

**SUMMONS
(CITACION JUDICIAL)**

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

HEALTHPRO HERITAGE, LLC, a South Carolina limited liability company;
(Additional Parties Attachment form is attached)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GERALDINE ABASTA, an individual, on behalf of herself, and on behalf of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/08/2023 at 03:10:38 PM
Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court - Hall of Justice Courthouse
330 West Broadway
San Diego, CA 92101

37-2023-00009663-CU-OE-CTL

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):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 03/09/2023
(Fecha)

Clerk, by _____, Deputy
(Secretario) C. Preston (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: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

SHORT TITLE: Geraldine Abasta v. Healthpro Heritage, LLC, et al.	CASE NUMBER:
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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

HEALTHPRO HERITAGE AT HOME, LLC, an Oklahoma limited liability company; NEW LIFE PHYSICAL THERAPY SERVICES, P.C., a California corporation; NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, INC., a California corporation; and DOES 1-50, Inclusive,

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 Jackland K. Hom (State Bar #327243)
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5 5440 Morehouse Drive, Suite 5400
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12 **JCL LAW FIRM, APC**
13 Jean-Claude Lapuyade (State Bar #248676)
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16 Telephone: (619) 599-8292
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19 Attorneys for PLAINTIFF

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SAN DIEGO**

22 GERALDINE ABASTA, an individual, on
23 behalf of herself, and on behalf of all persons
24 similarly situated,

25 Plaintiffs,

26 v.

27 HEALTHPRO HERITAGE, LLC, a South
28 Carolina limited liability company;
HEALTHPRO HERITAGE AT HOME, LLC,
an Oklahoma limited liability company; NEW
LIFE PHYSICAL THERAPY SERVICES,
P.C., a California corporation; NEW LIFE
PHYSICAL THERAPY SERVICES SAN
DIEGO, INC., a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00009663-CU-OE-CTL

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 GERALDINE ABASTA (“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 HEALTHPRO HERITAGE, LLC (“Defendant Healthpro Heritage”) is a South Carolina limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

2. Defendant HEALTHPRO HERITAGE AT HOME, LLC (“Defendant Healthpro Heritage at Home”) is an Oklahoma limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

3. Defendant NEW LIFE PHYSICAL THERAPY SERVICES, P.C. (“Defendant New Life Physical Therapy Services”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, INC. (“Defendant New Life Physical Therapy Services San Diego”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant Healthpro Heritage, Defendant Healthpro Heritage at Home, Defendant New Life Physical Therapy Services, and Defendant New Life Physical Therapy Services San Diego 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

1 jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
2 “DEFENDANT.”

3 6. DEFENDANTS provide therapy, consulting, and wellness services throughout the
4 state of California, including in the county of San Diego, where PLAINTIFF worked.

5 7. PLAINTIFF has been employed by DEFENDANT in California since April of
6 2020 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal
7 and rest periods and payment of minimum and overtime wages due for all 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 Healthpro Heritage
10 and/or Defendant Healthpro Heritage at Home and/or Defendant New Life Physical Therapy
11 Services and/or Defendant New Life Physical Therapy Services San Diego in California and
12 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
13 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
14 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
15 CALIFORNIA CLASS Members is under five million dollars (\$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 DEFENDANTS’ uniform policy and practice which failed to
19 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
20 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
21 and continue to retain wages due to 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 DEFENDANTS in the future, relief for the named PLAINTIFF and
24 the other members of the CALIFORNIA CLASS who have been economically injured by
25 DEFENDANTS’ 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.

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1 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue
2 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
3 statements showing, among other things, all applicable hourly rates in effect during the pay
4 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
5 uniform policies and practices are intended to purposefully avoid the accurate and full payment
6 for all time worked as required by California law which allows DEFENDANTS to illegally profit
7 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
8 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
9 PERIOD should be adjusted 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 duty and on call.
9 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
10 legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and
11 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
12 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

13 **B. Rest Period Violations**

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

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1 **C. Unreimbursed Business Expenses**

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

13 23. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to incur personal expenses for the use of personal cell
15 phones and vehicles as a result of and in furtherance of their job duties. Specifically, PLAINTIFF
16 and other CALIFORNIA CLASS Members were required to use their own cell phones and
17 vehicles in order to perform work related tasks. However, DEFENDANTS unlawfully failed to
18 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the personal expenses
19 incurred for the use of their personal cell phones and vehicles. As a result, in the course of their
20 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members
21 incurred unreimbursed business expenses that included, but were not limited to, costs related to
22 the use of their personal cell phones and vehicles, all on behalf of and for the benefit of
23 DEFENDANTS.

