 25 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
26 CLASS Members accurate overtime and double time wages;
- 27 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
28 CLASS Members at least minimum wage for all hours worked;

- 1 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
- 2 CALIFORNIA CLASS Members for required business expenses;
- 3 g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF
- 4 and the CALIFORNIA CLASS Members' pay;
- 5 h. Whether DEFENDANTS issued legally compliant wage statements;
- 6 i. Whether DEFENDANTS committed an act of unfair competition by
- 7 systematically failing to record and pay PLAINTIFF and the other members of the
- 8 CALIFORNIA CLASS for all time worked;
- 9 j. Whether DEFENDANTS committed an act of unfair competition by
- 10 systematically failing to record all meal and rest breaks missed by PLAINTIFF
- 11 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
- 12 the benefit of this work, required employees to perform this work and permits or
- 13 suffers to permit this work;
- 14 k. Whether DEFENDANTS committed an act of unfair competition in violation of
- 15 the UCL, by failing to provide the PLAINTIFF and the other members of the
- 16 CALIFORNIA CLASS with the legally required meal and rest periods.

17 45. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
18 a result of DEFENDANTS' conduct and actions alleged herein.

19 46. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
20 the same interests as the other members of the class.

21 47. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 48. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

25 49. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
26 interests of the other CALIFORNIA CLASS Members.

27 50. There is a strong community of interest among PLAINTIFF and the members of
28 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
2 sustained.

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

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

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

21 53. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition
15 may be enjoined in any court of competent jurisdiction. The court may make such
16 orders or judgments, including the appointment of a receiver, as may be necessary
17 to prevent the use or employment by any person of any practice which constitutes
18 unfair competition, as defined in this chapter, or as may be necessary to restore to
19 any person in interest any money or property, real or personal, which may have
20 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
21 17203).

22 57. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
26 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
27 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
28 constitute unfair competition, including restitution of wages wrongfully withheld.

58. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
7 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
8 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
9 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

26 64. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

9 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
10 and 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
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
13 business practices, including earned but unpaid wages for all time worked.

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

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

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SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

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

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

70. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

72. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

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

74. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

75. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

1 76. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

7 77. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 78. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

25 81. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 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 CLASS with a conscious and utter disregard for their legal rights, or the
2 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
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 84. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 85. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

11 88. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
12 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
13 they worked, including overtime work.

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

21 90. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
24 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
25 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
26 regulations.

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1 91. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 92. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
10 DEFENDANT’s violations of non- negotiable, non-waivable rights provided by the State of
11 California.

12 93. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

15 94. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
16 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
20 evidenced by DEFENDANT’s business records and witnessed by employees.

21 95. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
22 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
23 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
24 CLASS have suffered and will continue to suffer an economic injury in amounts which are
25 presently unknown to them, and which will be ascertained according to proof at trial.

26 96. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

22 101. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
23 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
24 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
26 meal period was not provided.

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

11 104. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
12 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
13 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
14 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
15 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
17 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
18 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
20 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
21 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
22 periods is evidenced by DEFENDANT's business records.

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

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code §§ 226)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

- 1 i. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 109. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
10 from time to time, DEFENDANTS included Sick pay hours into the computation of total hours
11 worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Sick pay hours
12 are not considered hours worked. DEFENDANTS' inclusion of Sick pay hours into the total hours
13 worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA CLASS
14 Members violates Cal. Lab. Code § 226(a)(2). Additionally, from time to time, DEFENDANTS
15 failed to issue wage statements that provided the accurate name and address of the legal entity
16 that is the employer of PLAINTIFF and other CALIFORNIA CLASS Members.

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

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

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

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

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

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

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

11 As used in this article:

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

18 114. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
19 an employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately."

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

22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention
25 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
26 Notwithstanding any other provision of law, an employee who quits without providing a
27 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
28 designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

116. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
Members' employment contract.

117. Cal. Lab. Code § 203 provides:

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

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

3 118. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
5 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
6 required by law.

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

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§ 2802)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

19 121. Cal. Lab. Code § 2802 provides, in relevant part, that:

20 An employer shall indemnify his or her employee for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of
22 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

24 122. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
25 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
26 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
27 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
28 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of

1 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
2 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
3 their personal cellular phones for DEFENDANTS within the course and scope of their
4 employment for DEFENDANTS. These expenses were necessary to complete their principal job
5 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
6 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
7 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
8 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
9 is required to do under the laws and regulations of California.

10 123. PLAINTIFF therefore demands reimbursement on behalf of the members of the
11 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
12 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
13 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

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


28 2. On behalf of the CALIFORNIA CLASS:

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

DATED: March 11, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: March 11, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Laspraway Medical Group, Inc.
 c/o Paracorp. Incorp.
 2804 Gateway Oaks Dr., #100
 Sacramento, CA 95833



9590 9402 6815 1074 9825 62

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3322

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Evan Gilbreath*

Agent

Addressee

B. Received by (Printed Name)

Evan Gilbreath

C. Date of Delivery

3/18/22

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

Zakrabova 3.11.22 Page

3. Service Type

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