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ALAMEDA COUNTY**

February 27, 2020

CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy

CASE NUMBER:  
**RG19047456**

1 **THIERMAN BUCK LLP**  
2 **MARK R. THIERMAN, SB# 72913**  
3 **JOSHUA D. BUCK, SB# 258325**  
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10 **ATTORNEYS FOR PLAINTIFFS**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF ALAMEDA**

13 **JILL ARENDS and ALEXANDRA**  
14 **ARMSTRONG, on behalf of themselves**  
15 **and all other similarly situated individuals,**

16 **Plaintiffs,**

17 **vs.**

18 **SELECT MEDICAL CORPORATION;**  
19 **SELECT EMPLOYMENT SERVICES,**  
20 **INC.; and DOES 1 through 50, inclusive,**

21 **Defendant(s).**

Case No. RG19047456

**FIRST AMENDED COMPLAINT**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Pay Minimum Wages in Violation of the California Labor Code;
- 3) Failure to Pay Overtime Wages in Violation of the California Labor Code;
- 4) Meal and Rest Period Violations;
- 5) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 6) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code;
- 7) Violating Private Attorney Generals Act; and
- 8) Unfair Business Practices.

**JURY TRIAL DEMANDED**

22 Plaintiffs JILL ARENDS and ALEXANDRA ARMSTRONG (collectively, "Plaintiffs"),  
23 on behalf of themselves, the general public, and all other similarly situated and typical persons,  
24 allege the following:  
25

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1 All allegations in this Complaint are based upon information and belief except for those  
2 allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this  
3 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable  
4 opportunity for further investigation and discovery.

5 **JURISDICTION AND VENUE**

6 1. The Superior Court of the State of California, for the County of Alameda, has  
7 original jurisdiction over the state law claims alleged herein pursuant to the California Constitution.

8 2. Venue is proper in this Court because Defendants have failed to designate a  
9 principal office in California and has conducted business in the state of California. *Easton v.*  
10 *Sup.Ct. (Schneider Bros., Inc.)* (1970) 12 CA3d 243, 246-247, 90 CR 642, 644.

11 **PARTIES**

12 3. Plaintiff JILL ARENDS is natural person who has been employed by Defendants  
13 as a non-exempt hourly paid employee in the State of California during the relevant time period.  
14 Attached hereto as Exhibit A is a true and correct redacted copy of Plaintiff’s 2018 W-2 listing  
15 Select Employment Services, Inc. as her employer. Attached hereto as Exhibit B is a true and  
16 correct copy of one of Plaintiff’s itemized pay statements listing Select Employment Services,  
17 Inc. as her employer.

18 4. Plaintiff ALEXANDRA ARMSTRONG is natural person who has been employed  
19 by Defendants as a non-exempt hourly paid employee in the State of California during the  
20 relevant time period.

21 5. Defendants SELECT MEDICAL CORPORATION and SELECT  
22 EMPLOYMENT SERVICES, INC. (collectively referred to as “Select Medical” or  
23 “Defendants”) are both foreign corporations with a principle place of business at 4714  
24 Gettysburg Road, Mechanicsburg, PA 17055. Upon information and belief, neither Select  
25 Medical Corporation nor Select Employment Services, Inc. list a California place of business  
26 with the California Secretary of State.

27 6. The identity of DOES 1-50 is unknown at this time, and this Complaint will be  
28 amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and

1 believe that each of the Defendants sued herein as DOE is responsible in some manner for the  
2 acts, omissions, or representations alleged herein and any reference to “Defendant,”  
3 “Defendants,” or “Select Medical” herein shall mean “Defendants and each of them.”

4 **FACTUAL ALLEGATIONS**

5 7. Select Medical is a publicly traded for-profit corporation (NYSE ticker symbol  
6 SEM) that operates health care facilities throughout the country. According to its website, Select  
7 Medical “encompasses four areas of expertise: critical illness recovery, inpatient medical  
8 rehabilitation, outpatient physical therapy and occupational medicine, all of which are delivered  
9 and supported by more than 46,000 talented health care professionals across the U.S.” See  
10 <https://www.selectmedical.com/select-medical-history/>. Plaintiffs are two of Select Medical’s  
11 46,000 employees.

12 8. Plaintiffs were employed by Select Medical as Speech Pathologists and worked at  
13 the California Rehabilitation Institute. Plaintiff Arends was an hourly paid non-exempt  
14 employee earning approximately \$58 per hour. Plaintiff Alexander is an hourly paid non-exempt  
15 employee and earns approximately \$46 per hour.

16 9. Since opening the California Rehabilitation Institute (CRI) location in July 2016,  
17 Defendants have systematically failed to compensate Plaintiffs and all other similarly situated  
18 employees for all their work performed, both overtime and non-overtime hours. Defendants have  
19 systematically understaffed CRI so that Plaintiffs and all other similarly situated employees are  
20 left to input patient information “off-the-clock” into the electronic record keeping software used  
21 by Defendants, either before the start of their shift, during their meal breaks, or after their shift.

22 10. The electronic record keeping system used by Defendants is called EPIC.  
23 Plaintiffs and all other similarly situated employees would record and document any and all  
24 patient care notes into the EPIC system. EPIC would automatically record the times in which  
25 Plaintiffs and all other similarly situated employees would enter data into the system, thereby  
26 leaving a “time stamp” to indicate when employees were using the system.

27 11. Defendants required Plaintiffs and all others similarly situated to make entries into  
28 the EPIC system while at the employer’s place of employment. It is an integral, indispensable

1 and legally necessary to the performance of Plaintiffs' job of providing patient care that they  
2 make these entries of patient care notes into the EPIC system, which was also an essential part  
3 of the medical billing process as well.

4 12. Defendants and Defendants' agents were aware that Plaintiffs and all other  
5 similarly situated employees were working without compensation because employees were  
6 physically present at Defendants' facility and the EPIC system recorded the time when Plaintiffs  
7 and similarly situated employees made entries. Defendants' agents would routinely observe  
8 Plaintiffs and all others similarly situated making these patient chart EPIC entries "off-the-  
9 clock" such as during lunch breaks and before and after each shift.

10 13. Defendants also required all hourly paid employees to clock in and out using the  
11 KRONOS timekeeping system for pay purposes. When comparing the difference between the  
12 time entries from EPIC to the time entries in the KRONOS, Plaintiffs and all other similarly  
13 situated employees worked a significant amount of time "off-the-clock".

14 14. Despite knowing that Plaintiffs and other similarly situated individuals were  
15 performing work off-the-clock and without compensation, Defendants failed to prevent the  
16 performance of such work. Defendants suffered and permitted Plaintiffs to continue doing  
17 uncompensated work that they were engaged to perform.

18 15. In addition to suffering and permitting Plaintiffs and all other similarly situated  
19 employees to perform work without compensation, Select Medical also violated California's meal  
20 and rest break law by not providing a meal period and rest periods within the requisite number of  
21 hours after the start of a shift; failing to provide a second meal period and/or rest period within the  
22 time proscribed by law, and by not permitting a full 30-minute uninterrupted meal period.

23 **COLLECTIVE, CLASS, AND REPRESENTATIVE ACTION ALLEGATIONS**

24 16. Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
25 this Complaint as though fully set forth herein.

26 17. Plaintiffs bring this action on behalf of themselves and all other similarly situated  
27 and typical employees employed in California as both a collective action under the FLSA and a  
28 true class action under California law.

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18. Plaintiffs bring this action on behalf of themselves and the following **FLSA Class**:

A. **FLSA Class:** All nonexempt hourly paid employees employed by Defendants within the United States who worked off the clock as demonstrated by the comparison between the EPIC electronic systems and KRONOS at any time during the relevant time period alleged herein.

19. With regard to the conditional certification mechanism under the FLSA, Plaintiffs are similarly situated to those they seeks to represent for the following reasons, among others:

A. Defendants employed Plaintiffs as hourly-paid employees who did not receive their wages and, where applicable, overtime premium pay at one and one-half times the regular rate of pay for all hours worked over forty (40) hours in a workweek.

B. Plaintiffs' situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other FLSA Off the Clock Members for all time they were required to work, but with the knowledge acquiescence and/or approval (tactic as well as expressed) of Defendants' managers and agents.

C. Common questions exist as to whether Plaintiffs and all other FLSA Off the Clock Class Members worked off the clock and without compensation.

