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11 Attorneys for Plaintiff SIHANATH J. VANGSOULATDA,
on behalf of himself and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14 SIHANATH J. VANGSOULATDA, on
15 behalf of himself and all others similarly
situated,

16 Plaintiffs,

17 v.

18 CALIFORNIA PHYSICIANS' SERVICE,
a California corporation; BLUE SHIELD
19 OF CALIFORNIA, a California corporation;
and DOES 1 to 100, inclusive,

20 Defendants.
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) Case No.: CGC-14-543296
) Honorable Curtis E. A. Karnow
) Department 304

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. **FAILURE TO PAY ALL WAGES;**
2. **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING;**
3. **FAILURE TO PROVIDE ALL MEAL PERIODS;**
4. **FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
5. **DERIVATIVE VIOLATIONS OF LABOR CODE §203;**
6. **INDEPENDENT VIOLATIONS OF LABOR CODE §203 REGARDING LATE CHECKS;**
7. **PENALTIES PURSUANT TO LABOR CODE §2699;**
8. **UNFAIR BUSINESS PRACTICES; AND**
9. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Action filed: December 18, 2014
Trial date: None Set

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

08/06/2015
Clerk of the Court

BY: ALISON AGBAY

Deputy Clerk

1 Plaintiff SIHANATH J. VANGSOULATDA, an individual on behalf of himself and all
2 others similarly situated (hereinafter collectively referred to as “Plaintiffs”), hereby files this
3 Complaint against Defendants CALIFORNIA PHYSICIANS’ SERVICE d/b/a “BLUE SHIELD
4 OF CALIFORNIA” and DOES 1 to 100 (hereinafter collectively referred to as “Defendants”).
5 Plaintiffs are informed and believe, and on the basis of that information and belief, allege as
6 follows:

7 **I.**

8 **INTRODUCTION**

9 1. This is a civil action seeking recovery for Defendants’ violations of California
10 Labor Code (“Labor Code”) §§1194, et seq., Labor Code §§200, et seq., Labor Code §§500, et
11 seq., Labor Code §§2698, et seq., California Business and Professions Code (“B&PC”) §17000,
12 et seq., the applicable Wage Orders issued by the California Industrial Welfare Commission
13 (hereinafter, the “IWC Wage Orders”) and related common law principles.

14 2. Plaintiffs’ action seeks monetary damages, including full restitution from
15 Defendants as a result of Defendants’ unlawful, fraudulent and/or unfair business practices.

16 3. The acts complained of herein occurred, occur and will occur, at least in part,
17 within the time period from four (4) years preceding the filing of the original Complaint herein,
18 up to and through the time of trial for this matter although this should not automatically be
19 considered the statute of limitations for any cause of action herein.

20 **RELEVANT JOB TITLES**

21 4. For introductory and general information only (and not to be considered a
22 proposed class definition), the relevant job titles held by the California citizens in this action are
23 Defendants’ hourly-paid non-exempt “Customer Service Representatives” (hereinafter including
24 any of Defendants’ job positions with substantially similar titles and/or duties, including but not
25 limited to “Associate Customer Service Representatives”).

26 5. The general obligations and responsibilities of Defendants’ Customer Service
27 Representatives are virtually identical from region to region, district to district, facility to facility,
28 and employee to employee. Any differences in job activities between the different individuals in

1 these positions were and are legally insignificant to the issues presented by this action.

2 SUMMARY OF CLAIMS

- 3 6. With regard to Defendants' Customer Service Representatives, Defendants have:
- 4 a. Failed to pay straight time, minimum and/or overtime wages for all hours
- 5 worked;
- 6 b. Failed to pay all wages due to illegal time rounding;
- 7 c. Failed to provide all meal periods;
- 8 d. Failed to timely furnish accurate itemized wage statements;
- 9 e. Derivatively violated Labor Code §203;
- 10 f. Independently violated Labor Code §203 regarding late checks;
- 11 g. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- 12 h. Conducted unfair business practices.

13 **II.**

14 **PARTIES**

15 PLAINTIFF SIHANATH J. VANGSOULATDA

16 7. Plaintiff SIHANATH J. VANGSOULATDA is an individual over the age of

17 eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State

18 of California.

19 8. Plaintiff SIHANATH J. VANGSOULATDA worked for Defendants as a Customer

20 Service Representative from approximately 2007 to March 20, 2014.

21 9. Plaintiff SIHANATH J. VANGSOULATDA seeks recovery herein from

22 Defendants because with regard to Plaintiff SIHANATH J. VANGSOULATDA, while acting for

23 Defendants in his capacity as a Customer Service Representative, Defendants have:

- 24 a. Failed to pay straight time, minimum and/or overtime wages for all hours
- 25 worked;
- 26 b. Failed to pay all wages due to illegal time rounding;
- 27 c. Failed to provide all meal periods;
- 28 d. Failed to timely furnish accurate itemized wage statements;

- 1 e. Derivatively violated Labor Code §203;
2 f. Independently violated Labor Code §203 regarding late checks;
3 g. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
4 h. Conducted unfair business practices.

5 DEFENDANT, CALIFORNIA PHYSICIANS' SERVICE

6 10. Defendant CALIFORNIA PHYSICIANS' SERVICE is now and/or at all times
7 mentioned in this Complaint was a California corporation and the owner and operator of an
8 industry, business and/or facility licensed to do business and actually doing business in the State
9 of California.

10 DEFENDANT, BLUE SHIELD OF CALIFORNIA

11 11. Defendant BLUE SHIELD OF CALIFORNIA is now and/or at all times
12 mentioned in this Complaint was a California corporation and the owner and operator of an
13 industry, business and/or facility licensed to do business and actually doing business in the State
14 of California.

15 DOES 1 TO 100, INCLUSIVE

16 12. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this
17 Complaint were licensed to do business and/or actually doing business in the State of California.

18 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
19 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
20 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

21 14. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
22 capacities as soon as they are ascertained.

23 ALL DEFENDANTS

24 15. Defendants, and each of them, are now and/or at all times mentioned in this
25 Complaint were in some manner legally responsible for the events, happenings and circumstances
26 alleged in this Complaint.

27 16. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
28 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

1 17. Defendants, and each of them, are now and/or at all times mentioned in this
2 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
3 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
4 mentioned in this Complaint were acting within the course and scope of that agency, servitude
5 and/or employment.

6 18. Defendants, and each of them, are now and/or at all times mentioned in this
7 Complaint were members of and/or engaged in a joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint
9 venture, partnership and common enterprise.

10 19. Defendants, and each of them, at all times mentioned in this Complaint concurred
11 and contributed to the various acts and omissions of each and every one of the other Defendants
12 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

13 20. Defendants, and each of them, at all times mentioned in this Complaint approved
14 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
15 this Complaint.

