



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-14-543296

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COMPLAINT

SIHANATH J VANGSOULATDA VS. CALIFORNIA PHYSICIANS' SERVICE A
CALIFORNIA ET AL

001C04728066

Instructions:

Please place this sheet on top of the document to be scanned.

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

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

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

CALIFORNIA PHYSICIANS' SERVICE, a California corporation;
BLUE SHIELD OF CALIFORNIA, a California corporation; and DOES

YOU ARE BEING SUED BY PLAINTIFF: 1 to 100, Inclusive,
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-14-543290
CGC-14-543296

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of Kevin T. Barnes, 5670 Wilshire Blvd., Suite 1460, Los Angeles, CA 90036 - (323) 549-9100

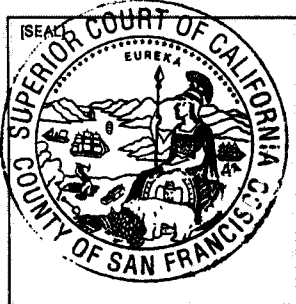
DATE: DEC 18 2014
(Fecha)

CLERK OF THE COURT

Clerk by
(Secretario)

Deputy
(Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other <i>(specify)</i> :	
- by personal delivery on *(date)*:

SHORT TITLE: Vangsoulatda v. California Physicians' Service	CASE NUMBER:
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INSTRUCTIONS FOR USE

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

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

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

1 to 100, inclusive

Page _____ of _____

Page 1 of 1

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

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SAN FRANCISCO**

24 SIHANATH J. VANGSOULATDA, on
25 behalf of himself and all others similarly
26 situated,

27 Plaintiffs,

28 v.

29 CALIFORNIA PHYSICIANS' SERVICE,
30 a California corporation; BLUE SHIELD
31 OF CALIFORNIA, a California corporation;
32 and DOES 1 to 100, inclusive,

33 Defendants.

Case No. **CGC-14-543296**

CLASS ACTION

COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

Plaintiff SIHANATH J. VANGSOULATDA, an individual on behalf of himself and all

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO
DEC 18 2014
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

1 others similarly situated (hereinafter collectively referred to as "Plaintiffs"), hereby files this
2 Complaint against Defendants CALIFORNIA PHYSICIANS' SERVICE, BLUE SHIELD OF
3 CALIFORNIA and DOES 1 to 100 (hereinafter collectively referred to as "Defendants").
4 Plaintiffs are informed and believe, and on the basis of that information and belief, allege as
5 follows:

6 I.

7 INTRODUCTION

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

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

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

19 RELEVANT JOB TITLES

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

25 5. The general obligations and responsibilities of Defendants' Customer Service
26 Representatives are virtually identical from region to region, district to district, facility to facility,
27 and employee to employee. Any differences in job activities between the different individuals in
28 these positions were and are legally insignificant to the issues presented by this action.

1 SUMMARY OF CLAIMS

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

11 II.

12 PARTIES

13 LAINTIFF SIHANATH J. VANGSOULATDA

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

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

16 of California.

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

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

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

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

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

- 22 a. Failed to pay straight time, minimum and/or overtime wages for all hours
- 23 worked;
- 24 b. Failed to pay all wages due to illegal time rounding;
- 25 c. Failed to timely furnish accurate itemized wage statements;
- 26 d. Derivatively violated Labor Code §203;
- 27 e. Independently violated Labor Code §203 regarding late checks;
- 28 f. Incurred penalties pursuant to Labor Code §§2698, et seq.; and

1 g. Conducted unfair business practices.

2 DEFENDANT, CALIFORNIA PHYSICIANS' SERVICE

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

7 DEFENDANT, BLUE SHIELD OF CALIFORNIA

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

12 DOES 1 TO 100, INCLUSIVE

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

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

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

20 ALL DEFENDANTS

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

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

26 17. Defendants, and each of them, are now and/or at all times mentioned in this
27 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
28 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times

1 mentioned in this Complaint were acting within the course and scope of that agency, servitude
2 and/or employment.