D. Upon information and belief, Defendants employ, and have employed, in excess of 1,000 FLSA Class Members within the applicable statute of limitations.

E. Plaintiffs have signed or will sign a Consent to Sue form shortly.

F. Consent to sue forms are not required for state law claims under Rule 23 of the California Rules of Civil Procedure.

20. Plaintiffs bring this action on behalf of themselves and the following **California Classes**:

A. **California Off the Clock Class:** All nonexempt hourly paid employees employed by Defendants in California who worked off the clock as

1 demonstrated by the comparison between the EPIC electronic systems and  
2 KRONOS at any time during the relevant time period alleged herein.

3 B. **California Meal/Rest Break Class:** All nonexempt hourly paid  
4 employees employed by Defendants in California at any time during the  
5 relevant time period alleged herein.

6 21. These Classes may be further subdivided into the following subclasses of  
7 similarly-situated and typical individuals based upon the divergent statute of limitations period  
8 for various claims asserted herein (collectively “the Subclasses” or “Subclass Members”):

9 A. **Itemized Wage Statement Subclass:** All Class Members who were  
10 employed at any time during the relevant time period alleged herein.

11 B. **Waiting Time Penalties Subclass:** All Class Members who were  
12 employed at any time during the relevant time period alleged herein.

13 C. **PAGA Subclass:** All Class Members who were employed at any time  
14 during the relevant time period alleged herein.

15 22. Class treatment is appropriate in this case for the following reasons:

16 A. The Class is Sufficiently Numerous: Upon information and belief,  
17 Defendants employ, and have employed, in excess of 1,000 Class Members within the  
18 applicable statute of limitations. Because Defendants are legally obligated to keep  
19 accurate payroll records, Plaintiffs allege that Defendants’ records will establish the  
20 members of the Class as well as their numerosity.

21 B. Common Questions of Law and Fact Exist: Common questions of law and  
22 fact exist and predominate as to Plaintiffs and Class Members, including, without limitation:

23 1) Whether Defendants failed to compensate Plaintiffs and members of the  
24 Class for all the hours that they worked;

25 2) Whether Defendants’ policy of not including the hours worked off the  
26 clock in a pay period on the pay stub violates the itemized wage statement  
27 provisions of the California Labor Code and the Orders of the California  
28 Industrial Wage Commission; and

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3) Whether Defendants willfully failed to pay Class Members all wages due and owing at the time of termination.

C. Plaintiffs' Claims are Typical to Those of Fellow Class Members: Plaintiffs performed work off the clock without compensation. Plaintiffs' claims are typical to those of the class they seek to represent. In addition, Defendants did not give Plaintiffs and Class Members accurate wage statements to reflect all their hours worked, rate of pay, and overtime compensation; and Defendants have not timely remitted all wages due and owing to Class Members who are former employees upon their termination.

D. Plaintiffs are Adequate Representatives of the Class: Plaintiffs will fairly and adequately represent the interests of Class Members because Plaintiffs are members of the Class, they have common issues of law and fact with all members of the Class, and their claims are typical to other Class Members.

E. A Class Action is Superior/Common Claims Predominate: A class action is superior to other available means for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses and burden of individualized litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

**FIRST CAUSE OF ACTION**

**Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207**

(On Behalf of Plaintiffs and all members of the FLSA Class Against Defendants)

23. Plaintiffs reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.





1           30.     Because Defendants failed to compensate Plaintiffs and Class Members for their  
2 hours worked off the clock as set forth above, Defendants failed to pay Plaintiffs and Class  
3 Members the required minimum wage rate for each hour worked.

4           31.     Labor Code § 1194.2(a) provides that, in an action to recover wages because of  
5 the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an  
6 employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully  
7 unpaid and interest thereon.

8           32.     Plaintiffs and Class Members should have received their regular rate of pay, or  
9 the minimum wage, whichever is higher, in a sum according to proof for the hours worked, but  
10 not compensated, during the Class Period. Defendants therefore owe Plaintiffs and Class  
11 Members regular rate wages or minimum wages, whichever are higher, as well as liquidated  
12 damages in an equal amount to the wages owed, and has failed and refused, and continues to  
13 fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

14           33.     As a direct and proximate result of Defendants’ unlawful conduct, as set forth  
15 herein, the Plaintiffs and Class Members have sustained damages and been deprived of  
16 minimum wages and regular wages that are owed in amounts to be proven at trial, and are  
17 entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys’ fees and  
18 costs pursuant to Labor Code §§ 218.5, 1194, and 1194.2. Because Defendants’ conduct  
19 described immediately above is an act of unfair competition and a business practice in violation  
20 of California Business & Professions Code § 17200, Plaintiffs and Class Members are entitled  
21 to recover the amounts previously specified for four years prior to the filing of this complaint to  
22 the date of judgment after trial.

23           34.     Defendants are also subject to civil penalties and restitution of wages payable to  
24 Plaintiffs and all Class Members pursuant to Labor Code § 1179.1 as follows:

- 25                   (1) For any initial violation that is intentionally committed,  
26 one hundred dollars (\$100) for each underpaid employee for each  
27 pay period for which the employee is underpaid. This amount shall  
28 be in addition to an amount sufficient to recover underpaid wages.

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(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

35. Defendants are also subject to civil penalties and restitution of wages payable to Plaintiffs and all Class Members pursuant to Labor Code § 558 for violating the applicable Wage Order as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

**THIRD CAUSE OF ACTION**

**Failure to Pay Overtime Wages for All Hours Worked**

(On Behalf of Plaintiffs and the California Off the Clock Class Defendants)

36. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

1           37. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No. 9,  
2 mandate that California employers pay overtime compensation at one and one-half times the  
3 regular rate of pay to all non-exempt employees for all hours worked over eight (8) per day or  
4 over forty (40) per week and “any work in excess of 12 hours in one day shall be compensated  
5 at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in  
6 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no  
7 less than twice the regular rate of pay of an employee.” Section 3(A)(1) of the applicable Wage  
8 Order states in relevant part: “Employment beyond eight (8) hours in any workday or more than  
9 six (6) days in any workweek is permissible provided the employee is compensated for such  
10 overtime at not less than: (a) One and one-half (11/2) times the employee’s regular rate of pay  
11 for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday,  
12 and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a  
13 workweek; and (b) Double the employee’s regular rate of pay for all hours worked in excess of  
14 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh  
15 (7th) consecutive day of work in a workweek.”

16           38. Labor Code § 1198 states that “The maximum hours of work and the standard  
17 conditions of labor fixed by the commission shall be the maximum hours of work and the  
18 standard conditions of labor for employees. The employment of any employee for longer hours  
19 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

20           39. Because Defendants failed to compensate Plaintiffs and California Off the Clock  
21 Class Members for their hours worked off the clock as set forth above, Defendants failed to pay  
22 Plaintiffs and California Off the Clock Class Members overtime compensation when due.

23           40. Wherefore, Plaintiffs demand for themselves and for California Off the Clock  
24 Class Members that Defendant pay Plaintiffs and California Off the Clock Class Members  
25 overtime pay at the applicable legal rate for all overtime hours worked together with attorneys’  
26 fees, costs, and interest as provided by law. Because Defendants’ conduct described immediately  
27 above is an act of unfair competition and a business practice in violation of California Business  
28 & Professions Code § 17200, Plaintiffs and California Off the Clock Class Members are entitled

1 to recover the amounts previously specified for four years prior to the filing of this complaint to  
2 the date of judgment after trial.

3 41. Defendants are also subject to civil penalties and restitution of wages payable to  
4 Plaintiffs and all California Off the Clock Class Members pursuant to Labor Code § 558 as follows:

5 (1) For any initial violation, fifty dollars (\$50) for each  
6 underpaid employee for each pay period for which the employee  
7 was underpaid in addition to an amount sufficient to recover  
8 underpaid wages.

9 (2) For each subsequent violation, one hundred dollars  
10 (\$100) for each underpaid employee for each pay period for which  
11 the employee was underpaid in addition to an amount sufficient to  
12 recover underpaid wages.

13 (3) Wages recovered pursuant to this section shall be paid to  
14 the affected employee.

15 These penalties are in addition to any other penalty provided by law and are recoverable  
16 by private individuals on behalf of the state of California under the Private Attorney General Act,  
17 Labor Code § 2699, et. seq.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Provide Meal Breaks**

20 (On Behalf of Plaintiffs and the California Meal Break Class Against Defendants)

21 42. Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
22 this Complaint as though fully set forth herein.