16 21. Defendants, and each of them, at all times mentioned in this Complaint aided and
17 abetted the acts and omissions of each and every one of the other Defendants thereby
18 proximately causing the damages alleged in this Complaint.

19 **III.**

20 **JURISDICTION AND VENUE**

21 22. The California Superior Court has jurisdiction in this matter due to Defendants'
22 aforementioned violations of California statutory law and/or related common law principles.

23 23. The California Superior Court also has jurisdiction in this matter because both the
24 individual and aggregate monetary damages and restitution sought herein exceed the minimal
25 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

26 24. The California Superior Court also has jurisdiction in this matter because during
27 their employment with Defendants, Plaintiff SIHANATH J. VANGSOULATDA and the members
28 of the putative Classes herein were all California citizens and Defendants CALIFORNIA

1 PHYSICIANS' SERVICE and BLUE SHIELD OF CALIFORNIA are California corporations.
2 Further, there is no federal question at issue, as the issues herein are based solely on California
3 statutes and law.

4 25. Venue is proper in San Francisco County pursuant to CCP §395(a) and CCP
5 §395.5 in that Defendants' corporate office is located there, liability arose there because at least
6 some of the transactions that are the subject matter of this Complaint occurred therein and/or each
7 Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

8 **IV.**

9 **CLASS ACTION ALLEGATIONS**

10 26. CCP §382 provides in pertinent part: "...[W]hen the question is one of a common
11 or general interest, of many persons, or when the parties are numerous, and it is impracticable to
12 bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs
13 bring this suit as a class action pursuant to CCP §382.

14 27. The putative classes Plaintiffs will seek to certify are currently composed of and
15 defined as follows:

- 16 a. All California citizens employed by Defendants as Customer Service
17 Representatives (as defined, supra) during the appropriate time period who
18 were subjected to Defendants' policies and practices regarding the payment of
19 straight time, minimum and/or overtime wages (hereinafter, the "Wage
20 Class");
- 21 b. All California citizens employed by Defendants as Customer Service
22 Representatives (as defined, supra) during the appropriate time period to
23 whom Defendants applied a time rounding policy and practice (hereinafter,
24 the "Rounding Class");
- 25 c. All California citizens employed by Defendants as Customer Service
26 Representatives (as defined, supra) during the appropriate time period who
27 were subjected to Defendants' policies and practices regarding meal periods
28 (hereinafter, the "Meal Period Class");

- 1 d. All California citizens employed by Defendants as Customer Service
2 Representatives (as defined, supra) during the appropriate time period who
3 were subjected to Defendants’ policies and practices regarding itemized wage
4 statements (hereinafter, the “Wage Statement Class”);
- 5 e. All formerly-employed California citizens employed by Defendants as
6 Customer Service Representatives (as defined, supra) during the appropriate
7 time period who were subjected to Defendants’ policies and practices
8 regarding Labor Code §203 and the payment of final wages (hereinafter, the
9 “LC 203 Class”); and
- 10 f. All formerly-employed California citizens employed by Defendants as
11 Customer Service Representatives (as defined, supra) during the appropriate
12 time period who were subjected to Defendants’ policies and practices
13 regarding Labor Code §203 and the payment of final wages (hereinafter, the
14 “Independent LC 203 Class”); and
- 15 g. All California citizens employed by Defendants as Customer Service
16 Representatives (as defined, supra) during the appropriate time period
17 regarding whom Defendants have engaged in unlawful, unfair and/or
18 fraudulent business acts or practices prohibited by B&PC §17200, et seq. as
19 described herein (hereinafter, the “17200 Class”).

20 28. The Wage Class, Rounding Class, Meal Periods Class, Wage Statement Class, LC
21 203 Class, Independent LC 203 Class and 17200 Class are herein collectively referred to as the
22 “Classes.”

23 29. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
24 necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a
25 class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

26 30. Numerosity (CCP §382):

- 27 a. The potential quantity of members of the Classes as defined is so numerous
28 that joinder of all members is unfeasible and impractical;

- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;
- c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

31. Superiority (CCP §382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy which encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;
- c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;
- d. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;
- e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against

1 Defendants because of an appreciable and justifiable fear of retaliation and
2 permanent damage to their lives, careers and well-being;

3 f. Proof of a common business practice or factual pattern, of which the members
4 of the Classes experienced, is representative of the Classes herein and will
5 establish the right of each of the members of the Classes to recover on the
6 causes of action alleged herein;

7 g. Absent class treatment, the prosecution of separate actions by the individual
8 members of the Classes, even if possible, would likely create:

9 i) a substantial risk of each individual plaintiff presenting in separate,
10 duplicative proceedings the same or essentially similar arguments and
11 evidence, including expert testimony;

12 ii) a multiplicity of trials conducted at enormous expense to both the
13 judicial system and the litigants;

14 iii) inconsistent or varying verdicts or adjudications with respect to the
15 individual members of the Classes against Defendants;

16 iv) potentially incompatible standards of conduct for Defendants; and

17 v) potentially incompatible legal determinations with respect to
18 individual members of the Classes which would, as a practical matter,
19 be dispositive of the interest of the other members of the Classes who
20 are not parties to the adjudications or which would substantially
21 impair or impede the ability of the members of the Classes to protect
22 their interests.

23 h. The claims of the individual members of the Classes are not sufficiently large
24 to warrant vigorous individual prosecution considering all of the concomitant
25 costs and expenses attendant thereto;

26 i. Courts seeking to preserve efficiency and other benefits of class actions
27 routinely fashion methods to manage any individual questions; and

28 j. The Supreme Court of California urges trial courts, which have an obligation

1 to consider the use of innovative procedural tools to certify a manageable
2 class, to be procedurally innovative in managing class actions.

