

1 Mitchell L. Feldman, Esq
Florida Bar No. 0080349 (*Pro hac vice*)
2 FELDMAN LEGAL GROUP
6916 West Linebaugh Avenue, # 101
3 Tampa, Florida 33625
Tel: (813) 639-9366
4 Fax: (813) 639-9376
Mfeldman@flandgatrialattorneys.com
5 Mail@feldmanlegal.us

6 David Ratner (Bar No.316267)
Shelley Molineaux (Bar No. 277884)
RATNER MOLINEAUX LLP
7 1990 N. California Boulevard, Suite 20
Walnut Creek, California 94596
8 Telephone: (925) 393-7511
Facsimile: (925) 891-3818
9 david@ratnermolineaux.com
shelley@ratnermolineaux.com

10 *Attorneys for Plaintiffs and the Proposed Classes*

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13 REBECCA ANDERSON and TARA
NUNALLY, individually, and on behalf of all
others similarly situated,

14 Plaintiffs,

15 v.

16 RELIANT PRO REHAB LLC, d/b/a
17 RELIANT REHAB, and DOES 1 through
50, inclusive,

18 Defendants.

Case No.1:22-cv-00599-HBK

**COLLECTIVE and CLASS ACTION
AMENDED COMPLAINT FOR:**

- 19 **(1) FAILURE TO PAY OVERTIME;**
- 20 **(2) FAILURE TO PROVIDE MEAL PERIODS;**
- 21 **(3) FAILURE TO PROVIDE REST PERIODS;**
- 22 **(4) FAILURE TO PAY FOR ALL HOURS WORKED**
- (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- (6) UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES;**
- (7) FAILURE TO PAY EARNED WAGES UPON DISCHARGE;**
- (8) DECLARATORY and INJUNCTIVE RELIEF**
- (9) FAILURE TO PAY OVERTIME (FLSA); and**

1 (10) FAILURE TO MAINTAIN
2 ACCURATE RECORDS OF HOURS
3 WORKED (FLSA).

4 DEMAND FOR JURY TRIAL

5
6 Plaintiffs, REBECCA ANDERSON and TARA NUNALLY (“Plaintiffs”), individually, and
7 on behalf of all others similarly situated (“Class Members”), pursuant to the Fair Labor Standards
8 Act, 29 U.S.C. 201 et seq., (“FLSA”), Federal Rules of Civil Procedure, Rule 23 and California
9 Wage laws, herein sue Defendant, RELIANT PRO REHAB LLC, d/b/a RELIANT REHAB
10 (hereinafter “RELIANT” or “Defendant”) for violations of the FLSA and California state wage
11 laws. Defendant has maintained an unlawful scheme to avoid its overtime pay obligations and deny
12 lawfully required bona fide off-duty breaks to a class of thousands of Therapists to increase profits
13 to the tune of millions of dollars each year at the expense of its hard working and dedicated
14 employees. As part of this scheme to avoid paying wages, and to save millions in labor costs as
15 well as to unfairly reap many millions of dollars in profits, akin to stealing the earned wages of
16 thousands of Therapists, Defendant maintained a De Facto policy of commanding and pressing
17 Therapists to underreport, and submit inaccurate and unreliable time sheets, to work without meal
18 breaks and to work off the clock. Therapists were told not to self-report more than 8 hours per day
19 and 40 hours for the week no matter how many additional hours they worked, and to self-report
20 30-minute meal breaks they rarely if ever took as a matter of policy. Meanwhile, RELIANT,
21 through productivity requirements and their desire to limit labor costs, pressured Therapists to work
22 overtime hours off the clock and underreport their hours, placing them in fear of disciplinary action

1 and terminations of their employment if they dared report all the overtime hours necessary to
2 complete their job duties.

3 **INTRODUCTION**

4 1. Defendant in this case has willfully FAILED to pay overtime wages to hourly-paid,
5 non-exempt THERAPISTS working under various specialties who have been permitted to suffer to
6 work off the clock in order to fulfill and handle required job duties and responsibilities in positions
7 where Defendant knows such employees working in these positions were working off the clock and
8 overtime hours in efforts to meet all company expectations and job requirements and avoid
9 suffering disciplinary action, including but not limited to termination of their employment. All
10 Class Members were paid on an hourly, non-exempt status.

11 2. Plaintiffs herein commence this legal action individually and as a Collective and Class
12 action on behalf of all others similarly situated against Defendant for unfair business practices and
13 violations of the California Labor Code (“Labor Code”) and the FLSA.

14 3. Pursuant to national common policy and plan, Plaintiffs and the class of similarly situated
15 current and former California employees, have worked under the titles of Physical Therapist (PT),
16 Physical Therapy Assistant (PTA), Occupational Therapist (OT), Certified Occupational Therapy
17 Assistant (COTA), Speech Language Pathologist (SLP) (herein collectively referred to as
18 “Therapists”), or other job titles used to describe persons performing similar, hourly, non-exempt
19 management positions working from approximately 870 or more locations or offices in 40 states in
20 the United States of America and 50 or more locations or offices in California.