23 43. Section 11 of the applicable Wage Order states, in relevant part: “(A) No employer  
24 shall employ any person for a work period of more than five (5) hours without a meal period of  
25 not less than 30 minutes . . . If an employer fails to provide an employee a meal period in  
26 accordance with the applicable provisions of this order, the employer shall pay the employee one  
27 (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal  
28 period is not provided.”

1 44. Labor Code § 226.7 states that: “a) No employer shall require any employee to  
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare  
3 Commission. (b) If an employer fails to provide an employee a meal period or rest period in  
4 accordance with an applicable order of the Industrial Welfare Commission, the employer shall  
5 pay the employee one additional hour of pay at the employee's regular rate of compensation for  
6 each work day that the meal or rest period is not provided.” California Labor Code § 229 provides  
7 for a private right of action to enforce the provisions of Labor Code 226.7.

8 45. Labor Code § 512 provides in relevant part: “An employer may not employ an  
9 employee for a work period of more than 10 hours per day without providing the employee with  
10 a second meal period of not less than 30 minutes . . .”

11 46. As described above and demonstrated by the comparison of the EPIC and  
12 KRONOS electronic records, Plaintiffs and California Meal Break Class Members routinely  
13 worked through meal periods as required by Defendants, but were not compensated for the  
14 missed meal period pursuant to 226.7.

15 47. Wherefore, Plaintiffs demand payment for themselves and all California Meal  
16 Break Class Members one hour pay per day for every missed mandatory meal period, together  
17 with attorneys’ fees, costs, penalties, and interest as provided by law.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Provide Accurate Wage Statements**

20 (On Behalf of Plaintiffs and the Wage Statement Subclass Against Defendants)

21 48. Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
22 this Complaint as though fully set forth herein.

23 49. Defendants knowingly and intentionally failed to provide timely, accurate,  
24 itemized wage statements showing, *inter alia*, hours worked, to Plaintiffs and Wage Statement  
25 Subclass Members in accordance with Labor Code § 226(a) and applicable Wage Order No. 9.  
26 Such failure caused injury to Plaintiffs and Wage Statement Subclass Members by, among other  
27 things, impeding them from knowing the amount of wages to which they are and were legally  
28 entitled.

1           50.     Plaintiffs’ good faith estimate of the number of pay periods in which Defendants  
2 failed to provide accurate itemized wage statements to Plaintiffs and Wage Statement Subclass  
3 Members is each and every pay period during the Class Period.

4           51.     Plaintiffs and the Wage Statement Subclass Members are entitled to and seek  
5 injunctive relief requiring Defendants to comply with Labor Code §§ 226(a) and further seek the  
6 amount provided under Labor Code § 226(e), including the greater of all actual damages or fifty  
7 dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars  
8 (\$100) per employee for each violation in a subsequent pay period.

9           52.     Defendants are also subject to civil penalties for Labor Code §§ 226(a) violations  
10 “in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial  
11 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . .  
12 .” as provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty  
13 provided by law and are recoverable by private individuals on behalf of the state of California  
14 under the Private Attorney General Act, Labor Code § 2699, et. seq.

15           53.     Because Defendants’ conduct described immediately above is an act of unfair  
16 competition and a business practice in violation of California Business & Professions Code  
17 Section 17200, Plaintiffs further demand the Defendants be enjoined from continuing to provide  
18 inaccurate pay statements that fail to include the amount of hours worked by each employee, the  
19 hourly rate of pay, and the amount of all overtime hours worked at the corresponding hourly rate.

20                                 **SIXTH CAUSE OF ACTION**

21                                 **Failure to Timely Pay All Wages Due and Owing**

22                                 (On Behalf of Plaintiffs and the Waiting Time Penalties Subclass Against Defendants)

23           54.     Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
24 this Complaint as though fully set forth herein.

25           55.     Labor Code §§ 201 and 202 require an employer to pay its employees all wages  
26 due within the time specified by law. Labor Code § 203 provides that if an employer willfully  
27 fails to timely pay such wages, the employer must continue to pay the subject employees’ wages  
28

1 until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30)  
2 days of wages.

3 56. Class Members who ceased employment with Defendants are entitled to unpaid  
4 compensation for unpaid minimum, regular, and overtime wages, as alleged above, but to date  
5 have not received such compensation. Defendants’ failure to pay such wages and compensation,  
6 as alleged above, was knowing and “willful” within the meaning of Labor Code § 203.

7 57. As a consequence of Defendants’ willful conduct in not paying compensation for  
8 all hours worked, Class Members whose employment ended within the last three years from the  
9 filing of this complaint are entitled to up to thirty days’ wages under Labor Code § 203, together  
10 with interest thereon and attorneys’ fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **Violating California Private Attorney General Act**

13 (On Behalf of Plaintiffs and the PAGA Subclass Against Defendants)

14 58. Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
15 this Complaint as though fully set forth herein.

16 59. Labor Code § 2699(a) states:

17 Notwithstanding any other provision of law, any provision of this code  
18 that provides for a civil penalty to be assessed and collected by the Labor and  
19 Workforce Development Agency or any of its departments, divisions,  
20 commissions, boards, agencies, or employees, for a violation of this code, may,  
21 as an alternative, be recovered through a civil action brought by an aggrieved  
employee on behalf of himself or herself and other current or former employees  
pursuant to the procedures specified in Section 2699.3.

22 60. Plaintiffs and PAGA Subclass Members are “aggrieved employees” as that term  
23 is defined in the California Labor Code Private Attorney General Act of 2004, because they are  
24 current or former employees of the alleged violator and against whom one or more of the alleged  
25 violations was committed.

26 61. Plaintiffs have met all the notice requirements set forth in Labor Code § 2699.3  
27 necessary to commence a civil action. Plaintiff Arends submitted her PAGA Notice, with a draft  
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1 Complaint attached, on November 1, 2019. Attached hereto as Exhibit C is a true and correct  
2 copy of the PAGA Notice, draft complaint, and return receipt.

3 62. Plaintiffs bring this action on behalf of themselves and all aggrieved employees  
4 who were subject to Defendants’ failure to pay Plaintiffs and aggrieved employees for all hours  
5 they worked at the applicable minimum, regular, and overtime wage rate; its failure to comply  
6 with California’s meal and rest break laws; its failure to provide accurate wage statements; and  
7 its failure to pay Plaintiffs and aggrieved employees who are former employees all their wages  
8 due and owing upon termination.

9 63. Plaintiffs, on behalf of themselves and in a representative capacity on behalf of  
10 all members of the PAGA aggrieved employee Class, demand the maximum civil penalty  
11 specified in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiffs and  
12 each aggrieved member of the Class per period for the initial violation and two hundred dollars  
13 (\$200) per pay period for each subsequent violation for violations of Labor Code §§ 201-204,  
14 226, 226.7, 510, 1194, 1197, and 1198.

15 64. These penalties are recoverable in addition to any other civil penalty separately  
16 recoverable by law.

17 **EIGHTH CAUSE OF ACTION**

18 **Unfair Business Practices**

19 (On Behalf of Plaintiffs and the Classes Against Defendants)

20 65. Plaintiffs reallege and incorporate by this reference all the paragraphs above in  
21 this Complaint as though fully set forth herein.

22 66. By the conduct described throughout this Complaint, Defendants have violated  
23 the provisions of the California Labor Code as specified and have engaged in unlawful, deceptive,  
24 and unfair business practices prohibited by California Business & Professions Code § 17200, *et*  
25 *seq.* Defendants’ use of such practices resulted in greatly decreased labor costs and constitutes  
26 an unfair business practice, unfair competition, and provides an unfair advantage over  
27 Defendants’ competitors.

28



1 67. The unlawful and unfair business practices complained of herein are ongoing and  
2 present a threat and likelihood of continuing against Defendants' current employees as well as  
3 other members of the general public. Plaintiffs and Class Members are therefore entitled to  
4 injunctive and other equitable relief against such unlawful practices in order to prevent future  
5 damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiffs and the Class Members  
6 request a preliminary and permanent injunction prohibiting Defendants from the unfair practices  
7 complained of herein.

8 68. Defendants generated income as a direct result of the above-mentioned unlawful  
9 and unfair business practices. Plaintiffs and the Class Members are therefore entitled to  
10 restitution of any and all monies withheld, acquired, and/or converted by Defendant by means of  
11 the unfair and unlawful practices complained of herein.