24 **D. Wage Statement Violations**

25 24. California Labor Code Section 226 required an employer to furnish its employees
26 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
27 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
28 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the

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

5 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
6 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
7 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
8 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
9 accurate wage statements which failed to show, among other things, all deductions, the total hours
10 worked and all applicable hourly rates in effect during the pay period, and the corresponding
11 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
12 meal and rest periods. Further, from time to time, DEFENDANT issued wage statements to
13 PLAINTIFF and other CALIFORNIA CLASS Members that included items such as, including
14 but not limited to, “Paid Time Off,” “CA Meal Penalty” and “State Leave” into the computation
15 of total hours worked despite the foregoing items not being hours worked for purposes of Cal.
16 Lab. Code § 226(a)(2). As such, DEFENDANT from time to time issues wage statements to
17 PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).

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

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

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

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

5 29. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, time spent submitting to Covid-19 health screenings. This
8 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while
9 off-the-clock.

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

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

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

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

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

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

1 36. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANTS’ direction, control, and
3 benefit for the time spent working while off-the-clock, including but not limited to, time spent
4 submitting to Covid-19 health screenings. DEFENDANTS’ uniform policy and practice to not
5 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
6 accordance with applicable law is evidenced by DEFENDANTS’ business records.

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

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

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

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

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

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

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

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

9 **H. Unlawful Deductions**

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

14 **I. Timekeeping Manipulation**

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

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

27 46. The mutability of the timekeeping system also allowed DEFENDANTS to alter
28 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'

1 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
2 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
3 were not at all times provided an off-duty meal break. This practice is a direct result of
4 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
5 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks

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

12 **J. Unlawful Rounding Practices**

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

25 49. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
26 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
27 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
28 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
2 receiving an off-duty meal break.

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

21 **CLASS ACTION ALLEGATIONS**

22 51. PLAINTIFF bring this Class Action on behalf of herself, and a California class
23 defined as all persons who are or previously were employed by Defendant Healthpro Heritage
24 and/or Defendant Healthpro Heritage at Home and/or Defendant New Life Physical Therapy
25 Services and/or Defendant New Life Physical Therapy Services in California and classified as
26 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
27 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
28 Court (the "CLASS PERIOD").

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

7 53. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 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 55. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
16 a result of DEFENDANT’S conduct and actions alleged herein.

17 56. 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 57. PLAINTIFF will fairly and adequately represent and protect the interests of the
20 CALIFORNIA CLASS Members.

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

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

25 60. 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 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

3 66. 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 67. By the conduct alleged herein, DEFENDANTS have engaged and continue 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 68. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
22 unfair in that these practices violated public policy, were immoral, unethical, oppressive
23 unscrupulous or substantially injurious to employees, and were without valid justification or
24 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
25 of the California Business & Professions Code, including restitution of wages wrongfully
26 withheld.

27 69. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
28 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
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

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

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

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

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

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

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

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

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

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

15 85. DEFENDANTS' 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, DEFENDANTS
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 DEFENDANTS' 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 DEFENDANTS' 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANTS 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 DEFENDANTS 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, DEFENDANTS 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, DEFENDANTS' 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. DEFENDANTS' 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 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
16 Welfare Commission requirements for DEFENDANTS' 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 DEFENDANTS to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

4 99. DEFENDANTS' 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, DEFENDANTS
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS 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 DEFENDANTS' 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 DEFENDANTS.

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 bring this Action on behalf of herself, and the CALIFORNIA CLASS, based on
26 DEFENDANTS' 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. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
5 the 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 DEFENDANTS
9 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
10 witnessed by employees.

11 105. By virtue of DEFENDANTS' 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
22 their 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, DEFENDANTS 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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 DEFENDANTS 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, DEFENDANTS 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 DEFENDANTS 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 DEFENDANTS' strict corporate policy and practice.

6 111. DEFENDANTS further violated California Labor Code §§ 226.7 and the
7 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
8 Members who were not provided a meal period, in accordance with the applicable Wage Order,
9 one additional hour of compensation at each employee's regular rate of pay for each workday that
10 a 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 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
3 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
4 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
5 provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid
6 rest periods is evidenced by DEFENDANTS' business records.