21 4. Plaintiffs and Class Members, were unlawfully not compensated a premium for all hours
22 worked over eight (8) hours in a day or forty (40) hours in a week, each and every workweek, by a
scheme and plan of Defendant to evade the overtime wage laws and save many millions of dollars
in labor costs to the detriment and harm of Plaintiffs and all other similarly situated present and

1 former employees.

2 5. Likewise, Defendant required Plaintiffs and Class Members to work more than five (5)
3 hours per day without receiving all mandated off-duty meal periods. Defendant had, and continues
4 to have, a pattern and practice of such high productivity requirements, upwards of 125%, which
5 leaves no time for 30-minute uninterrupted off-duty meal periods and rest breaks, which Defendant
6 knew and continues to employ to this day.

7 6. While Defendant did have some system for hourly employees to self-report their work
8 hours, Defendant maintains a policy, as many employers do, that “overtime” has to be
9 pre-approved. Meanwhile, and simultaneously, Defendant maintained a De Facto policy that all
10 such employees are to “do whatever it takes to get the job done” and complete all their job duties
11 including working off the clock as needed and required.

12 7. Defendant had actual knowledge, but at a minimum constructive knowledge, that Plaintiffs
13 and Class Members routinely worked off the clock, as well as worked more than five hours per day
14 without taking their mandated off-duty breaks.

15 8. Not only were directors, supervisors and others in management well informed of these
16 additional off the clock hours being performed and Therapists failing to take off-duty mandated
17 breaks, and thus had actual knowledge, but managers and/or directors and others in management
18 encouraged and even pressured Therapists to work as many overtime hours as needed off the clock
19 to meet productivity goals, and to complete all their job duties and required reporting forms and
20 medical notes.

21 9. When Plaintiffs and California Class Members did not receive uninterrupted off-duty meal
22 breaks, Defendant did not pay Plaintiffs and Class Members with the additional hour of
compensation as required by Labor Code §§ 226.7, 558, 1198 and Wage Order 7, § 11(D). As a
result, Defendant did not pay Plaintiffs and the Class Members with all wages due as required by
Labor Code §§ 201-204.

1 10. Defendant's Directors and superiors over the Plaintiffs and Class Members, who themselves
2 had worked in these same positions, also worked overtime hours off the clock and thus are aware
3 that working more than eight (8) hours in a day or forty (40) hours in the workweek was necessary
4 to complete these job duties and responsibilities, meet the productivity requirement, and to avoid
5 the risk of termination of their employment.

6 11. Moreover, Defendant here never prevented or discouraged Plaintiffs and Class Members
7 from accessing the offices, computer systems and data bases outside the standard or regular
8 business hours or on weekends to prevent and curtail off the clock work.

9 12. Indeed, Defendant knew that Plaintiffs and Class Members routinely accessed systems,
10 databases, and programs, including emails while off the clock and away from the office, including
11 by and through available tablets.

12 13. Defendant turned a "blind eye" to all the off the clock work for numerous reasons, while
13 pressuring, coercing, intimidating, and encouraging Therapists to work as many hours as necessary
14 to hit their productivity goals and complete their job duties.

15 14. Defendant had a policy and practice of requiring Plaintiffs and Class Members to work more
16 than 3.5 hours per day without receiving mandated off-duty, uninterrupted rest periods, in violation
17 of the rest break requirements pursuant to Labor Code § 226.7 and Wage Order 7, § 12(A). In an
18 effort to achieve unrealistic productivity rates, Plaintiffs and Class Members were not given their
19 mandated off-duty, uninterrupted rest periods. As a result, Plaintiffs and Class Members did not
20 receive 10-minute uninterrupted off-duty rest periods in addition to not receiving their off-duty
21 mandated meal break.

22 15. Defendant's pattern and practice required a productivity rate that cannot be met in a normal
eight (8) hour work day or forty (40) hour work week, so that Plaintiffs and Class Members were
required to skip rest breaks and skip off-duty meal breaks in an effort to minimize overtime work
that they were forbidden to take without approval and discouraged from asking for.

1 16. When Plaintiffs and Class Members did not receive uninterrupted off-duty rest periods,
2 Defendant did not pay Plaintiffs and Class Members with the additional hour of compensation as
3 required by Labor Code §§ 226.7, 558, 1198 and Wage Order 7, § 12(B). As a result, Defendant did
4 not pay Plaintiffs and the California Class Members with all wages due as required by Labor Code
5 §§ 201-204.