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

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

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

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

16 **III.**

17 **JURISDICTION AND VENUE**

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

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

23 24. The California Superior Court also has jurisdiction in this matter because during
24 their employment with Defendants, Plaintiff SIHANATH J. VANGSOULATDA and the members
25 of the putative Classes herein were all California citizens and Defendants CALIFORNIA
26 PHYSICIANS' SERVICE and BLUE SHIELD OF CALIFORNIA are California corporations.
27 Further, there is no federal question at issue, as the issues herein are based solely on California
28 statutes and law.

1 25. Venue is proper in San Francisco County pursuant to CCP §395(a) and CCP
2 §395.5 in that Defendants' corporate office is located there, liability arose there because at least
3 some of the transactions that are the subject matter of this Complaint occurred therein and/or each
4 Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

5 **IV.**

6 **CLASS ACTION ALLEGATIONS**

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

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

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

1 regarding Labor Code §203 and the payment of final wages (hereinafter, the
2 “LC 203 Class”); and

3 e. All formerly-employed California citizens employed by Defendants as
4 Customer Service Representatives (as defined, supra) during the appropriate
5 time period who were subjected to Defendants’ policies and practices
6 regarding Labor Code §203 and the payment of final wages (hereinafter, the
7 “Independent LC 203 Class”); and

8 f. All California citizens employed by Defendants as Customer Service
9 Representatives (as defined, supra) during the appropriate time period
10 regarding whom Defendants have engaged in unlawful, unfair and/or
11 fraudulent business acts or practices prohibited by B&PC §17200, et seq. as
12 described herein (hereinafter, the “17200 Class”).

13 28. The Wage Class, Rounding Class, Wage Statement Class, LC 203 Class,
14 Independent LC 203 Class and 17200 Class are herein collectively referred to as the “Classes.”

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

18 30. Numerosity (CCP §382):

- 19 a. The potential quantity of members of the Classes as defined is so numerous
20 that joinder of all members is unfeasible and impractical;
- 21 b. The disposition of the claims of the members of the Classes through this class
22 action will benefit both the parties and this Court;
- 23 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
24 however, it is estimated that the membership of the Classes numbers greater
25 than 100 individuals; and
- 26 d. The quantity and identity of such membership is readily ascertainable via
27 inspection of Defendants’ records.

28 31. Superiority (CCP §382): The nature of this action and the nature of the laws

1 available to Plaintiffs make the use of the class action format particularly efficient and the
2 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- 3 a. California has a public policy which encourages the use of the class action
4 device;
- 5 b. By establishing a technique whereby the claims of many individuals can be
6 resolved at the same time, the class suit both eliminates the possibility of
7 repetitious litigation and provides small claimants with a method of obtaining
8 redress for claims which would otherwise be too small to warrant individual
9 litigation;
- 10 c. This case involves large corporate Defendants and a large number of
11 individual Class members with many relatively small claims and common
12 issues of law and fact;
- 13 d. If each individual member of the Classes was required to file an individual
14 lawsuit, the large corporate Defendants would necessarily gain an
15 unconscionable advantage because Defendants would be able to exploit and
16 overwhelm the limited resources of each individual member of the Classes
17 with Defendants' vastly superior financial and legal resources;
- 18 e. Requiring each individual member of the Classes to pursue an individual
19 remedy would also discourage the assertion of lawful claims by the members
20 of the Classes who would be disinclined to pursue an action against
21 Defendants because of an appreciable and justifiable fear of retaliation and
22 permanent damage to their lives, careers and well-being;
- 23 f. Proof of a common business practice or factual pattern, of which the members
24 of the Classes experienced, is representative of the Classes herein and will
25 establish the right of each of the members of the Classes to recover on the
26 causes of action alleged herein;
- 27 g. Absent class treatment, the prosecution of separate actions by the individual
28 members of the Classes, even if possible, would likely create:

- 1 i) a substantial risk of each individual plaintiff presenting in separate,
2 duplicative proceedings the same or essentially similar arguments and
3 evidence, including expert testimony;
4 ii) a multiplicity of trials conducted at enormous expense to both the
5 judicial system and the litigants;
6 iii) inconsistent or varying verdicts or adjudications with respect to the
7 individual members of the Classes against Defendants;
8 iv) potentially incompatible standards of conduct for Defendants; and
9 v) potentially incompatible legal determinations with respect to
10 individual members of the Classes which would, as a practical matter,
11 be dispositive of the interest of the other members of the Classes who
12 are not parties to the adjudications or which would substantially
13 impair or impede the ability of the members of the Classes to protect
14 their interests.
- 15 h. The claims of the individual members of the Classes are not sufficiently large
16 to warrant vigorous individual prosecution considering all of the concomitant
17 costs and expenses attendant thereto;
- 18 i. Courts seeking to preserve efficiency and other benefits of class actions
19 routinely fashion methods to manage any individual questions; and
- 20 j. The Supreme Court of California urges trial courts, which have an obligation
21 to consider the use of innovative procedural tools to certify a manageable
22 class, to be procedurally innovative in managing class actions.

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

- 26 a. Typicality: The claims of Plaintiff SIHANATH J. VANGSOULATDA are
27 typical of the claims of all members of the Classes he seeks to represent
28 because all members of the Classes sustained injuries and damages arising out

1 of Defendants' common course of conduct in violation of law and the injuries
2 and damages of all members of the Classes were caused by Defendants'
3 wrongful conduct in violation of law, as alleged herein.

4 b. Adequacy: Plaintiff SIHANATH J. VANGSOULATDA:

- 5 i) is an adequate representative of the Classes he seeks to represent;
6 ii) will fairly protect the interests of the members of the Classes;
7 iii) has no interests antagonistic to the members of the Classes; and
8 iv) will vigorously pursue this suit via attorneys who are competent,
9 skilled and experienced in litigating matters of this type.

10 c. Predominant Common Questions of Law or Fact: There are common
11 questions of law and/or fact as to the members of the Classes which
12 predominate over questions affecting only individual members of the Classes,
13 including, without limitation:

- 14 i) Whether Defendants paid the legal and appropriate straight time pay,
15 minimum wage pay and/or overtime pay for all work hours to the
16 members of the Wage Class;
17 ii) Whether Defendants' time rounding policies and practices are illegal
18 with regard to the members of the Rounding Class;
19 iii) Whether Defendants failed to timely furnish accurate, itemized and
20 legal wage statements to the members of the Wage Statement Class;
21 iv) Whether Defendants are liable pursuant to Labor Code §203;
22 v) Whether the members of the Classes are entitled to penalties pursuant
23 to Labor Code §§2698, et seq.;
24 vi) Whether Defendants' conduct constitutes unfair competition within the
25 meaning of B&PC §17200, et seq.;
26 vii) Whether Defendants' conduct constitutes unfair business practices
27 within the meaning of B&PC §17200, et seq.;
28 viii) Whether the members of the Classes are entitled to compensatory

1 damages, and if so, the means of measuring such damages;

2 ix) Whether the members of the Classes are entitled to injunctive relief;

3 x) Whether the members of the Classes are entitled to restitution; and

4 xi) Whether Defendants are liable for attorneys' fees and costs.

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

8 V.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES**

12 **(On Behalf of the Wage Class)**

13 **(Against All Defendants)**

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

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

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

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

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

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

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

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

- 12 a. Administered a uniform company policy and practice as to the pay
13 policies regarding the members of the Wage Class;
- 14 b. Required the members of the Wage Class to be logged into their work
15 stations and ready to answer their telephones at the beginning of their
16 scheduled shift, necessitating that the Wage Class Members actually arrive
17 and begin working before the beginning of their scheduled shift;
- 18 c. Required the members of the Wage Class to perform various duties before
19 the beginning of their scheduled shift, including but not limited to:
 - 20 i. Turn on and log into their computers;
 - 21 ii. Open "E-time" software and wait for the software to load; and
 - 22 iii. Press the "stamp" key to clock in for work; and
- 23 d. As such, scheduled to work and/or required the members of the Wage
24 Class to work without paying for all time they were under Defendants'
25 control.

26 42. Because Defendants required the members of the Wage Class to remain under
27 Defendants' control without paying therefore, this resulted in the members of the Wage Class
28 earning less than the legal minimum wage in the State of California.

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

6 44. Further, Defendants' pattern and practice in uniform administration of corporate
7 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
8 Wage Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
9 §1194(a), to recovery by the members of the Wage Class, in a civil action, for the unpaid balance
10 of the full amount of the unpaid minimum wages owed, calculated as the difference between the
11 straight time compensation paid and the applicable minimum wage, including interest thereon.