3 32. Well-defined Community of Interest: Plaintiffs also meet the established
4 standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29
5 Cal.4th 1096), as follows:

- 6 a. Typicality: The claims of Plaintiff SIHANATH J. VANGSOULATDA are
7 typical of the claims of all members of the Classes he seeks to represent
8 because all members of the Classes sustained injuries and damages arising out
9 of Defendants' common course of conduct in violation of law and the injuries
10 and damages of all members of the Classes were caused by Defendants'
11 wrongful conduct in violation of law, as alleged herein.
- 12 b. Adequacy: Plaintiff SIHANATH J. VANGSOULATDA:
- 13 i) is an adequate representative of the Classes he seeks to represent;
 - 14 ii) will fairly protect the interests of the members of the Classes;
 - 15 iii) has no interests antagonistic to the members of the Classes; and
 - 16 iv) will vigorously pursue this suit via attorneys who are competent,
17 skilled and experienced in litigating matters of this type.
- 18 c. Predominant Common Questions of Law or Fact: There are common
19 questions of law and/or fact as to the members of the Classes which
20 predominate over questions affecting only individual members of the Classes,
21 including, without limitation:
- 22 i) Whether Defendants paid the legal and appropriate straight time pay,
23 minimum wage pay and/or overtime pay for all work hours to the
24 members of the Wage Class;
 - 25 ii) Whether Defendants' time rounding policies and practices are illegal
26 with regard to the members of the Rounding Class;
 - 27 iii) Whether Defendants failed and continue to fail to provide meal periods
28 to the members of the Meal Period Class in violation of the Labor

Code and Section 11 of the IWC Wage Orders;

- iv) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to the members of the Wage Statement Class;
- v) Whether Defendants are liable pursuant to Labor Code §203;
- vi) Whether the members of the Classes are entitled to penalties pursuant to Labor Code §§2698, et seq.;
- vii) Whether Defendants' conduct constitutes unfair competition within the meaning of B&PC §17200, et seq.;
- viii) Whether Defendants' conduct constitutes unfair business practices within the meaning of B&PC §17200, et seq.;
- ix) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- x) Whether the members of the Classes are entitled to injunctive relief;
- xi) Whether the members of the Classes are entitled to restitution; and
- xii) Whether Defendants are liable for attorneys' fees and costs.

33. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(On Behalf of the Wage Class)

(Against All Defendants)

34. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

35. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in

1 one workday and any work in excess of 40 hours in any one workweek ... shall be compensated
2 at the rate of no less than one and one-half times the regular rate of pay for any employee.”

3 36. Labor Code §1182.12, effective July 1, 2014, states: “Notwithstanding any other
4 provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not
5 less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all
6 industries shall be not less than ten dollars (\$10) per hour.”

7 37. Labor Code §§1194(a) states: “Notwithstanding any agreement to work for a
8 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid
10 balance of the full amount of this minimum wage or overtime compensation, including interest
11 thereon, reasonable attorney’s fees, and costs of suit.”

12 38. Further, pursuant to Labor Code §1197, payment of less than the minimum wage
13 fixed by the Labor Commission is unlawful.

14 39. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than
15 the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
16 Wage Order(s).

17 40. Pursuant to the IWC Wage Order(s), Defendants are required to pay the members
18 of the Wage Class for all hours worked, meaning the time during which an employee is subject
19 to the control of an employer, including all the time the employee is suffered or permitted to
20 work, whether or not required to do so.

21 41. Defendants, as a matter of established company policy and procedure, at each and
22 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 23 a. Administered a uniform company policy and practice as to the pay
24 policies regarding the members of the Wage Class;
- 25 b. Required the members of the Wage Class to be logged into their work
26 stations and ready to answer their telephones at the beginning of their
27 scheduled shift, necessitating that the Wage Class Members actually arrive
28 and begin working before the beginning of their scheduled shift;

- 1 c. Required the members of the Wage Class to perform various duties before
2 the beginning of their scheduled shift, including but not limited to:
3 i. Turn on and log into their computers;
4 ii. Open “E-time” software and wait for the software to load; and
5 iii. Press the “stamp” key to clock in for work; and
6 d. As such, scheduled to work and/or required the members of the Wage
7 Class to work without paying for all time they were under Defendants’
8 control.

9 42. Because Defendants required the members of the Wage Class to remain under
10 Defendants’ control without paying therefore, this resulted in the members of the Wage Class
11 earning less than the legal minimum wage in the State of California.

12 43. Defendants’ pattern, practice and uniform administration of corporate policy
13 regarding illegal employee compensation as described herein is unlawful and creates an
14 entitlement, pursuant to Labor Code §218, to recovery by Plaintiffs and the members of the
15 Wage Class, in a civil action, of the unpaid balance of the full amount of wages owing,
16 calculated at the appropriate rate.

17 44. Further, Defendants’ pattern and practice in uniform administration of corporate
18 policy regarding Defendants’ failure to pay the legal minimum wage to the members of the
19 Wage Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
20 §1194(a), to recovery by the members of the Wage Class, in a civil action, for the unpaid balance
21 of the full amount of the unpaid minimum wages owed, calculated as the difference between the
22 straight time compensation paid and the applicable minimum wage, including interest thereon.

23 45. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
24 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the members of
25 the Wage Class seek recovery of liquidated damages on the straight-time portion of
26 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
27 the wages unlawfully unpaid and interest thereon.

28 46. That calculation of individual damages for the members of the Wage Class may at

1 some point be required does not foreclose the possibility of taking common evidence on
2 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
3 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.
4 v. Superior Court (1981) 30 Cal.3d 256).

5 47. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the
6 members of the Wage Class seek recovery of pre-judgment interest on all amounts recovered
7 herein.

8 48. Pursuant to Labor Code §218.5 and/or Labor Code §1194, the members of the
9 Wage Class request that the Court award reasonable attorneys' fees and costs incurred by them
10 in this action.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

13 **(On Behalf of the Rounding Class)**

14 **(Against All Defendants)**

15 49. Plaintiffs incorporate by reference and reallege each and every one of the
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
17 forth herein.

18 50. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in
19 one workday and any work in excess of 40 hours in any one workweek ... shall be compensated
20 at the rate of no less than one and one-half times the regular rate of pay for any employee."

21 51. Labor Code §1182.12, effective July 1, 2014, states: "Notwithstanding any other
22 provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not
23 less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all
24 industries shall be not less than ten dollars (\$10) per hour."

25 52. Labor Code §§1194(a) states: "Notwithstanding any agreement to work for a
26 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid
28 balance of the full amount of this minimum wage or overtime compensation, including interest

1 thereon, reasonable attorney’s fees, and costs of suit.”

2 53. Further, pursuant to Labor Code §1197, payment of less than the minimum wage
3 fixed by the Labor Commission is unlawful.

4 54. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than
5 the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
6 Wage Order(s).

7 55. Pursuant to the IWC Wage Order(s), Defendants are required to pay the members
8 of the Rounding Class for all hours worked, meaning the time during which an employee is
9 subject to the control of an employer, including all the time the employee is suffered or permitted
10 to work, whether or not required to do so.

11 56. Defendants, as a matter of established company policy and procedure, at each and
12 every one of the individual facilities owned and/or operated by Defendants, until approximately
13 December 31, 2013, consistently:

- 14 a. Administered a uniform company policy and practice as to the rounding
15 policies regarding the members of the Rounding Class;
- 16 b. Required the members of the Rounding Class to be logged into their work
17 stations and ready to answer their telephones at the beginning of their
18 scheduled shift, necessitating that the Rounding Class Members actually
19 arrive and begin working before the beginning of their scheduled shift;
20 and
- 21 c. Rounded the actual time worked and recorded by the members of the
22 Rounding Class to the quarter hour, usually down, so that during the
23 course of the their employment, the members of the Rounding Class were
24 paid far less than they would have been paid had they been paid for actual
25 recorded time rather than “rounded” time.