6 17. Defendant has willfully failed to pay Plaintiffs and California Class Members all wages
7 owed in accordance with California State laws. Specifically, Plaintiffs and Class Members were not
8 paid overtime for time worked in excess of eight (8) hours per day or forty (40) hours per week and
9 were not paid a premium for not receiving uninterrupted off-duty breaks. As a result, Defendant did
10 not pay Plaintiffs and the Class Members with all wages due as required by Labor Code §§ 201-204.

11 18. Labor Code § 226 provides that every employer is required, “semimonthly or at the time of
12 each payment of wages,” to give each employee an itemized wage statement, including, inter alia,
13 the total hours worked by the employee (except for salaried employees), and “all applicable hourly
14 rates in effect during the pay period and the corresponding number of hours worked at each hourly
15 rate by the employee.” Labor Code § 226(a). Defendant had a policy and practice of failing to
16 provide proposed California Class Members, including Plaintiffs, with a properly itemized wage
17 statement with each paycheck in compliance with California law. Defendant's wage statements did
18 not indicate the additional hour of compensation when Plaintiffs and California Class Members
19 were not provided meal or rest breaks, in violation of Labor Code § 226(a)(1), (2), (5), and (9).

20 19. Labor Code § 1174(d) provides that an employer should keep payroll records “showing the
21 hours worked daily by and the wages paid to [...]”. Because Defendant had a policy and practice of
22 failing to adequately keep records of Plaintiffs’ and California Class Members’ meal breaks, as
required by Labor Code § 226.7 and 512, Defendant failed to maintain accurate and complete
payroll records in compliance with California law. This failure gives rise to civil penalties under
Labor Code § 1174.5.

1 20. Plaintiffs and Class Members did not, and currently do not, perform work that meets the
2 definition of any exemption under the FLSA and California Wage laws, and the Defendant’s pay
3 practices are not only clearly unlawful, but UNFAIR as well.

4 21. In this pleading, “Defendant” means the named Defendant and any other subsidiary or
5 affiliated and wholly owned corporation, parent corporations, former or predecessor corporations,
6 and any and all other organizations or entities responsible for the employment practices complained
7 of herein (discovery may reveal additional defendants that should be included).

8 **JURISDICTION AND VENUE**

9 22. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331,
10 since this action involves a federal question under the Fair Labor Standards Act (“FLSA”), 29
11 U.S.C. § 216 (b). Supplemental jurisdiction over the state law claims exists pursuant to 28 U.S.C. §
12 1367 which arises from the same common nucleus of operative facts.

13 23. This Court has subject matter jurisdiction over this action pursuant to 28 US Code § 1332 -
14 Diversity of citizenship, as Plaintiffs are residents of California and at all times material worked for
15 Defendant in California, and Defendant is a foreign corporation, with a principal place of business
16 in Texas. Moreover, the damages in this case exceed \$75,000. This Court also has supplemental
17 jurisdiction to consider claims arising under California state law pursuant to 28 US Code § 1367.

18 24. This Court has subject matter jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §
19 1332(d), the Class Action Fairness Act (CAFA). The amount in controversy exceeds \$5,000,000
20 and upon information and belief, there are numerous members of the proposed Class who are
21 citizens of a State different from the State of Citizenship of Reliant Rehab.

22 25. This Court may exercise personal jurisdiction over Reliant Rehab pursuant to California’s
Long Arm Statute, Cal. Code Civ. Proc § 410.10, as Defendant conducts substantial business in this
State and within the Eastern District of California, receives substantial compensation and profits

1 from its marketing, and from its local therapy services in this District, directs its employees to work
2 from and engage in business in this State, and has engaged in the unlawful practices described in
3 this Complaint in this District.

4 26. Venue is proper in this district because under 28 U.S.C. § 1391(b) Reliant has physical
5 offices and from which it performs work and provides services to the general public in this District,
6 and Defendant is subject to the Court's personal jurisdiction in this judicial district; and a substantial
7 part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

8 27. This Court has simultaneous jurisdiction over the Collective Action Allegations and the
9 Class Action Allegations. *See Calderone, et. al. v. Scott*, No. 2:14-cv-00519-JES-CM 838 F.3d 1101
10 (11th Cir. 2016)(holding that "a § 216(b) collective action and a state-law Rule 23(b)(3) class action
11 may be maintained in the same proceeding.").

12 28. Courts approve of Hybrid Rule 23 state law class actions and FLSA Section 216b Collective
13 actions. *See Davis v. Colonial Freight Sys.*, No. 3:16-CV-674-TRM-HBG, 2018 U.S. Dist. LEXIS
14 76225 (E.D. Tenn. Apr. 30, 2018); *Crouch v. Mo. Basin Well Serv.*, No. 1:15-cv-150, 2017 U.S.
15 Dist. LEXIS 233191 (D.N.D. Mar. 31, 2017).