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

17 46. That calculation of individual damages for the members of the Wage Class may at
18 some point be required does not foreclose the possibility of taking common evidence on
19 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
20 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.
21 v. Superior Court (1981) 30 Cal.3d 256).

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

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

28 ///

1 **SECOND CAUSE OF ACTION**

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

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

4 **(Against All Defendants)**

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

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

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

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

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

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

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

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

- 4 a. Administered a uniform company policy and practice as to the rounding
5 policies regarding the members of the Rounding Class;
- 6 b. Required the members of the Rounding Class to be logged into their work
7 stations and ready to answer their telephones at the beginning of their
8 scheduled shift, necessitating that the Rounding Class Members actually
9 arrive and begin working before the beginning of their scheduled shift;
10 and
- 11 c. Rounded the actual time worked and recorded by the members of the
12 Rounding Class to the quarter hour, usually down, so that during the
13 course of the their employment, the members of the Rounding Class were
14 paid far less than they would have been paid had they been paid for actual
15 recorded time rather than "rounded" time.

16 57. Defendants' time rounding policy is exacerbated by the fact that during the
17 relevant time period, Defendants also had a tardiness policy that stated in pertinent part that
18 employees who arrive to work eight or more minutes after the scheduled shift start time or leave
19 before the end of the scheduled shift end time, they incur half of an unscheduled absence.

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

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

28 60. Further, Defendants' pattern and practice in uniform administration of corporate

1 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
2 Rounding Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
3 §1194(a), to recovery by the members of the Rounding Class, in a civil action, for the unpaid
4 balance of the full amount of the unpaid minimum wages owed, calculated as the difference
5 between the straight time compensation paid and the applicable minimum wage (and/or the full
6 amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid
7 overtime premium for overtime hours worked), including interest thereon.

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

13 62. That calculation of individual damages for the members of the Rounding Class
14 may at some point be required does not foreclose the possibility of taking common evidence on
15 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
16 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.
17 v. Superior Court (1981) 30 Cal.3d 256).

18 63. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the
19 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
20 herein.

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

24 **THIRD CAUSE OF ACTION**

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

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

27 **(Against All Defendants)**

28 65. Plaintiffs incorporate by reference and reallege each and every one of the

1 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
2 forth herein.

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

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

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

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

28 70. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage

1 Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total
2 hours worked for Defendants by the members of the Wage Statement Class, including but not
3 limited to, beginning and ending of each work period, meal period and split shift interval, the
4 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

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

10 72. Here, the members of Wage Statement Class suffered injury because Defendants
11 failed to provide accurate and complete information as required by one or more items listed in
12 Labor Code §226(a)(1)-(9) and the Wage Statement Class members could not and cannot
13 promptly and easily ascertain requisite information without reference to other documents or
14 information.

15 73. In addition, the members of the Wage Statement Class have suffered injury as a
16 result of Defendants' failure to maintain accurate records for the members of the Wage
17 Statement Class in that the members of the Wage Statement Class were not timely provided
18 written accurate itemized statements showing all requisite information, including but not limited
19 to total hours worked by the employee, net wages earned and all applicable hourly rates in effect
20 during the pay period and the corresponding number of hours worked at each hourly rate, in
21 violation of Labor Code §226 and the IWC Wage Orders §7(A), such that the members of the
22 Wage Statement Class were misled by Defendants as to the correct information regarding
23 various items, including but not limited to total hours worked by the employee, net wages earned
24 and all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate.

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

- 1 a. Confusion over whether they received all wages owed them by Defendants;
2 b. The difficulty and expense of attempting to reconstruct time and pay records;
3 c. Being forced to engage in mathematical computations to analyze whether
4 Defendants' wages in fact compensated for all hours worked;
5 d. The inability to accurately calculate wage rates complicated by the fact that
6 wage statement information required by Labor Code §226 is missing;
7 e. That such practice prevents the members of the Wage Statement Class from
8 being able to effectively challenge information on their wage statements;
9 and/or
10 f. The difficulty and expense of filing and maintaining this lawsuit, and the
11 discovery required to collect and analyze the very information that California
12 law requires.