26 57. Defendants’ time rounding policy is exacerbated by the fact that during the
27 relevant time period, Defendants also had a tardiness policy that stated in pertinent part that
28 employees who arrive to work eight or more minutes after the scheduled shift start time or leave

1 before the end of the scheduled shift end time, they incur half of an unscheduled absence.

2 58. Because Defendants required the members of the Rounding Class to remain under
3 Defendants' control without paying therefore, this resulted in the members of the Rounding
4 Class earning less than the legal minimum wage in the State of California.

5 59. Defendants' pattern, practice and uniform administration of corporate policy
6 regarding illegal employee compensation as described herein is unlawful and creates an
7 entitlement, pursuant to Labor Code §218, to recovery by Plaintiffs and the members of the
8 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
9 calculated at the appropriate rate.

10 60. Further, Defendants' pattern and practice in uniform administration of corporate
11 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
12 Rounding Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
13 §1194(a), to recovery by the members of the Rounding Class, in a civil action, for the unpaid
14 balance of the full amount of the unpaid minimum wages owed, calculated as the difference
15 between the straight time compensation paid and the applicable minimum wage (and/or the full
16 amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid
17 overtime premium for overtime hours worked), including interest thereon.

18 61. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
19 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the members of
20 the Rounding Class seek recovery of liquidated damages on the straight-time portion of
21 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
22 the wages unlawfully unpaid and interest thereon.

23 62. That calculation of individual damages for the members of the Rounding Class
24 may at some point be required does not foreclose the possibility of taking common evidence on
25 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
26 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.
27 v. Superior Court (1981) 30 Cal.3d 256).

28 63. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the

1 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
2 herein.

3 64. Pursuant to Labor Code §218.5 and/or Labor Code §1194, the members of the
4 Rounding Class request that the Court award reasonable attorneys' fees and costs incurred by
5 them in this action.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PROVIDE ALL MEAL PERIODS**
8 **(On Behalf of the Meal Period Class)**
9 **(Against All Defendants)**

10 65. Plaintiffs incorporate by reference and reallege each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
12 forth herein.

13 66. Labor Code §226.7(b) provides that “An employer shall not require an employee
14 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
16 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

17 67. Labor Code §512 provides that “An employer may not employ an employee for a
18 work period of more than five hours per day without providing the employee with a meal period
19 of not less than 30 minutes, except that if the total work period per day of the employee is no
20 more than six hours, the meal period may be waived by mutual consent of both the employer and
21 employee. An employer may not employ an employee for a work period of more than 10 hours
22 per day without providing the employee with a second meal period of not less than 30 minutes,
23 except that if the total hours worked is no more than 12 hours, the second meal period may be
24 waived by mutual consent of the employer and the employee only if the first meal period was not
25 waived.”

26 68. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
27 amend working condition orders with respect to break periods, meal periods, and days of rest for
28 any workers in California consistent with the health and welfare of those workers.”

1 69. Section 11(A) of the IWC Wage Orders provides that “Unless the employee is
2 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
3 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
4 only when the nature of the work prevents an employee from being relieved of all duty and when
5 by written agreement between the parties an on-the-job paid meal period is agreed to. The
6 written agreement shall state that the employee may, in writing, revoke the agreement at any
7 time.”

8 70. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
9 provide an employee a meal period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
11 compensation for each workday that the meal period is not provided.”

12 71. On one or more occasions, the members of the Meal Period Class worked over
13 five (5) hours per shift and therefore were entitled to a meal period of not less than thirty (30)
14 minutes prior to exceeding five (5) hours of employment.

15 72. Further, on one or more occasions, some members of the Meal Period Class
16 worked over ten (10) hours per shift and therefore were entitled to a second meal period of not
17 less than 30 minutes.

18 73. The members of the Meal Period Class did not validly or legally waive their meal
19 periods, by mutual consent with Defendants or otherwise.

20 74. The members of the Meal Period Class did not enter into any written agreement
21 with Defendants agreeing to an on-the-job paid meal period.

22 75. As a matter of Defendants’ established company policy, and in combination with
23 Defendants’ time rounding policies as described herein, Defendants failed to always comply with
24 the meal period requirements established by Labor Code §226.7, Labor Code §512, Labor Code
25 §516 and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the
26 Meal Period Class with a first and in some cases a second legally compliant meal period.

27 76. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c)
28 which states “If an employer fails to provide an employee a meal or rest or recovery period in

1 accordance with a state law, including, but not limited to, an applicable statute or applicable
2 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
3 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
4 pay the employee one additional hour of pay at the employee's regular rate of compensation for
5 each workday that the meal or rest or recovery period is not provided.," the members of the Meal
6 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
7 employee's regular rate of compensation for each work day that the meal period was not
8 provided, in a sum to be proven at trial.

9 77. Pursuant to Labor Code §218.6 and CC §3287, the members of the Meal Period
10 Class seek recovery of pre-judgment interest on all amounts recovered herein.

11 78. Pursuant to Labor Code §218.5, the members of the Meal Period Class request
12 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

15 **(On Behalf of the Wage Statement Class)**

16 **(Against All Defendants)**

17 79. Plaintiffs incorporate by reference and reallege each and every one of the
18 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
19 forth herein.

20 80. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees, either as a
22 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
23 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
24 gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and
26 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
27 each the pay period and the corresponding number of hours worked at each hourly rate by the
28 employee....".

1 81. Further, the IWC Wage Orders §7(A) states in pertinent part: “(A) Every
2 employer shall keep accurate information with respect to each employee including the following:
3 (3) Time records showing when the employee begins and ends each work period. Meal periods,
4 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
5 in the payroll period and applicable rates of pay....”

6 82. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A),
7 California employers are required to maintain accurate records pertaining to the total hours
8 worked for Defendants by the members of the Wage Statement Class, including but not limited
9 to, beginning and ending of each work period, meal period and split shift interval, the total daily
10 hours worked, and the total hours worked per pay period and applicable rates of pay.

11 83. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage
12 Orders §7(A), Defendants did not and still do not furnish each of the members of the Wage
13 Statement Class with an accurate itemized statement in writing showing (1) gross wages earned,
14 (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all
15 applicable hourly rates in effect during each respective pay period and the corresponding number
16 of hours worked at each hourly rate by each respective individual.