12 69. As a result, Plaintiffs and Class Members seek restitution of their unpaid wages,  
13 unpaid overtime, meal and rest break pay, itemized wage statement penalties, and waiting time  
14 penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to proof.  
15 Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief  
16 sought from Defendants.

17 **JURY DEMAND**

18 Plaintiffs hereby respectfully demand a trial by jury on all issues so triable.

19 **PRAYER FOR RELIEF**

20 Wherefore Plaintiffs, individually and on behalf of all Class Members and all others  
21 similarly situated, pray for relief as follows relating to their collective, class and representative  
22 action allegations:

- 23 1. For an order conditionally certifying the action under the FLSA and providing  
24 notice to all FLSA Class Members so they may participate in the lawsuit;
- 25 2. For an order certifying this action as a class action on behalf of the proposed  
26 California Classes and Subclasses;
- 27 3. For an order appointing Plaintiffs as the Representatives of the Classes and their  
28 counsel as Class Counsel;

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4. For damages according to proof for regular rate or minimum rate pay, whichever is higher, for all hours worked under both federal and California law;
5. For damages according to proof for overtime compensation for all overtime hours worked under both federal and California law;
6. For liquidated damages;
7. For one hour of pay at the regular rate or minimum rate pay, whichever is higher, for every missed and/or inadequate meal period;
8. For waiting time penalties;
9. For civil penalties;
10. For PAGA penalties;
11. For interest as provided by law at the maximum legal rate;
12. For reasonable attorneys' fees authorized by statute;
13. For costs of suit incurred herein;
14. For pre-judgment and post-judgment interest, as provided by law, and
15. For such other and further relief as the Court may deem just and proper.

DATED: February 26, 2020

THIERMAN BUCK LLP

s/ Joshua D. Buck  
Mark R. Thierman  
Joshua D. Buck  
Leah L. Jones

*Attorneys for Plaintiff*

# **EXHIBIT A**

*Redacted Copy of Plaintiff's 2018 W-2*

**EXHIBIT A**

d Control number 281390	1 Wages, tips, other compensation 71114.87	2 Federal income tax withheld 9910.63
OMB No. 1545-0008	3 Social security wages 79203.18	4 Social security tax withheld 4910.60
This information is being furnished to the Internal Revenue Service	5 Medicare wages and tips 79203.18	6 Medicare tax withheld 1148.45

c Employer's name, address, and ZIP code  
**Select Employment Services, Inc.**  
 4714 Gettysburg Road  
 Mechanicsburg, PA 17055

7 Social security tips	8 Allocated tips	9 Verification Code
10 Dependent care benefits	11 Nonqualified plans	12a code C 949.42
12b code D 8088.31	12c code DD 6778.94	12d code 

b Employer identification number (EIN) [REDACTED] a Employee's social security number [REDACTED]

13 Statutory employee	Retirement plan	Third-party sick pay	14 Other CASDI 782.54
	X		

e/f Employee's name, address, and ZIP code  
**Jill G Arends**  
 [REDACTED]

**2018** Form **W-2 Wage and Tax Statement**  
 Copy B-To Be Filed With Employee's FEDERAL Tax Return  
 Department of the Treasury Internal Revenue Service

15 State CA	Employer's state ID no. [REDACTED]	16 State wages, tips, etc. 71114.87
17 State income tax 2544.26	18 Local wages, tips, etc.	
19 Local income tax	20 Locality name	

d Control number 281390	1 Wages, tips, other compensation 71114.87	2 Federal income tax withheld 9910.63
OMB No. 1545-0008	3 Social security wages 79203.18	4 Social security tax withheld 4910.60
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 Mechanicsburg, PA 17055

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12b code D 8088.31	12c code DD 6778.94	12d code 

b Employer identification number (EIN) [REDACTED] a Employee's social security number [REDACTED]

13 Statutory employee	Retirement plan	Third-party sick pay	14 Other CASDI 782.54
	X		

e/f Employee's name, address, and ZIP code  
**Jill G Arends**  
 [REDACTED]

**2018** Form **W-2 Wage and Tax Statement**  
 Copy C-For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)  
 Department of the Treasury Internal Revenue Service

15 State CA	Employer's state ID no. [REDACTED]	16 State wages, tips, etc. 71114.87
17 State income tax 2544.26	18 Local wages, tips, etc.	
19 Local income tax	20 Locality name	

d Control number 281390	1 Wages, tips, other compensation 71114.87	2 Federal income tax withheld 9910.63
OMB No. 1545-0008	3 Social security wages 79203.18	4 Social security tax withheld 4910.60
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c Employer's name, address, and ZIP code  
**Select Employment Services, Inc.**  
 4714 Gettysburg Road  
 Mechanicsburg, PA 17055

7 Social security tips	8 Allocated tips	9 Verification code
10 Dependent care benefits	11 Nonqualified plans	12a code C 949.42
12b code D 8088.31	12c code DD 6778.94	12d code 

b Employer identification number (EIN) [REDACTED] a Employee's social security number [REDACTED]

13 Statutory employee	Retirement plan	Third-party sick pay	14 Other CASDI 782.54
	X		

e/f Employee's name, address, and ZIP code  
**Jill G Arends**  
 [REDACTED]

**2018** Form **W-2 Wage and Tax Statement**  
 Copy 2-To Be Filed With Employee's State, City, or Local Income Tax Return  
 Department of the Treasury Internal Revenue Service

15 State CA	Employer's state ID no. 453-0687-5	16 State wages, tips, etc. 71114.87
17 State income tax 2544.26	18 Local wages, tips, etc.	
19 Local income tax	20 Locality name	

d Control number 281390	1 Wages, tips, other compensation 71114.87	2 Federal income tax withheld 9910.63
OMB No. 1545-0008	3 Social security wages 79203.18	4 Social security tax withheld 4910.60
	5 Medicare wages and tips 79203.18	6 Medicare tax withheld 1148.45

c Employer's name, address, and ZIP code  
**Select Employment Services, Inc.**  
 4714 Gettysburg Road  
 Mechanicsburg, PA 17055

7 Social security tips	8 Allocated tips	9 Verification code
10 Dependent care benefits	11 Nonqualified plans	12a code C 949.42
12b code D 8088.31	12c code DD 6778.94	12d code 

b Employer identification number (EIN) [REDACTED] a Employee's social security number [REDACTED]

13 Statutory employee	Retirement plan	Third-party sick pay	14 Other CASDI 782.54
	X		

e/f Employee's name, address, and ZIP code  
**Jill G Arends**  
 [REDACTED]

**2018** Form **W-2 Wage and Tax Statement**  
 Copy 2-To Be Filed With Employee's State, City, or Local Income Tax Return  
 Department of the Treasury Internal Revenue Service

15 State CA	Employer's state ID no. 453-0687-5	16 State wages, tips, etc. 71114.87
17 State income tax 2544.26	18 Local wages, tips, etc.	
19 Local income tax	20 Locality name	

# **EXHIBIT B**

*Plaintiff's Redacted Pay Statement*

**EXHIBIT B**

# Payroll



Navigator



Favorites

Home

Logout

Preferences

Help

## Payslip

Employee Name **Arends, Jill**

Employee Number **281390**

From Date

(example: 21-Sep-2018)

To Date

(example: 21-Sep-2018)

Search

Choose a Payslip

21-SEP-2018 - 281390 - Check 1

Go

Employee **Jill G. Arends**  
 Employee Number **281390**  
 Location **California Rehabilitation Institute**  
 Employee Address [REDACTED]

Employer name **Select Employment Services, Inc.**  
 Organization **California Rehabilitation Institute**  
 Employer Address **4714 Gettysburg Road**  
**Corporate**  
**Mechanicsburg**  
**PA**  
**17055**  
 Employer BIN **1976 9124**

### Pay Period and Salary

Pay Period	Payment Date	Pay Begin Date	Pay End Date	Pay Rate
Bi-Week	21-Sep-2018	31-Aug-2018	13-Sep-2018	58.19

### Summary

Current or YTD	Gross	Pre-Tax	Taxes	After-Tax Deductions	Net Pay
Current	4,163.78	606.73	1,004.36	52.86	2,457.63
YTD	65,365.99	9,728.27	14,928.70	740.04	38,534.34