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

17 76. Pursuant to Labor Code §226(g), the currently-employed members of the Wage
18 Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor
19 Code §226.

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

22 **FOURTH CAUSE OF ACTION**

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

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

25 **(Against All Defendants)**

26 78. 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 79. Labor Code §203 provides that if an employer willfully fails to pay, without
2 abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall continue at the same
4 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
5 commenced.

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

8 81. Defendants had a consistent and uniform policy, practice and procedure of
9 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
10 according to amendment or proof.

11 82. As set forth above, Defendants willfully failed to pay the members of the LC 203
12 Class their entire wages due and owing at the time of their termination or within seventy-two
13 (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

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

17 84. Thus, the members of the LC 203 Class are entitled to recovery pursuant to Labor
18 Code §203.

19 **FIFTH CAUSE OF ACTION**
20 **INDEPENDENT VIOLATIONS OF LABOR CODE §203 RE LATE CHECKS**
21 **(On Behalf of the Independent LC 203 Class)**
22 **(Against All Defendants)**

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

26 86. Labor Code §203 provides that if an employer willfully fails to timely pay,
27 without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an
28 employee who is discharged or who quits, the wages of the employee shall continue at the same

1 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
2 commenced.

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

5 88. Defendants had a consistent and uniform policy, practice and procedure of
6 willfully failing to timely pay the earned wages of Defendants' former employees, according to
7 amendment or proof.

8 89. For example, on March 20, 2014, Plaintiff was provided a letter of termination
9 which states "Your employment with Blue Shield of California is terminated effective today,
10 March 20, 2014, due to excessive absences." However, the letter continues "Within the next
11 few days, a check which represents all wages owed, including accrued, but unused PTO paid
12 through the day you received said check will be sent to your home address...". (emphasis
13 added).

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

17 91. Defendants' willful failure to timely pay final wages to the members of the
18 Independent LC 203 Class violates Labor Code §203 because Defendants knew or should have
19 known final wages were due to the members of the Independent LC 203 Class by a date certain,
20 but Defendants failed to pay them on a timely basis on or before that deadline.

21 92. Thus, the members of the Independent LC 203 Class are entitled to recovery
22 pursuant to Labor Code §203.

23 **SIXTH CAUSE OF ACTION**

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

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

26 **(Against All Defendants)**

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

1 forth herein.

2 94. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor
3 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
4 Development Agency ("LWDA") (or any of its departments, divisions, commissions, board
5 agencies or employees), such penalties may, as an alternative, be recovered through a civil action
6 brought by an aggrieved employee on behalf of himself or herself and other current or former
7 employees), the members of all Classes seek recovery of all applicable civil penalties.

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

- 12 a. Penalties under Labor Code §2699(f) in the amount of one hundred dollars
13 (\$100.00) for each aggrieved employee per pay period for the initial violation;
14 and two hundred dollars (\$200.00) for each aggrieved employee per pay
15 period for each subsequent violation;
- 16 b. Penalties under Labor Code §558, in addition to and entirely independent and
17 apart from other penalty provided in the Labor Code, in the amount of \$50 for
18 each underpaid aggrieved employee for each pay period the aggrieved
19 employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages, and \$100 for each subsequent violation for each underpaid
21 employee for each pay period for which the employee was underpaid in
22 addition to an amount sufficient to recover underpaid wages, with all wages
23 recovered pursuant to Labor Code §558 provided to the aggrieved employees;
- 24 c. Penalties under Labor Code §226.3, in addition to and entirely independent
25 and apart from other penalty provided in the Labor Code, in the amount of
26 \$250 for each aggrieved employee per pay period for each violation, and
27 \$1,000 for each aggrieved employee per pay period for each subsequent
28 violation;

- 1 d. Penalties under Labor Code §256, in addition to and entirely independent and
2 apart from other penalty provided in the Labor Code, including Labor Code
3 §2699, et seq., for any aggrieved employee who was discharged or quit, and
4 was not paid all earned wages at termination in accordance with Labor Code
5 §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one
6 day of pay, at the same rate, for each day that he or she was paid late, until
7 payment was/is made, up to a maximum of thirty (30) days; and
8 e. Any and all additional penalties and sums as provided by the Labor Code
9 and/or other relevant statutes.