17 84. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage
18 Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total
19 hours worked for Defendants by the members of the Wage Statement Class, including but not
20 limited to, beginning and ending of each work period, meal period and split shift interval, the
21 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

22 85. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
23 employee suffers injury if the employer fails to provide accurate and complete information as
24 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
25 promptly and easily ascertain requisite information without reference to other documents or
26 information.

27 86. Here, the members of Wage Statement Class suffered injury because Defendants
28 failed to provide accurate and complete information as required by one or more items listed in

1 Labor Code §226(a)(1)-(9) and the Wage Statement Class members could not and cannot
2 promptly and easily ascertain requisite information without reference to other documents or
3 information.

4 87. In addition, the members of the Wage Statement Class have suffered injury as a
5 result of Defendants' failure to maintain accurate records for the members of the Wage
6 Statement Class in that the members of the Wage Statement Class were not timely provided
7 written accurate itemized statements showing all requisite information, including but not limited
8 to total hours worked by the employee, net wages earned and all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate, in
10 violation of Labor Code §226 and the IWC Wage Orders §7(A), such that the members of the
11 Wage Statement Class were misled by Defendants as to the correct information regarding
12 various items, including but not limited to total hours worked by the employee, net wages earned
13 and all applicable hourly rates in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate.

15 88. The actual injuries suffered by the members of the Wage Statement Class as a
16 result of Defendants' knowing and intentional failure to maintain accurate records for the
17 members of the Wage Statement Class include but are not limited to:

- 18 a. Confusion over whether they received all wages owed them by Defendants;
- 19 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 20 c. Being forced to engage in mathematical computations to analyze whether
21 Defendants' wages in fact compensated for all hours worked;
- 22 d. The inability to accurately calculate wage rates complicated by the fact that
23 wage statement information required by Labor Code §226 is missing;
- 24 e. That such practice prevents the members of the Wage Statement Class from
25 being able to effectively challenge information on their wage statements;
26 and/or
- 27 f. The difficulty and expense of filing and maintaining this lawsuit, and the
28 discovery required to collect and analyze the very information that California

1 law requires.

2 89. Pursuant to Labor Code §226(e), the members of the Wage Statement Class are
3 entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation
4 hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a
5 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

6 90. Pursuant to Labor Code §226(g), the currently-employed members of the Wage
7 Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor
8 Code §226.

9 91. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Wage
10 Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

11 **FIFTH CAUSE OF ACTION**

12 **DERIVATIVE VIOLATIONS OF LABOR CODE §203**

13 **(On Behalf of the LC 203 Class)**

14 **(Against All Defendants)**

15 92. Plaintiffs incorporate by reference and reallege each and every one of the
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
17 forth herein.

18 93. Labor Code §203 provides that if an employer willfully fails to pay, without
19 abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an
20 employee who is discharged or who quits, the wages of the employee shall continue at the same
21 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
22 commenced.

23 94. The members of the LC 203 Class are no longer employed by Defendants as they
24 were either discharged from or quit Defendants' employ.

25 95. Defendants had a consistent and uniform policy, practice and procedure of
26 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
27 according to amendment or proof.

28 96. As set forth above, Defendants willfully failed to pay the members of the LC 203

1 Class their entire wages due and owing at the time of their termination or within seventy-two
2 (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

3 97. Defendants' willful failure to pay wages to the members of the LC 203 Class
4 violates Labor Code §203 because Defendants knew or should have known wages were due to
5 the members of the LC 203 Class, as set forth above, but Defendants failed to pay them.

6 98. Thus, the members of the LC 203 Class are entitled to recovery pursuant to Labor
7 Code §203.

8 **SIXTH CAUSE OF ACTION**
9 **INDEPENDENT VIOLATIONS OF LABOR CODE §203 RE LATE CHECKS**
10 **(On Behalf of the Independent LC 203 Class)**

11 **(Against All Defendants)**

12 99. Plaintiffs incorporate by reference and reallege each and every one of the
13 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
14 forth herein.

15 100. Labor Code §203 provides that if an employer willfully fails to timely pay,
16 without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall continue at the same
18 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
19 commenced.

20 101. The members of the Independent LC 203 Class are no longer employed by
21 Defendants as they were either discharged from or quit Defendants' employ.

22 102. Defendants had a consistent and uniform policy, practice and procedure of
23 willfully failing to timely pay the earned wages of Defendants' former employees, according to
24 amendment or proof.

25 103. For example, on March 20, 2014, Plaintiff was provided a letter of termination
26 which states "Your employment with Blue Shield of California is terminated effective today,
27 March 20, 2014, due to excessive absences." However, the letter continues "**Within the next**
28 **few days**, a check which represents all wages owed, including accrued, but unused PTO paid

1 through the day you received said check will be sent to your home address...”. (emphasis
2 added).

3 104. As such, Defendants willfully failed to pay Plaintiff and the members of the
4 Independent LC 203 Class all wages due and owing at the time of their termination and/or within
5 seventy-two (72) hours of their resignation.

6 105. Defendants’ willful failure to timely pay final wages to the members of the
7 Independent LC 203 Class violates Labor Code §203 because Defendants knew or should have
8 known final wages were due to the members of the Independent LC 203 Class by a date certain,
9 but Defendants failed to pay them on a timely basis on or before that deadline.

10 106. Thus, the members of the Independent LC 203 Class are entitled to recovery
11 pursuant to Labor Code §203.

12 **SEVENTH CAUSE OF ACTION**

13 **PENALTIES PURSUANT TO LABOR CODE §2699**

14 **(On Behalf of the Members of the Classes)**

15 **(Against All Defendants)**

16 107. Plaintiffs incorporate by reference and reallege each and every one of the
17 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
18 forth herein.

19 108. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor
20 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
21 Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board
22 agencies or employees), such penalties may, as an alternative, be recovered through a civil action
23 brought by an aggrieved employee on behalf of himself or herself and other current or former
24 employees), the members of all Classes seek recovery of all applicable civil penalties.