### Hours and Earnings

Description	Start Date	End Date	Current Hours	Current Amount	YTD Hours	YTD Amount
Overtime			0.42	36.94	25.12	2,199.04
Time Entry Wages			46.28	2,693.04	715.48	41,597.35
Holiday Pay			8.00	698.28		1,382.88
PTO Pay Hrl				0.00		7,067.77
Shift Diff.			7.99	488.91		3,906.43
Shift O/T			0.68	62.42		531.28
EID Pay Hrl				0.00		6,919.77
Holiday O/T			1.22	141.99		210.45
GTL Imputed Income				0.00		696.22
GTL Imputed Income				42.20		738.42
Penalty Pay				0.00	2.00	116.38

### Pre-Tax Deductions

### Taxes

# **EXHIBIT C**

*PAGA Notice, Draft Complaint, and Return Receipt*

**EXHIBIT C**

November 1, 2019

**VIA E-FILING**

California Labor and Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, California 95814

Subject: **PAGA Claim Notice: *Jill Arends v. Select Medical Corp. and Select Medical Employment Services, Inc.***

Dear Representative:

This office represents Jill Arends, on behalf of herself and all other similarly situated and aggrieved employees ("Plaintiff"), in connection with her claims under the California Labor Code against her employers Select Medical Corp. and Select Medical Employment Services, Inc. ("Select Medical"). Plaintiff intends to seek penalties for certain violations of the California Labor Code (hereinafter referred to as "Labor Code"), detailed below, which are recoverable under Labor Code §§ 2699, *et seq.* ("the Private Attorneys General Act"). Plaintiff is seeking penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of Labor Code § 2699.3.

A draft complaint is attached to this letter as Exhibit A which sets forth all of the factual and legal theories that support Plaintiff's claim for unpaid wages and penalties. Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties related to these violations of the California Labor Code pursuant to the Private Attorneys General Act.

Upon the best information available, the employer may be contacted directly at the following addresses:

Select Medical Corporation  
4714 Gettysburg Road  
Mechanicsburg, PA 17055

Select Medical Employment Services, Inc.  
4714 Gettysburg Road  
Mechanicsburg, PA 17055



Neither Select Medical Corporation nor Select Medical Employment Services, Inc. have an agent of service listed in California.

Thank you for your attention to this matter. If you have any questions, or if we may be of any further assistance, please contact me at (775) 284-1500.

Very truly yours,

*Joshua D. Buck*

Joshua D. Buck

cc: Jill Arends  
Select Medical Corporation (Via Certified Mail)  
Select Medical Employment Services, Inc. (Via Certified Mail)  
file

DRAFT COMPLAINT

1 **THIERMAN BUCK LLP**  
MARK R. THIERMAN, SB# 72913  
2 JOSHUA D. BUCK, SB# 258325  
LEAH L. JONES, SB# 276448  
3 7287 Lakeside Drive  
Reno, NV 89511  
4 Tel: 775.284.1500  
Fax: 775.703.5027  
5 info@thiermanbuck.com

6 ATTORNEYS FOR PLAINTIFF

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF ALAMEDA**  
9

10 JILL ARENDS, on behalf of herself and all  
11 other similarly situated individuals,

12 Plaintiff,

13 vs.

14 SELECT MEDICAL CORPORATION;  
15 SELECT EMPLOYMENT SERVICES,  
16 INC.; and DOES 1 through 50, inclusive,

17 Defendant(s).

Case No.

**COLLECTIVE, CLASS, AND  
REPRESENTATIVE ACTION  
COMPLAINT**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Pay Minimum Wages in Violation of the California Labor Code;
- 3) Failure to Pay Overtime Wages in Violation of the California Labor Code;
- 4) Meal and Rest Period Violations;
- 5) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 6) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code;
- 7) Violating Private Attorney Generals Act; and
- 8) Unfair Business Practices.

**JURY TRIAL DEMANDED**

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27 Plaintiff JILL ARENDS (“Plaintiff”), on behalf of herself, the general public, and  
28 all other similarly situated and typical persons, alleges the following:

THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

# DRAFT COMPLAINT

1 All allegations in this Complaint are based upon information and belief except for  
2 those allegations that pertain to the Plaintiff named herein and her counsel. Each allegation  
3 in this Complaint either has evidentiary support or is likely to have evidentiary support after  
4 a reasonable opportunity for further investigation and discovery.

## JURISDICTION AND VENUE

6 1. The Superior Court of the State of California, for the County of Alameda, has  
7 original jurisdiction over the state law claims alleged herein pursuant to the California  
8 Constitution.

9 2. Venue is proper in this Court because Defendants have failed to designate a  
10 principal office in California and has conducted business in the state of California. *Easton*  
11 *v. Sup.Ct. (Schneider Bros., Inc.)* (1970) 12 CA3d 243, 246-247, 90 CR 642, 644.

## PARTIES

13 3. Plaintiff JILL ARENDS is natural person who has been employed by  
14 Defendants as a non-exempt hourly paid employee in the State of California during the  
15 relevant time period.

16 4. Defendants SELECT MEDICAL CORPORATION and SELECT  
17 EMPLOYMENT SERVICES, INC. (collectively referred to as "Select Medical" or  
18 "Defendants") are both foreign corporations with a principle place of business at 4714  
19 Gettysburg Road, Mechanicsburg, PA 17055.

20 5. The identity of DOES 1-50 is unknown at this time, and this Complaint will  
21 be amended at such time when the identities are known to Plaintiff. Plaintiff is informed  
22 and believes that each of the Defendants sued herein as DOE is responsible in some manner  
23 for the acts, omissions, or representations alleged herein and any reference to "Defendant,"  
24 "Defendants," or "Select Medical" herein shall mean "Defendants and each of them."

## FACTUAL ALLEGATIONS

26 6. Select Medical is a publicly traded for-profit corporation (NYSE ticker  
27 symbol SEM) that operates health care facilities throughout the country. According to its  
28 website, Select Medical "encompasses four areas of expertise: critical illness recovery,

## DRAFT COMPLAINT

1 inpatient medical rehabilitation, outpatient physical therapy and occupational medicine, all  
2 of which are delivered and supported by more than 46,000 talented health care  
3 professionals across the U.S.” See [https://www.selectmedical.com/select-medical-](https://www.selectmedical.com/select-medical-history/)  
4 [history/](https://www.selectmedical.com/select-medical-history/). Plaintiff is one of Select Medical’s 46,000 employees.

5 7. Plaintiff was employed by Select Medical as a Speech Pathologist and  
6 worked at the California Rehabilitation Institute. Plaintiff was an hourly paid non-exempt  
7 employee and earns approximately \$58 per hour.

8 8. Since opening the California Rehabilitation Institute (CRI) location in July  
9 2016, Defendants have systematically failed to compensate Plaintiff and all other similarly  
10 situated employees for all their work performed, both overtime and non-overtime hours.  
11 Defendants have systematically understaffed CRI so that Plaintiff and all other similarly  
12 situated employees are left to input patient information “off-the-clock” into the electronic  
13 record keeping software used by Defendants, either before the start of their shift, during  
14 their meal breaks, or after their shift.

15 9. The electronic record keeping system is called EPIC. Plaintiff and all other  
16 similarly situated employees would record and document any and all patient care notes  
17 into the EPIC system. EPIC would automatically record the times in which Plaintiff and  
18 all other similarly situated employees would enter data into the system, thereby leaving a  
19 “time stamp” to indicate when employees were using the system.

20 10. Defendants required Plaintiff and all others similarly situated to make  
21 entries into the EPIC system while at the employer’s place of employment. It is an integral,  
22 indispensable and legally necessary to the performance of Plaintiff’s job of providing  
23 patient care that she make these entries of patient care notes into the EPIC system, which  
24 was also an essential part of the medical billing process as well.

25 11. Defendants and Defendants’ agents were aware that Plaintiff and all other  
26 similarly situated employees were working without compensation because employees  
27 were physically present at Defendants’ facility and the EPIC system recorded the time  
28 when Plaintiff and similarly situated employees made entries. Defendants agents would

# DRAFT COMPLAINT

1 routinely observe Plaintiff and all others similarly situated making these patient chart EPIC  
2 entries "off the clock" such as during lunch breaks and before and after each shift.

3 12. Defendants also required all hourly paid employees to clock in and out using  
4 the KRONOS timekeeping system for pay purposes. When comparing the difference  
5 between the time entries from EPIC to the time entries in the KRONOS, Plaintiff and all  
6 other similarly situated employees worked a significant amount of time "off-the-clock".