16 **THE PLAINTIFFS**

17 29. Plaintiff Anderson is a resident of this District who worked for Defendant as a Physical
18 Therapy Assistant (PTA) from June 2019 until September 2021 including last working at Avalon
19 Health Care San Andreas, in San Andreas, California.

20 30. Plaintiff Nunally is a resident of this District who worked for Defendant as a Certified
21 Occupational Therapy Assistant (COTA) from approximately April 2019 to May 2022 including
22 last working for Defendant in San Andreas, California.

31. Plaintiffs brings their claims individually, as a 216(b) Collective Action on behalf of a
similarly situated National class, defined as all individuals who are now, or were previously

1 employed by Defendant in the United States and classified as non-exempt, hourly Therapist
2 employees at any time during the period beginning on the date three (3) years prior to the filing of
3 this Complaint, up through the present and until compliance with the law (the “FLSA Class”) and as
4 a Class Action on behalf of a similarly situated California class, defined as all individuals who are
5 now, or were previously employed by Defendant in California and classified as non-exempt, hourly
6 Therapist employees at any time during the period beginning on the date four (4) years prior to the
7 filing of this Complaint, up through the present and until compliance with the law (the “California
8 Class”). The amount in controversy for the aggregate claim of FLSA Class Members is over five
9 million dollars (\$5,000,000.00). The amount in controversy for the aggregate claim of California
10 Class Members is over five million dollars (\$5,000,000.00).

11 32. The “FLSA Class Period” is designated as the date of filing the complaint, through the trial
12 date, based upon the allegation that the violations of the FLSA’s wage-and-hour laws as described
13 more fully below, have been ongoing for at least the three (3) years prior to the filing of the
14 complaint in this action.

15 33. The “California Class Period” is designated as the date of filing the complaint, through the
16 trial date, based upon the allegation that the violations of California’s wage-and-hour laws as
17 described more fully below, have been ongoing for at least the four years prior to the filing of the
18 complaint in this action.

19 34. Plaintiffs seek recovery of all allowable compensation and other sums for the violations
20 described below, including minimum wages and overtime wages, penalties and premium pay for
21 missed meal and rest periods, penalties, restitution and restoration of sums owed and property
22 unlawfully held, declaratory and injunctive relief, interest, attorneys’ fees, and costs.

35. Plaintiffs bring this Class Action on behalf of themselves and a California Class to fully
compensate the California Class members for their losses incurred during the California Class

1 Period caused by Defendant’s policy and practice which failed to lawfully compensate these
2 employees for all hours worked. Defendant’s policy and practice alleged herein is an unlawful,
3 unfair, and deceptive business practice whereby Defendant retained and continues to retain wages
4 due Plaintiffs and the other members of the California Class. Plaintiffs and the other members of the
5 California Class seek an injunction enjoining such conduct by Defendant in the future, relief for the
6 named Plaintiffs and the other members of the California Class who have been economically injured
7 by Defendant’s past and current unlawful conduct, and all other appropriate legal and equitable
8 relief.

9 36. Plaintiffs bring this FLSA Collective Action on behalf of themselves and a National Class to
10 fully compensate the FLSA Class members for their losses incurred during the FLSA Class Period
11 caused by Defendant’s policy and practice which failed to lawfully compensate these employees for
12 all hours worked. Defendant’s policy and practice alleged herein is an unlawful, unfair, and
13 deceptive business practice whereby Defendant retained and continues to retain wages due Plaintiffs
14 and the other members of the FLSA Class. Plaintiffs and the other members of the FLSA Class seek
15 an injunction enjoining such conduct by Defendant in the future, relief for the named Plaintiffs and
16 the other members of the FLSA Class who have been economically injured by Defendant’s past and
17 current unlawful conduct, and all other appropriate legal and equitable relief.

18 **DEFENDANT RELIANT PRO REHAB LLC D/B/A RELIANT REHAB**

19 37. Defendant, RELIANT PRO REHAB LLC. (hereinafter Defendant or “RELIANT”), is a
20 Foreign (Delaware) Limited Liability Corporation, with a principal place of business located at
21 5800 Granite Parkway, Suite 1000, Plano, Texas 75024, and who all times material hereto, has
22 routinely and consistently conducted business in the State of California through its numerous, fixed
long term health care and nursing home facilities or locations, including in this district. Defendant

1 may be served through its Registered Agent for service of process at 1505 Corporation, 112, C T
2 CORPORATION SYSTEM, 330 N BRAND BLVD STE 700, GLENDALE, CA 91203.

3 38. As stated by Defendant on their website: “Reliant provides physical, occupational and
4 speech therapy services to skilled nursing facilities. Using our proprietary patient-centered clinical
5 programs, we have over 37,000 patient interactions every day in over 870 facilities in 40 states.”

6 39. Defendant employs, upon information and belief and investigation, upwards of 4,000
7 currently employed Therapists in the U.S., and with turnover, upwards of about 7,000 Therapists
8 from its published 870 facilities in 40 states.