25 109. Pursuant to Labor Code §2699(e) (which provides that for all provisions of the
26 Labor Code except those for which a civil penalty is specifically provided, there is established a
27 civil penalty for a violation of these provisions), the members of the Classes seek recovery of the
28 applicable civil penalties pursuant to Labor Code §2699(e)(2) as follows:

- 1 a. Penalties under Labor Code §2699(f) in the amount of one hundred dollars
2 (\$100.00) for each aggrieved employee per pay period for the initial violation;
3 and two hundred dollars (\$200.00) for each aggrieved employee per pay
4 period for each subsequent violation;
- 5 b. Penalties under Labor Code §558, in addition to and entirely independent and
6 apart from other penalty provided in the Labor Code, in the amount of \$50 for
7 each underpaid aggrieved employee for each pay period the aggrieved
8 employee was underpaid in addition to an amount sufficient to recover
9 underpaid wages, and \$100 for each subsequent violation for each underpaid
10 employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover underpaid wages, with all wages
12 recovered pursuant to Labor Code §558 provided to the aggrieved employees;
- 13 c. Penalties under Labor Code §226.3, in addition to and entirely independent
14 and apart from other penalty provided in the Labor Code, in the amount of
15 \$250 for each aggrieved employee per pay period for each violation, and
16 \$1,000 for each aggrieved employee per pay period for each subsequent
17 violation;
- 18 d. Penalties under Labor Code §256, in addition to and entirely independent and
19 apart from other penalty provided in the Labor Code, including Labor Code
20 §2699, et seq., for any aggrieved employee who was discharged or quit, and
21 was not paid all earned wages at termination in accordance with Labor Code
22 §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one
23 day of pay, at the same rate, for each day that he or she was paid late, until
24 payment was/is made, up to a maximum of thirty (30) days; and
- 25 e. Any and all additional penalties and sums as provided by the Labor Code
26 and/or other relevant statutes.

27 110. In addition, Plaintiffs seek and are entitled to fifty percent (50%) of all penalties
28 obtained under Labor Code §2699 to be allocated to the General Fund, and twenty-five percent

1 (25%) of all penalties obtained to be allocated to the LWDA, for education of employers and
2 employees about their rights and responsibilities under the Labor Code, and twenty-five percent
3 (25%) to all aggrieved employees.

4 111. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs
5 pursuant to Labor Code §§2699(g)(1), 218.5 (Wages), 1194(a), and any other applicable statute.

6 112. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved
7 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
8 listed in Section 2699.5 shall commence only after the following requirements have been met:

9 (1) The aggrieved employee or representative shall give written notice by certified mail to the
10 LWDA and the employer of the specific provisions of this code alleged to have been violated,
11 including the facts and theories to support the alleged violation."

12 113. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code
13 §2699.5. As such, Labor Code §2699.3(a) applies to this action, and Labor Code §2699.3(b) and
14 §2699.3(c) do not apply to this action.

15 114. On November 14, 2014, Plaintiffs complied with Labor Code §2699.3(a) in that
16 Plaintiffs gave written notice by certified mail to the LWDA and Defendants of the specific
17 provisions of the Labor Code alleged to have been violated, including the facts and theories to
18 support the alleged violation. Attached hereto as Exhibit "1" is Plaintiffs' November 14, 2014
19 LWDA letter.

20 115. Labor Code §2699.3(a) further states in pertinent part: "(2)(A) The agency shall
21 notify the employer and the aggrieved employee or representative by certified mail that it does
22 not intend to investigate the alleged violation within 30 calendar days of the postmark date of the
23 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
24 within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
25 aggrieved employee may commence a civil action pursuant to Section 2699."

26 116. As of December 17, 2014 (33 calendar days after Plaintiffs' November 14, 2014
27 LWDA letter was mailed via certified mail), Plaintiffs had not received any notification that the
28 LWDA intended to investigate the alleged violations.

1 117. Further, on June 30, 2015, Plaintiffs again complied with Labor Code §2699.3(a)
2 in that Plaintiffs gave written notice by certified mail to the LWDA and Defendants of the
3 additional specific provisions of the Labor Code alleged to have been violated, including the
4 facts and theories to support the alleged violations. Attached hereto as Exhibit “2” is Plaintiffs’
5 June 30, 2015 LWDA letter.

6 118. As of August 2, 2015 (33 calendar days after Plaintiffs’ June 30, 2015 LWDA
7 letter was mailed via certified mail), Plaintiffs had not received any notification that the LWDA
8 intended to investigate the alleged violations.

9 119. As such, Plaintiffs have complied with Labor Code §2699.3(a) and have been
10 given authorization therefrom to commence a civil action which includes a cause of action
11 pursuant to Labor Code §2699.

12 **EIGHTH CAUSE OF ACTION**
13 **UNFAIR BUSINESS PRACTICES**
14 **(On Behalf of the 17200 Class)**
15 **(Against All Defendants)**

16 120. Plaintiffs incorporate by reference and reallege each and every one of the
17 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
18 forth herein.

19 121. B&PC §17200 provides in pertinent part “...[U]nfair competition shall mean and
20 include any unlawful, unfair or fraudulent business act...”.

21 122. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
22 penalties provided for unfair competition “are cumulative to each other and to the remedies or
23 penalties available under all other laws of this state.”

24 123. B&PC §17204 provides that an action for any relief from unfair competition may
25 be prosecuted by any person who has suffered injury in fact and has lost money or property as a
26 result of such unfair competition.

27 124. Defendants have engaged in unlawful, unfair and fraudulent business acts or
28 practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing

1 paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum
2 working standards and conditions due to them under the Labor Code and/or the IWC Wage
3 Orders, as specifically described herein.

4 125. Defendants have engaged in unfair business practices in California by practicing,
5 employing and utilizing the employment practices outlined in the preceding paragraphs,
6 specifically, by requiring employees to perform the labor services complained of herein without
7 the requisite compensation.

8 126. Defendants' use of such practices constitutes an unfair business practice, unfair
9 competition and provides an unfair advantage over Defendants' competitors.

10 127. Plaintiffs have suffered injury in fact and have lost money or property as a result
11 of such unfair competition.

12 128. Plaintiffs seek full restitution from Defendants, as necessary and according to
13 proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means
14 of the unfair practices complained of herein.

15 129. Further, if Defendants are not enjoined from the conduct set forth above,
16 Defendants will continue to practice, employ and utilize the employment practices outlined in the
17 preceding paragraphs.

18 130. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
19 injunction prohibiting Defendants from engaging in the foregoing conduct.

20 131. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
21 monetary relief sought from Defendants.

22 **NINTH CAUSE OF ACTION**

23 **DECLARATORY RELIEF [CCP §1060]**

24 **(On Behalf of Plaintiffs and All Others Similarly Situated)**

25 **(Against All Defendants)**

26 132. Plaintiffs incorporate by reference and reallege each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
28 forth herein.

1 133. CCP §1060 provides that any person who desires a declaration of his or her rights
2 or duties with respect to another, in cases of actual controversy relating to the legal rights and
3 duties of the respective parties, may ask the Court for a declaration of rights or duties, and the
4 Court may make a binding declaration of these rights or duties, whether or not further relief is or
5 could be claimed at the time; any such declaration by the Court shall have the force of a final
6 judgment.

7 134. Defendants continue to this day to engage in some or all of the unlawful and
8 unfair conduct as described herein.