7 13. Despite knowing that Plaintiff and other similarly situated individuals were  
8 performing work off-the-clock and without compensation, Defendants failed to prevent  
9 the performance of such work. Defendants suffered and permitted Plaintiff to continue  
10 doing uncompensated work that they were engaged to perform.

11 14. In addition to suffering and permitting Plaintiff and all other similarly  
12 situated employees to perform work without compensation, Select Medical also violated  
13 California's meal and rest break law by not providing a meal period and rest periods within  
14 the requisite number of hours after the start of a shift; failing to provide a second meal  
15 period and/or rest period within the time proscribed by law, and by not permitting a full  
16 30-minute uninterrupted meal period.

## 17 COLLECTIVE, CLASS, AND REPRESENTATIVE ACTION ALLEGATIONS

18 15. Plaintiff realleges and incorporates by this reference all the paragraphs  
19 above in this Complaint as though fully set forth herein.

20 16. Plaintiff brings this action on behalf of herself and all other similarly situated  
21 and typical employees employed in California as both a collective action under the FLSA  
22 and a true class action under California law.

23 17. Plaintiff brings this action on behalf of herself and the following FLSA

### 24 **Class:**

- 25 a. **FLSA Class:** All nonexempt hourly paid employees employed by  
26 Defendant who worked off the clock as demonstrated by the comparison  
27 between the EPIC electronic systems and KRONOS at any time during  
28 the relevant time period alleged herein.

# DRAFT COMPLAINT

1           18. With regard to the conditional certification mechanism under the FLSA,  
2 Plaintiff is similarly situated to those she seeks to represent for the following reasons,  
3 among others:

- 4           a. Defendants employed Plaintiff as an hourly-paid employee who did not  
5 receive her wages and, where applicable, overtime premium pay at one  
6 and one-half times the regular rate of pay for all hours worked over forty  
7 (40) hours in a workweek.
- 8           b. Plaintiff's situation is similar to those she seeks to represent because  
9 Defendants failed to pay Plaintiff and all other FLSA Off the Clock  
10 Members for all time they were required to work, but with the knowledge  
11 acquiescence and/or approval (tactic as well as expressed) of  
12 Defendants' managers and agents.
- 13           c. Common questions exist as to whether Plaintiff and all other FLSA Off  
14 the Clock Class Members worked off the clock and without  
15 compensation.
- 16           d. Upon information and belief, Defendants employ, and have employed,  
17 in excess of 1,000 FLSA Class Members within the applicable statute of  
18 limitations.
- 19           e. Plaintiff has signed or will sign a Consent to Sue form shortly.
- 20           f. Consent to sue forms are not required for state law claims under Rule 23  
21 of the California Rules of Civil Procedure.

22           19. Plaintiff brings this action on behalf of herself and the following **California**  
23 **Classes:**

- 24           a. **California Off the Clock Class:** All nonexempt hourly paid employees  
25 employed by Defendants who worked off the clock as demonstrated by  
26 the comparison between the EPIC electronic systems and KRONOS at  
27 any time during the relevant time period alleged herein.  
28

# DRAFT COMPLAINT

1           b. **California Meal/Rest Break Class:** All nonexempt hourly paid  
2           employees employed by Defendants at any time during the relevant time  
3           period alleged herein.

4           20. These Classes may be further subdivided into the following subclasses of  
5           similarly-situated and typical individuals based upon the divergent statute of limitations  
6           period for various claims asserted herein (collectively “the Subclasses” or “Subclass  
7           Members”):

8           a. **Itemized Wage Statement Subclass:** All Class Members who were  
9           employed at any time during the relevant time period alleged herein.

10          b. **Waiting Time Penalties Subclass:** All Class Members who were  
11          employed at any time during the relevant time period alleged herein.

12          c. **PAGA Subclass:** All Class Members who were employed at any time  
13          during the relevant time period alleged herein.

14          21. Class treatment is appropriate in this case for the following reasons:

15           A. The Class is Sufficiently Numerous: Upon information and belief,  
16           Defendants employ, and have employed, in excess of 1,000 Class Members within  
17           the applicable statute of limitations. Because Defendants are legally obligated to  
18           keep accurate payroll records, Plaintiff alleges that Defendants’ records will  
19           establish the members of the Class as well as their numerosity.

20           B. Common Questions of Law and Fact Exist: Common questions of  
21           law and fact exist and predominate as to Plaintiff and Class Members, including,  
22           without limitation:

23           1) Whether Defendants failed to compensate Plaintiff and members of  
24           the Class for all the hours that they worked;

25           2) Whether Defendants’ policy of not including the hours worked off  
26           the clock in a pay period on the pay stub violates the itemized wage  
27           statement provisions of the California Labor Code and the Orders of  
28           the California Industrial Wage Commission; and

DRAFT COMPLAINT

3) Whether Defendants willfully failed to pay Class Members all wages due and owing at the time of termination.

C. Plaintiff's Claims are Typical to Those of Fellow Class Members:

Plaintiff performed work off the clock without compensation. Plaintiff's claims are typical to those of the class she seeks to represent. In addition, Defendants did not give Plaintiff and Class Members accurate wage statements to reflect all their hours worked, rate of pay, and overtime compensation; and Defendants have not timely remitted all wages due and owing to Class Members who are former employees upon their termination.

D. Plaintiff is an Adequate Representative of the Class:

Plaintiff will fairly and adequately represent the interests of Class Members because Plaintiff is a member of the Class, she has common issues of law and fact with all members of the Class, and her claims are typical to other Class Members.

E. A Class Action is Superior/Common Claims Predominate:

A class action is superior to other available means for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses and burden of individualized litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

**FIRST CAUSE OF ACTION**

**Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207**

(On Behalf of Plaintiff and all members of the FLSA Class Against Defendants)

THERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thermanbuck.com www.thermanbuck.com

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# DRAFT COMPLAINT

1           22. Plaintiff realleges and incorporates by reference all the paragraphs above in  
2 the Complaint as though fully set forth herein.

3           23. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise  
4 provided in the section, no employer shall employ any of his employees who in any  
5 workweek is engaged in commerce or in the production of goods for commerce, or is  
6 employed in an enterprise engaged in commerce or in the production of goods for  
7 commerce, for a workweek longer than forty hours unless such employee receives  
8 compensation for his employment in excess of the hours above specified at a rate not less  
9 than one and one-half times the regular rate at which he is employed."

10           24. By failing to compensate Plaintiff and FLSA Class Members for all the time  
11 they were suffered and/or permitted to work, Defendants failed to pay Plaintiffs and FLSA  
12 Class Members overtime for all hours worked in excess of forty (40) hours in a week in  
13 violation of 29 U.S.C. Section 207(a)(1).

14           25. Wherefore, Plaintiff demands for herself and for all others similarly situated,  
15 that Defendant pay Plaintiff and FLSA Class Members one and one-half times their regular  
16 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the  
17 relevant time period together with liquidated damages, attorneys' fees, costs, and interest  
18 as provided by law.

## SECOND CAUSE OF ACTION

### **Failure to Pay Minimum Wages for All Hours Worked**

21 (On Behalf of Plaintiff and the California Off the Clock Class Against Defendants)

22           26. Plaintiff realleges and incorporates by this reference all the paragraphs  
23 above in this Complaint as though fully set forth herein.

24           27. California Labor Code (hereinafter referred to as "Labor Code") § 1194  
25 provides that "Notwithstanding any agreement to work for a lesser wage, any employee  
26 receiving less than the legal minimum wage or the legal overtime compensation applicable  
27 to the employee is entitled to recover in a civil action the unpaid balance of the full amount  
28

## DRAFT COMPLAINT

1 of this minimum wage or overtime compensation, including interest thereon, reasonable  
2 attorney's fees, and costs of suit."

3 28. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the  
4 minimum wage and states that "the payment of a less wage than the minimum so fixed is  
5 unlawful." Section 4 of applicable Wage Order No. 9 requires Defendant to pay its  
6 employees minimum wages for all hours worked.

7 29. Because Defendants failed to compensate Plaintiff and Class Members for  
8 their hours worked off the clock as set forth above, Defendants failed to pay Plaintiff and  
9 Class Members the required minimum wage rate for each hour worked.