7 115. DEFENDANTS further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
9 Members who were not provided a rest period, in accordance with the applicable Wage Order,
10 one additional hour of compensation at each employee's regular rate of pay for each workday that
11 rest 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, DEFENDANTS 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. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
2 members for expenses which included, but were not limited to, personal expenses incurred for the
3 use of their personal cell phones and vehicles all on behalf of and for the benefit of
4 DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
5 required by DEFENDANTS to use their own cell phones and vehicles to execute their essential
6 job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure
7 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting
8 from the use of their personal cell phones and vehicles for DEFENDANTS within the course and
9 scope of their employment for DEFENDANTS. These expenses were necessary to complete their
10 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
11 waiver of this expectation. Although these expenses were necessary expenses incurred by
12 PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and
13 reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an
14 employer is required to do under the laws and regulations of California.

15 120. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
16 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
17 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
18 statutory rate and costs under Cal. Lab. Code § 2802.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure To Provide Accurate Itemized Statements**

21 **(Cal. Lab. Code § 226)**

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

23 121. 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.

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

28 a. Gross wages earned,

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

123. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANT issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that included items such as, including but not limited to, "Paid Time Off," "CA Meal Penalty" and "State Leave" into

1 the computation of total hours worked despite the foregoing items not being hours worked for
2 purposes of Cal. Lab. Code § 226(a)(2). As such, DEFENDANT from time to time issues wage
3 statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab.
4 Code § 226(a)(2).

5 124. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
6 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
7 requirements of California Labor Code Section 226.

8 125. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
9 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
10 CLASS. These damages include, but are not limited to, costs expended calculating the correct
11 wages for all missed meal and rest breaks and the amount of employment taxes which were not
12 properly paid to state and federal tax authorities. These damages are difficult to estimate.
13 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
14 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
15 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
16 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
17 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
18 of the CALIFORNIA CLASS herein).

19 **EIGHTH CAUSE OF ACTION**

20 **Failure To Pay Wages When Due**

21 **(Cal. Lab. Code § 203)**

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

23 126. 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.

26 127. Cal. Lab. Code § 200 provides that:

27 As used in this article:
28

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

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

5 128. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
6 an employee, the wages earned and unpaid at the time of discharge are due and payable
7 immediately."

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

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

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

16 131. Cal. Lab. Code § 203 provides:

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

20 132. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
21 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
22 missed meal and rest breaks, as required by law.

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

28 ///

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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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 8, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: March 8, 2023

ZAKAY LAW GROUP, APLC


By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



Client # 58601

February 8, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

HEALTHPRO HERITAGE, LLC

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

Via Certified U.S. Mail with Return Receipt No. 7022 3330 0000 0722 4973

HEALTHPRO HERITAGE AT HOME, LLC

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

Via Certified U.S. Mail with Return Receipt No. 7022 3330 0000 0722 4966

NEW LIFE PHYSICAL THERAPY SERVICES, P.C.

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

Via Certified U.S. Mail with Return Receipt No. 7022 3330 0000 0722 4959

NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, INC.

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

Via Certified U.S. Mail with Return Receipt No. 7022 3330 0000 0722 4942

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, 1198.5, 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 GERALDINE ABASTA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants HEALTHPRO HERITAGE, LLC (“Defendant Healthpro Heritage”), HEALTHPRO HERITAGE AT HOME, LLC (“Defendant Healthpro Heritage at Home”), NEW LIFE PHYSICAL THERAPY SERVICES, P.C. (“Defendant New Life Physical Therapy Services”) and NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, INC. (“Defendant New Life Physical Therapy Services San Diego”) (collectively, “Defendants”). Plaintiff has been employed by Defendants since April of 2020 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. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, which among other violations 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, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant Healthpro Heritage and/or Defendant Healthpro Heritage at Home and/or Defendant New Life Physical Therapy Services and/or Defendant New Life Physical Therapy Services San Diego in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, 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 Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as

alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General 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

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GERALDINE ABASTA, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

HEALTHPRO HERITAGE, LLC, a South Carolina limited liability company; HEALTHPRO HERITAGE AT HOME, LLC, an Oklahoma limited liability company; NEW LIFE PHYSICAL THERAPY SERVICES, P.C., a California corporation; NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, 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 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 GERALDINE ABASTA (“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 HEALTHPRO HERITAGE, LLC (“Defendant Healthpro Heritage”) is a South Carolina limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