9 135. An actual controversy exists in that Defendants assert they have the legal right to
10 perform the acts as described herein.

11 136. Plaintiffs desire a declaration as to the rights of Plaintiffs and all others similarly
12 situated with respect to Defendants' unlawful and unfair conduct, as described herein.

13 137. It is therefore necessary that the Court declare the rights and duties of the parties
14 hereto.

15 VI.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray:

18 a. That the Court issue an Order certifying the Classes herein, appointing all named
19 Plaintiffs as representative of all others similarly situated, and appointing all law firms
20 representing all named Plaintiffs as counsel for the members of the Classes;

21 As to the First Cause of Action for Failure to Pay All Wages:

22 b. For recovery of the unpaid balance of the full amount of the straight time
23 compensation due and owing, according to proof;

24 c. For liquidated damages on the straight-time portion of uncompensated hours of
25 work (not including the overtime portion thereof), as authorized by Labor Code §1194.2(a);

26 d. For recovery of the unpaid balance of the full amount of overtime compensation
27 due and owing, calculated at the appropriate rate and according to proof;

28 e. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code

1 §1194(a) and CC §3287;

2 f. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
3 §218.5 and/or Labor Code §1194(a);

4 As to the Second Cause of Action for Failure to Pay All Wages Due To Illegal Rounding:

5 g. For recovery of the unpaid balance of the full amount of the straight time
6 compensation due and owing, according to proof;

7 h. For liquidated damages on the straight-time portion of uncompensated hours of
8 work (not including the overtime portion thereof), as authorized by Labor Code §1194.2(a);

9 i. For recovery of the unpaid balance of the full amount of overtime compensation
10 due and owing, calculated at the appropriate rate and according to proof;

11 j. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
12 §1194(a) and CC §3287;

13 k. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
14 §218.5 and/or Labor Code §1194(a);

15 As to the Third Cause of Action for Failure to Provide Meal Periods:

16 l. For one (1) hour of pay at the regular rate of compensation for each member of
17 the Meal Period Class for each workday that a meal or rest period was not provided;

18 m. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

19 n. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
20 §218.5;

21 As to the Fourth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage

22 Statements:

23 o. For recovery as authorized by Labor Code §226(e);

24 p. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
25 §226(e) and/or §226(g);

26 As to the Fifth Cause of Action for Derivative Violations of Labor Code §203:

27 q. For recovery as authorized by Labor Code §203;

28 As to the Sixth Cause of Action for Independent Violations of Labor Code §203 regarding Late

1 Checks:

2 r. For recovery as authorized by Labor Code §203;

3 As to the Seventh Cause of Action for Penalties Pursuant to Labor Code §2699:

4 s. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
5 independent and apart from other penalties in the Labor Code and for Labor Code violations
6 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay
7 period for each violation, and \$200 for each aggrieved employee per pay period for each
8 subsequent violation;

9 t. For civil penalties pursuant to Labor Code §558, as follows:

10 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
11 employee for each pay period for which the employee was underpaid in
12 addition to an amount which is sufficient to recover unpaid wages;

13 ii. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount which is sufficient to recover unpaid
16 wages; and

17 iii. For all unpaid wages, to be paid to the aggrieved employees;

18 u. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
19 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee
20 per pay period for each subsequent violation;

21 v. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
22 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
23 payment was/is made, up to a maximum of thirty (30) days;

24 w. For reasonable attorneys' fees and costs incurred;

25 As to the Eighth Cause of Action for Unfair Business Practices:

26 x. For an accounting, under administration of Plaintiffs and/or the receiver and
27 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
28 to be refunded to members of the Classes who are owed monies by Defendants;

1 y. For an Order requiring Defendants to identify each of the members of the Classes
2 by name, home address, home telephone number and, if available, email address;

3 z. For an Order requiring Defendants to make full restitution and payment pursuant
4 to California law;

5 aa. For an Order for a preliminary and/or permanent injunction prohibiting
6 Defendants from engaging in the acts complained of herein;

7 bb. For the creation of an administrative process wherein each injured member of the
8 Classes may submit a claim in order to receive his/her money;

9 cc. For all other appropriate injunctive, declaratory and equitable relief;

10 dd. For interest to the extent permitted by law;

11 ee. For an award of attorneys' fees and costs incurred in the investigation, filing and
12 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194
13 and/or any other applicable provision of law;

14 As to the Ninth Cause of Action for Declaratory Relief:

15 ff. For a Declaration from the Court determining the rights of Plaintiffs and all others
16 similarly situated regarding Defendants' unlawful and unfair conduct as described herein;

17 gg. For such further Declaration of rights as the Court may deem proper;

18 hh. For payment of costs and attorneys' fees from the amount recovered for the
19 common benefit of Plaintiffs and all others similarly situated;

20 As to All Causes of Action:

21 ii. For such relief as this Court may deem just and proper, including reasonable
22 attorneys' fees and costs incurred.

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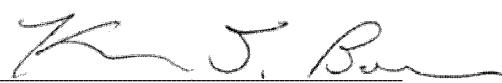
VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: August 6, 2015

LAW OFFICES OF KEVIN T. BARNES
THE MARKHAM LAW FIRM
UNITED EMPLOYEES LAW GROUP, PC

By: 
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EXHIBIT 1

LAW OFFICES OF
KEVIN T. BARNES

KEVIN T. BARNES
GREGG LANDER

OF COUNSEL:
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November 14, 2014

VIA CERTIFIED MAIL

PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(415)703-4810

Re: California Physicians' Service and Blue Shield of California (the "Employers")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency

From: Sihanath J. Vangsoulatda (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a), and alleges as follows:

During the applicable time period, the Employers employed the Employee and certain other similarly situated employees as hourly-paid Customer Service Representatives ("CSRs") (including employees with substantially similar titles and/or duties, such as Associate Customer Service Representatives). During this time period, the Employers utilized consistent policies and procedures regarding the Employee and others similarly situated, allegedly in violation of Labor Code §§201-203, 204, 226, 510, 1194, 1197 and 1198, as follows:

First, the Employers required the Employee and other similarly situated CSRs to be at their work stations ready to take their first call at their scheduled shift start time. This requires CSRs to log on to the Employers' computers and then open and load software; only then are they able to clock in. As such, allegedly in violation of Labor Code §§204, 510, 1194, 1197 and 1198 and the applicable Industrial Wage Order, the Employers (by failing to pay the Employee and all others similarly situated for all hours worked) failed to pay all straight time, minimum wages and overtime wages due.

Second, until approximately December 31, 2013, the Employer utilized an illegal time rounding policy. This policy (combined with the fact that the subject employees were required to arrive early to perform the aforementioned log-in and software loading process) resulted in a disproportionate impact which does not average out over a period of time and results in a failure to compensate the Employee and those similarly situated for all time actually worked.