10 30. Labor Code § 1194.2(a) provides that, in an action to recover wages because  
11 of the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an  
12 employee is entitled to recover liquidated damages in an amount equal to the wages  
13 unlawfully unpaid and interest thereon.

14 31. Plaintiff and Class Members should have received their regular rate of pay,  
15 or the minimum wage, whichever is higher, in a sum according to proof for the hours  
16 worked, but not compensated, during the Class Period. Defendants therefore owe Plaintiff  
17 and Class Members regular rate wages or minimum wages, whichever are higher, as well  
18 as liquidated damages in an equal amount to the wages owed, and has failed and refused,  
19 and continues to fail and refuse, to pay Plaintiff and Class Members the amounts owed.

20 32. As a direct and proximate result of Defendants' unlawful conduct, as set  
21 forth herein, the Plaintiff and Class Members have sustained damages and been deprived  
22 of minimum wages and regular wages that are owed in amounts to be proven at trial, and  
23 are entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys'  
24 fees and costs pursuant to Labor Code §§ 218.5, 1194, and 1194.2. Because Defendants'  
25 conduct described immediately above is an act of unfair competition and a business  
26 practice in violation of California Business & Professions Code § 17200, Plaintiff and  
27 Class Members are entitled to recover the amounts previously specified for four years prior  
28 to the filing of this complaint to the date of judgment after trial.

# DRAFT COMPLAINT

1           33. Defendants are also subject to civil penalties and restitution of wages  
2 payable to Plaintiff and all Class Members pursuant to Labor Code § 1179.1 as follows:

3           (1) For any initial violation that is intentionally committed, one hundred dollars  
4 (\$100) for each underpaid employee for each pay period for which the employee is  
5 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid  
6 wages.

7           (2) For each subsequent violation for the same specific offense, two hundred fifty  
8 dollars (\$250) for each underpaid employee for each pay period for which the employee is  
9 underpaid regardless of whether the initial violation is intentionally committed. This  
10 amount shall be in addition to an amount sufficient to recover underpaid wages.

11           (3) Wages recovered pursuant to this section shall be paid to the affected employee.

12           These penalties are in addition to any other penalty provided by law and are  
13 recoverable by private individuals on behalf of the state of California under the Private  
14 Attorney General Act, Labor Code § 2699, et. seq.

15           34. Defendants are also subject to civil penalties and restitution of wages  
16 payable to Plaintiff and all Class Members pursuant to Labor Code § 558 for violating the  
17 applicable Wage Order as follows:

18           (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
19 pay period for which the employee was underpaid in addition to an amount sufficient to  
20 recover underpaid wages.

21           (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
22 employee for each pay period for which the employee was underpaid in addition to an  
23 amount sufficient to recover underpaid wages.

24           (3) Wages recovered pursuant to this section shall be paid to the affected employee.

25           These penalties are in addition to any other penalty provided by law and are  
26 recoverable by private individuals on behalf of the state of California under the Private  
27 Attorney General Act, Labor Code § 2699, et. seq.

## **THIRD CAUSE OF ACTION**

### **Failure to Pay Overtime Wages for All Hours Worked**

# DRAFT COMPLAINT

1 (On Behalf of Plaintiff and the California Off the Clock Class Defendants)

2 35. Plaintiff realleges and incorporates by this reference all the paragraphs  
3 above in this Complaint as though fully set forth herein.

4 36. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No.  
5 9, mandate that California employers pay overtime compensation at one and one-half times  
6 the regular rate of pay to all non-exempt employees for all hours worked over eight (8) per  
7 day or over forty (40) per week and “any work in excess of 12 hours in one day shall be  
8 compensated at the rate of no less than twice the regular rate of pay for an employee. In  
9 addition, any work in excess of eight hours on any seventh day of a workweek shall be  
10 compensated at the rate of no less than twice the regular rate of pay of an employee.”  
11 Section 3(A)(1) of the applicable Wage Order states in relevant part: “Employment beyond  
12 eight (8) hours in any workday or more than six (6) days in any workweek is permissible  
13 provided the employee is compensated for such overtime at not less than: (a) One and one-  
14 half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight  
15 (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours  
16 worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the  
17 employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday  
18 and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day  
19 of work in a workweek.”

20 37. Labor Code § 1198 states that “The maximum hours of work and the  
21 standard conditions of labor fixed by the commission shall be the maximum hours of work  
22 and the standard conditions of labor for employees. The employment of any employee for  
23 longer hours than those fixed by the order or under conditions of labor prohibited by the  
24 order is unlawful.”

25 38. Because Defendants failed to compensate Plaintiff and California Off the  
26 Clock Class Members for their hours worked off the clock as set forth above, Defendants  
27 failed to pay Plaintiff and California Off the Clock Class Members overtime compensation  
28 when due.

# DRAFT COMPLAINT

1           39.     Wherefore, Plaintiff demands for herself and for California Off the Clock  
2 Class Members that Defendant pay Plaintiff and California Off the Clock Class Members  
3 overtime pay at the applicable legal rate for all overtime hours worked together with  
4 attorneys' fees, costs, and interest as provided by law. Because Defendants' conduct  
5 described immediately above is an act of unfair competition and a business practice in  
6 violation of California Business & Professions Code § 17200, Plaintiff and California Off  
7 the Clock Class Members are entitled to recover the amounts previously specified for four  
8 years prior to the filing of this complaint to the date of judgment after trial.

9           40.     Defendants are also subject to civil penalties and restitution of wages  
10 payable to Plaintiff and all California Off the Clock Class Members pursuant to Labor Code  
11 § 558 as follows:

12           (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
13 pay period for which the employee was underpaid in addition to an amount sufficient to  
14 recover underpaid wages.

15           (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
16 employee for each pay period for which the employee was underpaid in addition to an  
17 amount sufficient to recover underpaid wages.

18           (3) Wages recovered pursuant to this section shall be paid to the affected employee.

19           These penalties are in addition to any other penalty provided by law and are  
20 recoverable by private individuals on behalf of the state of California under the Private  
21 Attorney General Act, Labor Code § 2699, et. seq.

## **FOURTH CAUSE OF ACTION**

### **Failure to Provide Meal Breaks**

22           (On Behalf of Plaintiff and the California Meal Break Class Against Defendants)

23           41.     Plaintiff realleges and incorporates by this reference all the paragraphs  
24 above in this Complaint as though fully set forth herein.

25           42.     Section 11 of the applicable Wage Order states, in relevant part: "(A) No  
26 employer shall employ any person for a work period of more than five (5) hours without a  
27  
28

DRAFT COMPLAINT

1 meal period of not less than 30 minutes . . . If an employer fails to provide an employee a  
2 meal period in accordance with the applicable provisions of this order, the employer shall  
3 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for  
4 each workday that the meal period is not provided.”

5 43. Labor Code § 226.7 states that: “a) No employer shall require any employee  
6 to work during any meal or rest period mandated by an applicable order of the Industrial  
7 Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest  
8 period in accordance with an applicable order of the Industrial Welfare Commission, the  
9 employer shall pay the employee one additional hour of pay at the employee's regular rate  
10 of compensation for each work day that the meal or rest period is not provided.” California  
11 Labor Code § 229 provides for a private right of action to enforce the provisions of Labor  
12 Code 226.7.

13 44. Labor Code § 512 provides in relevant part: “An employer may not employ  
14 an employee for a work period of more than 10 hours per day without providing the  
15 employee with a second meal period of not less than 30 minutes . . .”

16 45. As described above and demonstrated by the comparison of the EPIC and  
17 KRONOS electronic records, Plaintiff and California Meal Break Class Members routinely  
18 worked through meal periods as required by Defendants, but were not compensated for the  
19 missed meal period pursuant to 226.7.

20 46. Wherefore, Plaintiff demands payment for herself and all California Meal  
21 Break Class Members one hour pay per day for every missed mandatory meal period,  
22 together with attorneys’ fees, costs, penalties, and interest as provided by law.

**FIFTH CAUSE OF ACTION**

**Failure to Provide Accurate Wage Statements**

(On Behalf of Plaintiff and the Wage Statement Subclass Against Defendants)

26 47. Plaintiff realleges and incorporates by this reference all the paragraphs  
27 above in this Complaint as though fully set forth herein.