10 96. In addition, Plaintiffs seek and are entitled to fifty percent (50%) of all penalties
11 obtained under Labor Code §2699 to be allocated to the General Fund, and twenty-five percent
12 (25%) of all penalties obtained to be allocated to the LWDA, for education of employers and
13 employees about their rights and responsibilities under the Labor Code, and twenty-five percent
14 (25%) to all aggrieved employees.

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

17 98. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved
18 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
19 listed in Section 2699.5 shall commence only after the following requirements have been met:
20 (1) The aggrieved employee or representative shall give written notice by certified mail to the
21 LWDA and the employer of the specific provisions of this code alleged to have been violated,
22 including the facts and theories to support the alleged violation."

23 99. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code
24 §2699.5. As such, Labor Code §2699.3(a) applies to this action, and Labor Code §2699.3(b) and
25 §2699.3(c) do not apply to this action.

26 100. On November 14, 2014, Plaintiffs complied with Labor Code §2699.3(a) in that
27 Plaintiffs gave written notice by certified mail to the LWDA and Defendants of the specific
28 provisions of the Labor Code alleged to have been violated, including the facts and theories to

1 support the alleged violation. Attached hereto as Exhibit "1" is Plaintiffs' LWDA letter.

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

8 102. As of December 17, 2014 (33 calendar days after Plaintiffs' LWDA letter was
9 mailed via certified mail), Plaintiffs had not received any notification that the LWDA intended to
10 investigate the alleged violations.

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

14 **SIXTH CAUSE OF ACTION**

15 **UNFAIR BUSINESS PRACTICES**

16 **(On Behalf of the 17200 Class)**

17 **(Against All Defendants)**

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

21 105. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and
22 include any unlawful, unfair or fraudulent business act..."

23 106. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
24 penalties provided for unfair competition "are cumulative to each other and to the remedies or
25 penalties available under all other laws of this state."

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

1 108. Defendants have engaged in unlawful, unfair and fraudulent business acts or
2 practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing
3 paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum
4 working standards and conditions due to them under the Labor Code and/or the IWC Wage
5 Orders, as specifically described herein.

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

10 110. Defendants' use of such practices constitutes an unfair business practice, unfair
11 competition and provides an unfair advantage over Defendants' competitors.

12 111. Plaintiffs have suffered injury in fact and have lost money or property as a result
13 of such unfair competition.

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

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

20 114. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
21 injunction prohibiting Defendants from engaging in the foregoing conduct.

22 115. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
23 monetary relief sought from Defendants.

24 **SEVENTH CAUSE OF ACTION**
25 **DECLARATORY RELIEF [CCP §1060]**
26 **(On Behalf of Plaintiffs and All Others Similarly Situated)**
27 **(Against All Defendants)**

28 116. Plaintiffs incorporate by reference and reallege each and every one of the

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1 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
2 forth herein.

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

9 118. Defendants continue to this day to engage in some or all of the unlawful and
10 unfair conduct as described herein.

11 119. An actual controversy exists in that Defendants assert they have the legal right to
12 perform the acts as described herein.

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

15 121. It is therefore necessary that the Court declare the rights and duties of the parties
16 hereto.

17 **VI.**

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray:

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

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

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

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

28 d. For recovery of the unpaid balance of the full amount of overtime compensation

1 due and owing, calculated at the appropriate rate and according to proof;

2 e. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
3 §1194(a) and CC §3287;

4 f. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
5 §218.5 and/or Labor Code §1194(a);

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

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

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

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

13 j. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
14 §1194(a) and CC §3287;

15 k. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
16 §218.5 and/or Labor Code §1194(a);

17 As to the Third Cause of Action for Failure to Timely Furnish Accurate Itemized Wage

18 Statements:

19 l. For recovery as authorized by Labor Code §226(e);

20 m. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
21 §226(e) and/or §226(g);

22 As to the Fourth Cause of Action for Derivative Violations of Labor Code §203:

23 n. For recovery as authorized by Labor Code §203;

24 As to the Fifth Cause of Action for Independent Violations of Labor Code §203 regarding Late

25 Checks:

26 o. For recovery as authorized by Labor Code §203;