2. Defendant HEALTHPRO HERITAGE AT HOME, LLC (“Defendant Healthpro Heritage at Home”) is an Oklahoma limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

3. Defendant NEW LIFE PHYSICAL THERAPY SERVICES, P.C. (“Defendant New Life Physical Therapy Services”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant NEW LIFE PHYSICAL THERAPY SERVICES SAN DIEGO, INC. (“Defendant New Life Physical Therapy Services San Diego”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 5. Defendant Healthpro Heritage, Defendant Healthpro Heritage at Home, Defendant
2 New Life Physical Therapy Services, and Defendant New Life Physical Therapy Services San
3 Diego were the joint employers of PLAINTIFF as evidenced by the documents issued to
4 PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore
5 jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
6 “DEFENDANT.”

7 6. DEFENDANTS provide therapy, consulting, and wellness services throughout the
8 state of California, including in the county of San Diego, where PLAINTIFF worked.

9 7. PLAINTIFF has been employed by DEFENDANT in California since April of
10 2020 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal
11 and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

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

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

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

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

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

11 **JURISDICTION AND VENUE**

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

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

20 **THE CONDUCT**

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

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

12 **A. Meal Period Violations**

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

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

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

15 **B. Rest Period Violations**

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

1 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
2 proper rest periods by DEFENDANT and DEFENDANT's managers.

3 **C. Unreimbursed Business Expenses**

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

15 23. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the use of personal cell
17 phones and vehicles as a result of and in furtherance of their job duties. Specifically, PLAINTIFF
18 and other CALIFORNIA CLASS Members were required to use their own cell phones and
19 vehicles in order to perform work related tasks. However, DEFENDANTS unlawfully failed to
20 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the personal expenses
21 incurred for the use of their personal cell phones and vehicles. As a result, in the course of their
22 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members
23 incurred unreimbursed business expenses that included, but were not limited to, costs related to
24 the use of their personal cell phones and vehicles, all on behalf of and for the benefit of
25 DEFENDANTS.

26 **D. Wage Statement Violations**

27 24. California Labor Code Section 226 required an employer to furnish its employees
28 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours

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

7 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
8 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
9 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
10 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
11 accurate wage statements which failed to show, among other things, all deductions, the total hours
12 worked and all applicable hourly rates in effect during the pay period, and the corresponding
13 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
14 meal and rest periods. Further, from time to time, DEFENDANT issued wage statements to
15 PLAINTIFF and other CALIFORNIA CLASS Members that included items such as, including
16 but not limited to, "Paid Time Off," "CA Meal Penalty" and "State Leave" into the computation
17 of total hours worked despite the foregoing items not being hours worked for purposes of Cal.
18 Lab. Code § 226(a)(2). As such, DEFENDANT from time to time issues wage statements to
19 PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).

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

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

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

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

5 29. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, time spent submitting to Covid-19 health screenings. This
8 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while
9 off-the-clock.

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

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

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

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

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

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

1 36. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANTS’ direction, control, and
3 benefit for the time spent working while off-the-clock, including but not limited to, time spent
4 submitting to Covid-19 health screenings. DEFENDANTS’ uniform policy and practice to not
5 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
6 accordance with applicable law is evidenced by DEFENDANTS’ business records.

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

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

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

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

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

19 41. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
24 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
25 of the correct overtime and double time compensation, meal and rest period premiums, and sick
26 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
27 unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

1 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
2 CLASS PERIOD should be adjusted accordingly.

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

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

9 **H. Unlawful Deductions**

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

14 **I. Timekeeping Manipulation**

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

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

27 46. The mutability of the timekeeping system also allowed DEFENDANTS to alter
28 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'

1 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
2 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
3 were not at all times provided an off-duty meal break. This practice is a direct result of
4 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
5 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks

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

12 **J. Unlawful Rounding Practices**

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

25 49. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
26 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
27 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
28 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
2 receiving an off-duty meal break.

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

21 **CLASS ACTION ALLEGATIONS**

22 51. PLAINTIFF bring this Class Action on behalf of herself, and a California class
23 defined as all persons who are or previously were employed by Defendant Healthpro Heritage
24 and/or Defendant Healthpro Heritage at Home and/or Defendant New Life Physical Therapy
25 Services and/or Defendant New Life Physical Therapy Services in California and classified as
26 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
27 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
28 Court (the "CLASS PERIOD").

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

7 53. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 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 55. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
16 a result of DEFENDANT’s conduct and actions alleged herein.