9 40. Defendant is an employer within the definition of the California State Wage Laws, has
10 revenues exceeding \$500,000 annually and employs more than 100 persons in this State alone.
11 Defendant at all times material was required to compensate Plaintiffs and California Class members
12 overtime premiums for all overtime hours worked in each and every workweek, and provide
13 30-minute, uninterrupted, non-working meal breaks each day, and 10-minute rest periods, all of
14 which it has willfully failed to provide.

15 41. Defendant is an employer within the definition of the FLSA, has revenues exceeding
16 \$500,000 annually and employs more than 100 persons in this State alone. Defendant at all times
17 material was required to compensate Plaintiffs and FLSA Class members overtime premiums for all
18 overtime hours worked in each and every workweek, which it has willfully failed to provide.

19 **COLLECTIVE AND CLASS ACTION FACTUAL ALLEGATIONS**

20 42. This Collective and Class action arises from a longstanding and continuing wrongful scheme
21 by Defendant to: a) willfully fail to accurately and properly track and record the work hours of
22 Therapists and b) willfully refuse to pay overtime wages to a large class of non-exempt, hourly paid
employees who Defendant knows or should have known, were working off the clock and working
overtime hours without being paid for all such hours.

1 43. Plaintiff brings this suit individually, and on behalf of all similarly situated persons
2 composed of the following FLSA Class members:

3 **All persons employed as a Physical Therapist, Physical Therapy Assistant,**
4 **Certified Occupational Therapy Assistant, Occupational Therapist, Speech**
5 **Language Pathologist, or any other job titles used to describe persons**
6 **performing similar job requirements, who are currently employed by or were**
7 **previously employed by Reliant Pro Rehab LLC, d/b/a Reliant Rehab in the**
8 **U.S. within the three years preceding the filing of this lawsuit to date of trial**
9 **in this action.**

10 44. Plaintiffs brings this suit individually, and on behalf of all similarly situated persons
11 composed of the following California Class members:

12 **All persons employed as a Physical Therapist, Physical Therapy Assistant,**
13 **Certified Occupational Therapy Assistant, Occupational Therapist, Speech**
14 **Language Pathologist, or any other job titles used to describe persons**
15 **performing similar job requirements, who are currently employed by or were**
16 **previously employed by Reliant Pro Rehab LLC, d/b/a Reliant Rehab in the**
17 **State of California in the four years preceding the filing of this lawsuit to date of**
18 **trial in this action.**

19 45. Plaintiffs are able to protect and represent FLSA and California Class Members, and they
20 are willing, able, and consent to doing so. Plaintiffs are familiar with the pay practices, company
21 policies and procedures going back to 2019 and each year within the relevant class period.

22 46. Plaintiffs have routinely worked more than eight (8) hours in a day and forty (40) hours in
their workweeks throughout their terms of employment with Defendant, and without being paid any
wage or premium for all the hours worked in each and every workweek.

47. Plaintiffs were required to routinely attend meetings and training sessions which negatively
impacted their productivity.

48. Plaintiffs were required to attend mandatory case review meetings at lunchtime, which also
caused them to be unable to take a 30-minute off-duty, uninterrupted meal break.

49. Plaintiffs were required to meet productivity expectations for patient treatment of 95%,
which equated to 7.6 hours per day, and yet supposedly be able to take a 30-minute uninterrupted,

1 non-working bona fide meal break, and complete all notes for the therapy on the patients the same
2 day all within 8 hours of clocked time per day, no more.

3 50. As was Plaintiffs' experience, hitting and maintaining this productivity requirement, while
4 supposedly taking a 30-minute meal break, 10-minute rest break, and completing all notes and
5 attending all meetings, while treating patients 7.6 hours per day was an impossibility in 8 hours a
6 day and 40 hours per week of work.

7 51. Defendant knew that Therapists, including Plaintiffs, were working off the clock, working
8 more hours than reported, not taking 30 minutes of uninterrupted meal breaks, not taking rest breaks
9 coming in early, and staying late in order to complete their job duties and responsibilities.

10 52. Said another way, Defendant knew that the Therapists were required to work more than
11 eight (8) hours in a day and forty (40) hours in a week routinely throughout their workweeks, and
12 thus worked off the clock.

13 53. Astonishingly, Defendant warned Plaintiffs and Class members across the U.S. that if they
14 did not self-report 30 minutes each day for a meal break on their timesheets, the company would
15 automatically deduct the 30 minutes of time, even when they knew the employees did not take this
16 meal break and worked through some or all of this time. This is wage theft.

17 54. Thus, each week, Defendant stole 30 minutes a day in wages, most probably overtime
18 wages, and approximately 2.5 hours each week in overtime pay, as each person had to report no
19 more than forty (40) hours of work for the week and no more than eight (8) hours per day on their
20 timesheets, less these breaks.