27 As to the Sixth Cause of Action for Penalties Pursuant to Labor Code §2699:

28 p. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely

1 independent and apart from other penalties in the Labor Code and for Labor Code violations
2 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay
3 period for each violation, and \$200 for each aggrieved employee per pay period for each
4 subsequent violation;

5 q. For civil penalties pursuant to Labor Code §558, as follows:

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

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

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

14 r. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
15 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee
16 per pay period for each subsequent violation;

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

20 t. For reasonable attorneys' fees and costs incurred;

21 As to the Sixth Cause of Action for Unfair Business Practices:

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

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

27 w. For an Order requiring Defendants to make full restitution and payment pursuant
28 to California law;

- 1 x. For an Order for a preliminary and/or permanent injunction prohibiting
2 Defendants from engaging in the acts complained of herein;
- 3 y. For the creation of an administrative process wherein each injured member of the
4 Classes may submit a claim in order to receive his/her money;
- 5 z. For all other appropriate injunctive, declaratory and equitable relief;
- 6 aa. For interest to the extent permitted by law;
- 7 bb. For an award of attorneys' fees and costs incurred in the investigation, filing and
8 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194
9 and/or any other applicable provision of law;

10 As to the Seventh Cause of Action for Declaratory Relief:

- 11 cc. For a Declaration from the Court determining the rights of Plaintiffs and all others
12 similarly situated regarding Defendants' unlawful and unfair conduct as described herein;
- 13 dd. For such further Declaration of rights as the Court may deem proper;
- 14 ee. For payment of costs and attorneys' fees from the amount recovered for the
15 common benefit of Plaintiffs and all others similarly situated;

16 As to All Causes of Action:

- 17 ff. For such relief as this Court may deem just and proper, including reasonable
18 attorneys' fees and costs incurred.

19 VII.

20 **DEMAND FOR JURY TRIAL**

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

22 Dated: December 18, 2014

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

24 By: 

25 Kevin T. Barnes, Esq.
26 Gregg Lander, Esq.
27 Attorneys for Plaintiffs

EXHIBIT 1

LAW OFFICES OF
KEVIN T. BARNES

KEVIN T. BARNES
GREGG LANDER

OF COUNSEL:
JOSEPH ANTONELLI

5670 WILSHIRE BOULEVARD, SUITE 1460
LOS ANGELES, CALIFORNIA 90036-5664

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A Professional Law Corporation

www.kbarnes.com

Barnes@kbarnes.com

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

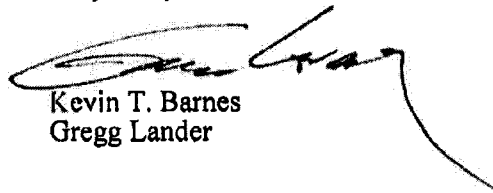
Regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all others similarly situated are allegedly entitled to thirty day of wages at their regular rate of pay for the Employers' alleged failure to pay all wages due upon separation of employment. Here, because the Employers allegedly 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 Certified Mail)
Blue Shield of California
c/o Seth Jacobs
50 Beale Street
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 U.S. Mail)
Walter L. Haines, Esq.
UNITED EMPLOYEES LAW GROUP, PC
5500 Bolsa Avenue, Suite 201
Huntington Beach, CA 92649

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Kevin T. Barnes, Esq. (SBN#138477)
 Law Offices of Kevin T. Barnes
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, California 90036
 TELEPHONE NO.: (323) 549-9100 FAX NO.: (323) 549-0101

ATTORNEY FOR (Name): Sihanath J. Vangsoulatda

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS: 400 McAllister Street
 CITY AND ZIP CODE: San Francisco, CA 94102
 BRANCH NAME: Civic Center Courthouse

CASE NAME:
 Sihanath J. Vangsoulatda v. California Physicians' Service

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-14-543296
 JUDGE:
 DEPT:

FILED SUPERIOR COURT COUNTY OF SAN FRANCISCO DEC 18 2014 CLERK OF THE COURT BY: [Signature] Deputy Clerk

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Eight (8)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 18, 2014
 Kevin T. Barnes, Esq.
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.