17 56. 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 57. PLAINTIFF will fairly and adequately represent and protect the interests of the
20 CALIFORNIA CLASS Members.

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

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

25 60. 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 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

3 66. 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 67. By the conduct alleged herein, DEFENDANTS have engaged and continue 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 68. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
22 unfair in that these practices violated public policy, were immoral, unethical, oppressive
23 unscrupulous or substantially injurious to employees, and were without valid justification or
24 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
25 of the California Business & Professions Code, including restitution of wages wrongfully
26 withheld.

27 69. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
28 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
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

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

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

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

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

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

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

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

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

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

15 85. DEFENDANTS' 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, DEFENDANTS
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 DEFENDANTS' 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 DEFENDANTS' 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANTS 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 DEFENDANTS 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, DEFENDANTS 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, DEFENDANTS’ 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. DEFENDANTS’ 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 DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial
16 Welfare Commission requirements for DEFENDANTS’ 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 DEFENDANTS to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

4 99. DEFENDANTS' 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, DEFENDANTS
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS 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 DEFENDANTS' 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 DEFENDANTS.

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 bring this Action on behalf of herself, and the CALIFORNIA CLASS, based on
26 DEFENDANTS' 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. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
5 the 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 DEFENDANTS
9 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
10 witnessed by employees.

11 105. By virtue of DEFENDANTS' 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
22 their 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, DEFENDANTS 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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 DEFENDANTS 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, DEFENDANTS 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 DEFENDANTS 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 DEFENDANTS' strict corporate policy and practice.

6 111. DEFENDANTS further violated California Labor Code §§ 226.7 and the
7 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
8 Members who were not provided a meal period, in accordance with the applicable Wage Order,
9 one additional hour of compensation at each employee's regular rate of pay for each workday that
10 a 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 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
3 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
4 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
5 provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid
6 rest periods is evidenced by DEFENDANTS' business records.

7 115. DEFENDANTS further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
9 Members who were not provided a rest period, in accordance with the applicable Wage Order,
10 one additional hour of compensation at each employee's regular rate of pay for each workday that
11 rest 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, DEFENDANTS 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. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
2 members for expenses which included, but were not limited to, personal expenses incurred for the
3 use of their personal cell phones and vehicles all on behalf of and for the benefit of
4 DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
5 required by DEFENDANTS to use their own cell phones and vehicles to execute their essential
6 job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure
7 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting
8 from the use of their personal cell phones and vehicles for DEFENDANTS within the course and
9 scope of their employment for DEFENDANTS. These expenses were necessary to complete their
10 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
11 waiver of this expectation. Although these expenses were necessary expenses incurred by
12 PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and
13 reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an
14 employer is required to do under the laws and regulations of California.

15 120. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
16 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
17 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
18 statutory rate and costs under Cal. Lab. Code § 2802.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure To Provide Accurate Itemized Statements**

21 **(Cal. Lab. Code § 226)**

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

23 121. 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.

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

28 a. Gross wages earned,

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

123. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANT issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that included items such as, including but not limited to, "Paid Time Off," "CA Meal Penalty" and "State Leave" into

1 the computation of total hours worked despite the foregoing items not being hours worked for
2 purposes of Cal. Lab. Code § 226(a)(2). As such, DEFENDANT from time to time issues wage
3 statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab.
4 Code § 226(a)(2).

5 124. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
6 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
7 requirements of California Labor Code Section 226.

8 125. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
9 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
10 CLASS. These damages include, but are not limited to, costs expended calculating the correct
11 wages for all missed meal and rest breaks and the amount of employment taxes which were not
12 properly paid to state and federal tax authorities. These damages are difficult to estimate.
13 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
14 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
15 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
16 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
17 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
18 of the CALIFORNIA CLASS herein).

19 **EIGHTH CAUSE OF ACTION**

20 **Failure To Pay Wages When Due**

21 **(Cal. Lab. Code § 203)**

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

23 126. 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.

26 127. Cal. Lab. Code § 200 provides that:

27 As used in this article:
28

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

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

5 128. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
6 an employee, the wages earned and unpaid at the time of discharge are due and payable
7 immediately."

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

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

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

16 131. Cal. Lab. Code § 203 provides:

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

20 132. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
21 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
22 missed meal and rest breaks, as required by law.

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

28 ///

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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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: February 8, 2023

ZAKAY LAW GROUP, APLC


By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: February 8, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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