21 55. Throughout Plaintiffs' terms of employment with Defendant, they generally had no time to
22 take 30 minutes of uninterrupted meal breaks. They would work through the day, and if they could
even take a break to eat, it was for a few minutes or eating on the run or eating and working on
notes while eating, all of which meant that this time was not off-duty breaks but compensable hours,
and overtime that should be paid at a premium, not stolen.

1 56. Defendant did not care if employees worked or had to work through the day without taking
2 this 30-minute uninterrupted meal break in order to meet productivity, and there was no ability or
3 means to report less than 30 minutes without suffering the auto deduction by Defendant.

4 57. Throughout Plaintiffs' employment they simply reported eight (8) hours exactly each day,
5 and 30 minutes of meal break, which Defendant could see and in fact knew was false, unreliable,
6 and inaccurate.

7 58. Hourly employees do not work exactly eight (8) hours every day, and forty (40) hours every
8 week, and take exactly 30 minutes of meal break each day. Timecards reflecting such exact timing
9 are indications of not properly recording employee time.

10 59. Moreover, the act of Defendant deducting 30 minutes for a meal break not taken when
11 employees did not self-report this 30-minute meal break, is wage theft, unlawful time editing,
12 shaving, and falsification of Defendant's own time records.

13 60. Plaintiffs and all others similarly situated were left with just 30 minutes each day throughout
14 the workweek in which to attend daily, weekly, and even monthly facility meetings; treat patients
15 with therapy, complete notes and handle any other communications or patient issues and yet not
16 report more than eight (8) hours in a day and forty (40) hours for the week.

17 61. Left between a rock and a hard place, Plaintiffs, like other Therapists, were forced to suffer
18 to work off the clock and submit inaccurate, underreported, unreliable and inaccurate time records
19 or face discipline and termination of their employment.

20 62. Defendant is no stranger to unlawful and fraudulent actions, intended to increase profits
21 unlawfully, such as having been sued by the United States of America for Medicare fraud and being
22 forced to pay \$6,100,000.00 to settle the claims. "Reliant Rehabilitation Holdings Inc. (Reliant), a
national provider of rehabilitation therapy and related services headquartered in Plano, Texas, has
agreed to pay the United States \$6.1 million to resolve allegations that it violated the False Claims
Act (FCA), 31 U.S.C. §3729, et seq., by paying kickbacks to skilled nursing facilities and

1 physicians in connection with care provided to Medicare beneficiaries as a way of improperly
2 promoting Reliant’s rehabilitation therapy business, the Justice Department announced today.” See
3 DOJ website:
4 <https://www.justice.gov/opa/pr/reliant-pay-61-million-settle-false-claims-act-allegations-it-paid-kic>
5 [kbacks-nursing-homes#:~:text=\(Reliant\)%2C%20a%20national%20provider,Act%20\(FCA\)%2C%2031%20U.S.C.](https://www.justice.gov/opa/pr/reliant-pay-61-million-settle-false-claims-act-allegations-it-paid-kic)

6 63. Defendant’s history of committing willful, unlawful, fraudulent acts for the sake of
7 increasing profits, makes their actions here in willfully permitting Therapists to suffer to work off
8 the clock and falsifying time records in order to save millions of dollars in wages owed to a
9 hard-working group of employees, particularly egregious and exposes them to punitive damages.

10 64. Defendant knew Plaintiffs and the Class members accessed the company computer systems
11 and databases, such as Rehab Optima, while off the clock, permitted it, and implicitly encouraged it
12 by demanding all work be done each week without clocking overtime.

13 65. First, Defendant knew and could see that work was being done off the clock, observed by
14 Directors of Rehab (DOR), and others, and secondly, as per the Company De Facto (unwritten)
15 policy, Defendant encouraged and pressured Plaintiffs and class members to work off the clock and
discouraged reporting the overtime hours.

16 66. Meanwhile, Defendant turned a blind eye to Therapists, including Plaintiffs working more
17 than eight (8) hours in a day and staying late and off the clock working on Defendant’s computers
18 putting in notes off the clock, because Defendant’s reaped the rewards of the additional work and
19 labor for free.

20 67. Plaintiffs allege for themselves, and on behalf of Class Members that they are entitled to
21 unpaid wages from Defendant for overtime hours worked for which they did not receive overtime
premium pay as required by the FLSA and California’ wage laws.

22 68. Upon information and belief and investigation, Defendant employs upwards of 200-300

1 currently employed Therapists and with turnover, upwards of about 1,200 Therapists from its
2 California facilities, such as long-term health care and nursing home facilities it staffs and runs.

3 69. Defendant has maintained a single job description for its various Therapist positions and has
4 posted such jobs within the relevant 4-year class period demonstrating the job requirements for
5 Therapists at any location in California are identical. Regardless, a Therapist's job responsibilities
6 are generally the same wherever they work: perform therapy, document the treatment, and for SLP,
7 PT and OT, create the treatment plans and initial evaluations.

