

**SUMMONS  
(CITACION JUDICIAL)**

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

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

MICARE CALIFORNIA, P.C., a California corporation; EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC, a Delaware limited liability company; (See Attachment)

E-FILED  
4/6/2023  
Superior Court of California  
County of Fresno  
By: Taharea Navarro, Deputy

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

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

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Fresno Superior Court  
1130 O Street, Fresno, CA 93724

CASE NUMBER:  
(Número del Caso): **23CECG01242**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jean-Claude Lapuyade, Esq. (SBN: 248676) 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; T: (619) 599-8292

DATE: **4/6/2023** Clerk, by **Taharea Navarro**, Deputy  
(Fecha) (Secretario) (Adjunto)

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



**NOTICE TO THE PERSON SERVED: You are served**

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

SHORT TITLE:

Vasquez v. MiCare California, P.C., et al.

CASE NUMBER:

23CECG01242

**INSTRUCTIONS FOR USE**

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

IMAGINE 360 ADMINISTRATORS, LLC, a Texas limited liability company; IMAGINE 360 LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,

**JCL LAW FIRM, APC**

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E-FILED  
4/3/2023 8:00 AM  
Superior Court of California  
County of Fresno  
By: Taharea Navarro, Deputy

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF FRESNO**

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

Plaintiffs,

v.

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

Defendants.

Case No: **23CECG01242**

**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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

**DEMAND FOR A JURY TRIAL**

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

**PRELIMINARY ALLEGATIONS**

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

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

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

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

5. Defendant MiCare, Defendant EBMS, Defendant Imagine 360 Administrators and Defendant Imagine 360 were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”



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

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

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

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

27           10.    The true names and capacities, whether individual, corporate, subsidiary,  
28 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are

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

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

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

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

27  
28



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

25 20. From time to time during the CLASS PERIOD, as a result of their rigorous work  
26 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
27 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
28 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other

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

16 **B. Rest Period Violations**

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

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

6 **C. Unreimbursed Business Expenses**

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

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

1 their personal cellular phones, the purchase of and maintenance of uniforms, and the purchase of  
2 their own equipment, all on behalf of and for the benefit of DEFENDANT.

3 **D. Wage Statement Violations**

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

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

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

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



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

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

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

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

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

16           32. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
17 assignments, and employment conditions of PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS.

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

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

25           35. DEFENDANT’s policies and practices deprived PLAINTIFF and the other  
26 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
27 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
28 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than

1 eight (8) hours per day, DEFENDANT’s policies and practices also deprived them of overtime  
2 pay.

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

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

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

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

23 39. State law provides that employees must be paid overtime at one-and-one-half times  
24 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were  
25 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
26 employee’s performance.

27 40. The second component of PLAINTIFF’S and other CALIFORNIA CLASS  
28 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid

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

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

23 42. In violation of the applicable sections of the California Labor Code and the  
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
25 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
26 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
27 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed  
28 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain

1 an unfair advantage over competitors who complied with the law. To the extent equitable tolling  
2 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the  
3 CLASS PERIOD should be adjusted accordingly.

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

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

10 **H. Unlawful Deductions**

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

15 **I. Timekeeping Manipulation**

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

25 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
26 time-to-time, forfeited time worked by working without their time being accurately recorded and  
27 without compensation at the applicable pay rates.  
28

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

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

14 **J. Unlawful Rounding Practices**

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

27           50. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
28 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time

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

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

### 23 **CLASS ACTION ALLEGATIONS**

24 52. PLAINTIFF brings this Class Action on behalf of herself, and a California class  
25 defined as all persons who are or previously were employed by Defendant MiCare and/or  
26 Defendant EBMS and/or Defendant Imagine 360 Administrators and/or Defendant Imagine 360  
27 in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time  
28 during the period beginning four (4) years prior to the filing of this Complaint and ending on the

1 date as determined by the Court (the “CLASS PERIOD”).

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

8 54. The members of the class are so numerous that joinder of all class members is  
9 impractical.

10 55. Common questions of law and fact regarding DEFENDANT’s conduct, including  
11 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately  
12 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
13 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
14 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide  
15 accurate itemized wage statements accurate, 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 DEFENDANT maintained legally compliant meal period policies and  
20 practices;
- 21 b. Whether DEFENDANT maintained legally compliant rest period policies and  
22 practices;
- 23 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
24 Members accurate premium payments for missed meal and rest periods;
- 25 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
26 Members accurate overtime wages;
- 27 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
28 Members at least minimum wage for all hours worked;



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

15 56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
16 a result of DEFENDANT’S conduct and actions alleged herein.

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

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

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

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

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



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

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

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

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

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

26           70.     By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
27 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally  
28 mandated meal and rest periods and the required amount of compensation for missed meal and  
rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all  
necessary business expenses incurred, due to a systematic business practice that cannot be  
justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission

1 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should  
2 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
3 restitution of wages wrongfully withheld.

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

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

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

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

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

26 76. All the acts described herein as violations of, among other things, the Industrial  
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
28 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business  
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 80. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
27 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
28

1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
2 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

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

25 87. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
27 minimum wage compensation for their time worked for DEFENDANT.  
28

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

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

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

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

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



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

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

28

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

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

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

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

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

28

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

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

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

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

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

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

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

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

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

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

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

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

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

## 15 **SIXTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

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

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

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

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

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

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

7 127. 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.

10 128. 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.

18 129. 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."

21 130. 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.

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

132. Cal. Lab. Code § 203 provides:

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

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.

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

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

11 **PRAYER FOR RELIEF**

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

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA CLASS:

- 26 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
27 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
28 to Cal. Code of Civ. Proc. § 382;  
b. Compensatory damages, according to proof at trial, including compensatory

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damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: March 31, 2023

**JCL LAW FIRM, APC**

By:   
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Jean-Claude Lapuyade  
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 31, 2023

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lapuyade  
Attorney for PLAINTIFF