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1 48. Defendants knowingly and intentionally failed to provide timely, accurate,  
2 itemized wage statements showing, inter alia, hours worked, to Plaintiff and Wage  
3 Statement Subclass Members in accordance with Labor Code § 226(a) and applicable Wage  
4 Order No. 9. Such failure caused injury to Plaintiff and Wage Statement Subclass Members  
5 by, among other things, impeding them from knowing the amount of wages to which they  
6 are and were legally entitled.

7 49. Plaintiff’s good faith estimate of the number of pay periods in which  
8 Defendants failed to provide accurate itemized wage statements to Plaintiff and Wage  
9 Statement Subclass Members is each and every pay period during the Class Period.

10 50. Plaintiff and the Wage Statement Subclass Members are entitled to and seek  
11 injunctive relief requiring Defendants to comply with Labor Code §§ 226(a) and further  
12 seek the amount provided under Labor Code § 226(e), including the greater of all actual  
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurred and  
14 one hundred dollars (\$100) per employee for each violation in a subsequent pay period.

15 51. Defendants are also subject to civil penalties for Labor Code §§ 226(a)  
16 violations “in the amount of two hundred and fifty dollars (\$250) per employee per  
17 violation in an initial citation and one thousand (\$1,000) per employee for each violation  
18 in a subsequent citation . . . .” as provided by Labor Code §§ 226.3. These penalties are in  
19 addition to any other penalty provided by law and are recoverable by private individuals on  
20 behalf of the state of California under the Private Attorney General Act, Labor Code § 2699,  
21 et. seq.

22 52. Because Defendants’ conduct described immediately above is an act of  
23 unfair competition and a business practice in violation of California Business & Professions  
24 Code Section 17200, Plaintiff further demands the Defendants be enjoined from continuing  
25 to provide inaccurate pay statements that fail to include the amount of hours worked by  
26 each employee, the hourly rate of pay, and the amount of all overtime hours worked at the  
27 corresponding hourly rate.

28 ///

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## SIXTH CAUSE OF ACTION

### **Failure to Timely Pay All Wages Due and Owing**

(On Behalf of Plaintiff and the Waiting Time Penalties Subclass Against Defendants)

53. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

54. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the time specified by law. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

55. Class Members who ceased employment with Defendants are entitled to unpaid compensation for unpaid minimum, regular, and overtime wages, as alleged above, but to date have not received such compensation. Defendants' failure to pay such wages and compensation, as alleged above, was knowing and "willful" within the meaning of Labor Code § 203.

56. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, Class Members whose employment ended within the last three years from the filing of this complaint are entitled to up to thirty days' wages under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

## SEVENTH CAUSE OF ACTION

### **Violating California Private Attorney General Act**

(On Behalf of Plaintiff and the PAGA Subclass Against Defendants)

57. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

58. Labor Code § 2699(a) states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of



## DRAFT COMPLAINT

1 this code, may, as an alternative, be recovered through a civil action brought  
2 by an aggrieved employee on behalf of himself or herself and other current  
or former employees pursuant to the procedures specified in Section 2699.3.

3 59. Plaintiff and PAGA Subclass Members are “aggrieved employees” as that  
4 term is defined in the California Labor Code Private Attorney General Act of 2004, because  
5 they are current or former employees of the alleged violator and against whom one or more  
6 of the alleged violations was committed.

7 60. As outlined above, Plaintiff has met all the notice requirements set forth in  
8 Labor Code § 2699.3 necessary to commence a civil action.

9 61. Plaintiff brings this action on behalf of herself and all aggrieved employees  
10 who were subject to Defendants’ failure to pay Plaintiff and aggrieved employees for all  
11 hours they worked at the applicable minimum, regular, and overtime wage rate; its failure  
12 to comply with California’s meal and rest break laws; its failure to provide accurate wage  
13 statements; and its failure to pay Plaintiff and aggrieved employees who are former  
14 employees all their wages due and owing upon termination.

15 62. Plaintiff, on behalf of herself and in a representative capacity on behalf of  
16 all members of the PAGA aggrieved employee Class, demand the maximum civil penalty  
17 specified in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiff  
18 and each aggrieved member of the Class per period for the initial violation and two hundred  
19 dollars (\$200) per pay period for each subsequent violation for violations of Labor Code  
20 §§ 201-204, 226, 226.7, 510, 1194, 1197, and 1198.

21 63. These penalties are recoverable in addition to any other civil penalty  
22 separately recoverable by law.

### EIGHTH CAUSE OF ACTION

#### **Unfair Business Practices**

(On Behalf of Plaintiff and the Classes Against Defendants)

23 64. Plaintiff realleges and incorporates by this reference all the paragraphs  
24 above in this Complaint as though fully set forth herein.  
25  
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28

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1           65. By the conduct described throughout this Complaint, Defendants have  
2 violated the provisions of the California Labor Code as specified and have engaged in  
3 unlawful, deceptive, and unfair business practices prohibited by California Business &  
4 Professions Code § 17200, *et seq.* Defendants’ use of such practices resulted in greatly  
5 decreased labor costs and constitutes an unfair business practice, unfair competition, and  
6 provides an unfair advantage over Defendants’ competitors.

7           66. The unlawful and unfair business practices complained of herein are  
8 ongoing and present a threat and likelihood of continuing against Defendants’ current  
9 employees as well as other members of the general public. Plaintiff and Class Members  
10 are therefore entitled to injunctive and other equitable relief against such unlawful practices  
11 in order to prevent future damage and to avoid a multiplicity of lawsuits. Accordingly,  
12 Plaintiff and the Class Members request a preliminary and permanent injunction prohibiting  
13 Defendants from the unfair practices complained of herein.

14           67. Defendants generated income as a direct result of the above-mentioned  
15 unlawful and unfair business practices. Plaintiff and the Class Members are therefore  
16 entitled to restitution of any and all monies withheld, acquired, and/or converted by  
17 Defendant by means of the unfair and unlawful practices complained of herein.

18           68. As a result, Plaintiff and Class Members seek restitution of their unpaid  
19 wages, unpaid overtime, meal and rest break pay, itemized wage statement penalties, and  
20 waiting time penalties, in addition to interest, attorneys’ fees, and costs, as necessary and  
21 according to proof. Plaintiff seeks the appointment of a receiver, as necessary, to establish  
22 the total monetary relief sought from Defendants.

23 ///  
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# DRAFT COMPLAINT

## JURY DEMAND

1  
2 Plaintiff JILL ARENDS hereby respectfully demands a trial by jury on all issues  
3 so triable.

## PRAYER FOR RELIEF

4  
5 Wherefore Plaintiff, individually and on behalf of all Class Members and all others  
6 similarly situated, prays for relief as follows relating to her collective, class and  
7 representative action allegations:

- 8 1. For an order conditionally certifying the action under the FLSA and  
9 providing notice to all FLSA Class Members so they may participate in the  
10 lawsuit;
- 11 2. For an order certifying this action as a class action on behalf of the proposed  
12 California Classes and Subclasses;
- 13 3. For an order appointing Plaintiff as the Representative of the Classes and her  
14 counsel as Class Counsel;
- 15 4. For damages according to proof for regular rate or minimum rate pay,  
16 whichever is higher, for all hours worked under both federal and California  
17 law;
- 18 5. For damages according to proof for overtime compensation for all overtime  
19 hours worked under both federal and California law;
- 20 6. For liquidated damages;
- 21 7. For one hour of pay at the regular rate or minimum rate pay, whichever is  
22 higher, for every missed and/or inadequate meal period;
- 23 8. For waiting time penalties;
- 24 9. For civil penalties;
- 25 10. For PAGA penalties;
- 26 11. For interest as provided by law at the maximum legal rate;
- 27 12. For reasonable attorneys' fees authorized by statute;
- 28 13. For costs of suit incurred herein;

# DRAFT COMPLAINT

- 1 14. For pre-judgment and post-judgment interest, as provided by law, and
- 2 15. For such other and further relief as the Court may deem just and proper.
- 3

4 DATED: November 1, 2019

THIERMAN BUCK LLP

6 *s/* \_\_\_\_\_  
7 Mark R. Thierman  
8 Joshua D. Buck  
9 Leah L. Jones

10 *Attorneys for Plaintiff*

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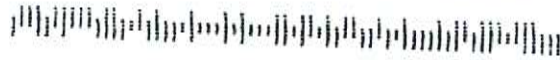
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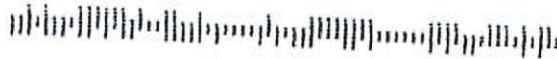
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