8 70. Defendant has maintained a single job description for its various Therapist positions and has
9 posted such jobs within the relevant 3-year class period demonstrating the job requirements for
10 Therapists at any location in the U.S. are identical. Regardless, a Therapist's job responsibilities are
11 generally the same wherever they work: perform therapy, document the treatment, and for SLP, PT
12 and OT, create the treatment plans and initial evaluations.

13 71. All Therapists within this defined putative FLSA and California classes of similarly situated
14 employees here were treated and classified by Defendant as hourly, nonexempt employees.

15 72. Therapists, including Plaintiffs were discouraged from reporting their overtime hours under
16 Defendant's De Facto (unwritten) Policy, including pressure from superiors and by fear and
17 intimidation that complaining of the off the clock hours would result in termination.

18 73. When Plaintiffs complained of the inability to complete all job duties within an eight (8)
19 hour workday and forty (40) hour work week, including working on weekends and outside the
20 office hours during the week, Plaintiffs' manager made it clear that Plaintiffs either keep up and do
21 all the work off the clock or suffer disciplinary action.

22 74. The company discouraged complaining of the overtime hours and against clocking and
performing overtime work on the clock, meanwhile pressured, and encouraged Therapists to work
as many hours as required to perform all job requirements and meet their productivity.

75. Further, if a Therapist dared to put their overtime hours on the time records and submit it,

1 doing so would diminish the ability to hit the productivity and they would be subject to discipline.
2 Thus, Defendant also discouraged the reporting and clocking of overtime hours as would lead to
3 disciplinary action for not meeting the productivity goals.

4 76. Defendant maintains a companywide policy throughout the relevant class period of willfully
5 refusing to pay premium wages for all overtime hours worked by Therapists.

6 77. Defendant maintained a “code of silence” when it came to the issue of overtime laws and
7 overtime wages, the mandatory 30-minute uninterrupted, non-working lunch or meal break
8 requirement, and no rest period, with literally no company meetings or discussions about the law.

9 78. Defendant maintained a culture and environment of discouraging and intimidating
10 Therapists from submitting or reporting overtime hours worked; warning they had to find a way to
11 do all their work and keep up, sacrificing personal time, or they would be subjected to termination
12 of their jobs.

13 79. Defendant does not presently and has not throughout the relevant four (4) year class period,
14 properly clocked, tracked, or recorded the actual working hours of each Therapist in their locations
15 or facilities in California.

16 80. Defendant does not presently and has not throughout the relevant three (3) year class period,
17 properly clocked, tracked, or recorded the actual working hours of each Therapist in their locations
18 or facilities in the U.S.

19 81. Most full-time staff Therapists, including Plaintiffs, primarily worked a similar corporate set
20 schedule of five (5) days per week, typically Monday to Friday, and were required to work 8 hours
21 per day and 40 hours per week.

22 82. All Therapists were trained to perform their respective job duties and responsibilities and
expected to perform their job duties and responsibilities in similar manners throughout the U.S. and
California.

83. Simple math confirms that all Therapists, by having a required productivity of up to 95%

1 and higher, would have to work more than eight (8) hours per day and more than forty (40) hours
2 per week, if they took a 30 minute, uninterrupted and non-working meal break.

3 84. Particularly egregious, some Therapists were told by Defendant that they had to meet a
4 productivity requirement of 100% to 125%.

5 85. The members of the FLSA Collective Class are so numerous that joinder of all members is
6 impracticable and in the interests of justice, as well as in keeping with the legislature's intent in
7 creating Collective Actions under Section 216(b), proceeding as a collective action is proper in this
8 case.

9 86. Plaintiffs will fairly and adequately protect the interests of the putative FLSA Class of
10 similarly situated Therapists, and have retained counsel that is experienced and competent in
11 class/collective actions and employment litigation. Plaintiffs have no interest that is contrary to, or
12 in conflict with, members of the putative Class.

13 87. A collective action suit, such as the instant one, is superior to other available means for a fair
14 and efficient adjudication of this lawsuit. The damages suffered by individual members of the
15 FLSA Class may be relatively small when compared to the expense and burden of litigation,
16 making it virtually impossible for members of the Class to individually seek redress for the wrongs
17 done to them.

18 88. A collective action is, therefore, superior to other available methods for the fair and
19 efficient adjudication of the controversy. Absent these actions, the members of the Class likely will
20 not obtain redress of their injuries and Defendant will retain the proceeds from its violations of the
21 FLSA.