As a derivative result of the above claims, the Employers have also allegedly violated Labor Code §226 and §201-203, as follows:

Regarding wage statements, pursuant to Labor Code §226 and the applicable Industrial Wage Order, the Employers are required to include on a paystub such information as all hours worked, the hourly rate of pay, and the rate of pay for overtime and double time work. Here, because the Employers allegedly failed to pay for all regular and/or overtime hours worked at the appropriate straight time or overtime rate, improper paystubs were issued by the Employers, and the Employee alleges that the Employers have derivatively violated Labor Code §226.

PAGA Administrator

Re: California Physicians' Service and Blue Shield of California

November 14, 2014

Page 2

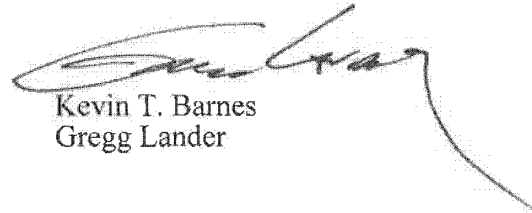
Regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all others similarly situated are allegedly entitled to thirty day of wages at their regular rate of pay for the Employers' alleged failure to pay all wages due upon separation of employment. Here, because the Employers allegedly failed to pay for all regular and/or overtime hours worked at the appropriate straight time or overtime rate, the Employee alleges that the Employers have derivatively violated Labor Code §203.

Finally, the Employee's last date of work for the Employers was March 20, 2014. However, the Employee was not furnished his final check for wages on that day. Instead, he was provided correspondence stating "Within the next few days, a check which represents all wages owed, including accrued, but unused PTO paid through the day you received said check will be sent to your home address..." As such, as an independent violation of Labor Code §§201-203, the Employee and all others similarly situated who allegedly did not timely receive their final wages are entitled to thirty day of wages at their regular rate of pay for the Employers' alleged failure to pay all wages due upon separation of employment.

Therefore, pursuant to Labor Code §2699.3(a/c)(2)(A), please advise within thirty (30) calendar days of the postmark date of this notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within thirty-three (33) calendar days of the postmark date of this notice that the LWDA intends to investigate these allegations, that the aggrieved employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,



Kevin T. Barnes
Gregg Lander

cc: (via Certified Mail)
California Physicians' Service
c/o National Corporate Research, Ltd.
50 Beale Street, 22nd Floor
San Francisco, CA 94105

cc: (via U.S. Mail)
David R. Markham, Esq.
THE MARKHAM LAW FIRM
750 B Street, Suite 1950
San Diego, CA 92101

cc: (via Certified Mail)
Blue Shield of California
c/o Seth Jacobs
50 Beale Street
San Francisco, CA 94105

cc: (via U.S. Mail)
Walter L. Haines, Esq.
UNITED EMPLOYEES LAW GROUP, PC
5500 Bolsa Avenue, Suite 201
Huntington Beach, CA 92649

EXHIBIT 2

LAW OFFICES OF
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June 30, 2015

VIA CERTIFIED MAIL

PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(415) 703-4810

Re: California Physicians' Service and Blue Shield of California (the "Employers")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency

From: Sihanath J. Vangsoulatda (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee submits this Notice, in follow-up to the Notice sent by the Employee on November 14, 2014, to which no response was received, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a), and alleges as follows:

During the applicable time period, the Employers employed the Employee and certain other similarly situated employees as hourly-paid Customer Service Representatives ("CSRs") (including employees with substantially similar titles and/or duties, such as Associate Customer Service Representatives). During this time period, the Employers utilized consistent policies and procedures regarding the Employee and others similarly situated, as follows:

As previously advised, the Employers utilized a time rounding policy and those similarly situated for all time actually worked. As a result of this time rounding policy, when the Employee and all others similarly situated clocked out for meal periods, their time would be rounded by the Employers so as to truncate their meal periods. As such, the Employers failed to timely provide all legally requisite meal breaks (including second meal breaks) to the Employee and all others similarly situated, even though they worked over five hours (and in some cases over ten hours) per day. As such, the Employers violated Labor Code §§226.7, 512 and 516 and the applicable Industrial Wage Order, ¶11, and owe penalties pursuant to Labor Code §§2699(f) and/or 558.

As a derivative result of the above claims, the Employers have also allegedly violated Labor Code §226 and §201-203, as follows:

Regarding wage statements, pursuant to Labor Code §226 and the applicable Industrial Wage Order, the Employers are required to include on a paystub such information as all hours worked, the hourly rate of pay, and the rate of pay for overtime and double time work. Here, because the Employers allegedly failed to provide all legally requisite meal periods, improper paystubs were issued by the Employers, and the Employee alleges that the Employers have derivatively violated Labor Code §226.

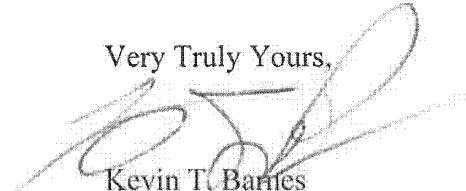
Regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all others similarly situated are allegedly entitled to thirty day of wages at their regular rate of pay for the Employers' alleged failure to pay all wages due upon separation of employment. Here, because the Employers allegedly failed to provide all legally requisite meal periods, the Employee alleges that the Employers have derivatively violated Labor Code §203.

PAGA Administrator
Re: California Physicians' Service
and Blue Shield of California
June 30, 2015
Page 2

Therefore, pursuant to Labor Code §2699.3(a/c)(2)(A), please advise within thirty (30) calendar days of the postmark date of this notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within thirty-three (33) calendar days of the postmark date of this notice that the LWDA intends to investigate these allegations, that the aggrieved employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,



Kevin T. Barnes
Gregg Lander

cc: (via Certified Mail)
California Physicians' Service
c/o Christopher A. Rheinheimer, Esq.
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

cc: (via Certified Mail)
Blue Shield of California
c/o Christopher A. Rheinheimer, Esq.
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San Francisco, CA 94111

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cc: (via U.S. Mail)
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, CA 90036-5664, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows:

Attorneys for Defendants:

Sharon B. Bauman, Esq.
Christopher A. Rheinheimer, Esq.
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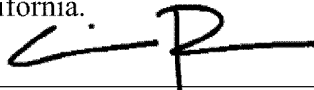
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Email: Walter@whaines.com

using the following service method:

X **VIA ELECTRONIC SERVICE:** Service was made pursuant to Court Order. The document(s) were served via the Court-approved File & Serve Xpress (“FSX”) service to all parties.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2015, at Los Angeles, California.



Cindy Rivas