22 89. Furthermore, even if any member of the FLSA Class could afford individual litigation
against Defendant, it would be unduly burdensome to the judicial system. The instant methodology,
when compared to voluminous individual actions, has fewer management difficulties and provides
the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single

1 court. Concentrating this litigation in one forum will promote judicial economy and parity among
2 the claims of individual members of the FLSA Class and provide for judicial consistency.

3 90. There is a well-defined community of interest in the questions of law and fact affecting the
4 FLSA Class as a whole. The questions of law and fact common to each of the FLSA Class
5 members predominate over any questions affecting solely individual members of the action.

6 Among common questions of law and fact are:

7 a. Whether Defendant employed members of the Class within the meaning of
8 the applicable provisions of the FLSA;

9 b. Whether Plaintiffs and members of the Class were expected, permitted, and
10 encouraged to regularly work hours in excess of forty (40) per week off the clock and
11 without being paid a premium for all hours worked;

12 c. Whether Defendant unlawfully either edited or shaved overtime hours from
13 Therapists time records, or required and instructed Therapists to shave, edit and remove
14 overtime hours from their own weekly time records;

15 d. Whether Defendant knowingly failed to maintain and preserve accurate and
16 true records of all hours worked and wages earned by Plaintiffs and the Class;

17 e. Whether Plaintiffs and the Class have sustained damages, and if so, what is
18 the proper measure of such damages;

19 f. Whether Defendant willfully and with reckless disregard, underpaid
20 Plaintiffs and the class of similarly situated, even when they did pay a premium for overtime
21 hours worked;

22 g. Whether Defendant maintained a De Facto, unlawful policy against paying
overtime wages and against Therapists from claiming or reporting all hours worked; and

h. Whether Defendant permitted Plaintiffs and all others similarly situated to
suffer to work off the clock.

1 91. Plaintiffs know of no difficulty that will be encountered in the management of this litigation
2 that would preclude its maintenance as a 216(b) Collective action.

3 92. In summary, Defendant maintained a De Facto policy which required Therapists, including
4 Plaintiffs, to complete all job duties and responsibilities but never to report more than 8 hours for
5 the day or more than 40 hours for the week under the company De Facto Policy.

6 93. Therapists, including Plaintiffs, were likewise told to do what it takes to complete all job
7 duties and requirements, including working overtime hours off the clock, but discouraged from
8 self-reporting overtime hours to the Defendant, despite Defendant's knowledge that such off the
9 clock overtime work was being performed.

10 **CALIFORNIA CLASS ALLEGATIONS**

11 94. Plaintiffs herein also will label this group of similarly situated present and former employees
12 of Defendant as the "California Therapists Class". The number of individuals in the California class
13 is so numerous that joinder of all members is impracticable. Upon information and belief, the class
14 of California employees including turnover within the last four (4) years is in the range of 1,200
15 persons, with 200 to 300 or more employed at any given time.

16 95. Plaintiffs will fairly and adequately protect the interests of the class, are ready and willing to
17 do so, and have retained counsel that is experienced and competent in class actions, collective
18 actions, and employment litigation.

19 96. Plaintiffs' claims are typical of the members of the proposed class.

20 97. Plaintiffs have no interests that are contrary to, or in conflict with, the members of the class.

21 98. A class action suit, such as the instant one, is superior to other available means for a fair and
22 efficient adjudication of the lawsuit. The damages suffered by individual members of the class may
be relatively small when compared to the expense and burden of litigation, making it virtually
impossible for members of the class to individually seek redress for the wrongs done to them.

1 99. The claims of Plaintiffs are identical to those of the California Therapists Class, as the pay
2 practices complained of were applicable to all Therapists in California, and Defendant treated all as
3 hourly, non-exempt employees.

4 100. Plaintiffs were taught and instructed by Defendant to perform their job requirements and
5 duties in a similar, if not identical manner, and Therapists perform their job requirements based
6 upon State professional standards regulated by their own professions and by the California
7 governing agencies. Moreover, Defendant maintains a job description and company policies and
practices, including time keeping and overtime pay policies applicable to all California Therapists.

8 101. The proposed California Therapist Class is brought and may properly be maintained as a
9 class action under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

10 102. Pursuant to those requirements, the California Therapists Class are so numerous that
11 joinder of all members is impracticable.

12 103. Further, common questions of law and fact exist as to all members of the California
Therapists Class that predominate over any questions affecting individual members, including:

13 a. Whether Defendant violated California Labor Code §§ 510 & 1194 and the
14 California Business & Professions Code Section 17200 by failing to pay premium
15 compensation to the California Class members who worked in excess of forty (40) hours per
16 week, and/or eight (8) hours a day and/or twelve (12) hours per day; and

17 b. Whether Defendant violated California Labor Code § 226 and the California
18 Business & Professions Code Section 17200 by failing to keep accurate records of
19 employees' hours worked, and by failing to provide accurate semi-monthly itemized
20 statements to California Class members of total hours worked by each and all applicable
hourly rates in effect during the relevant pay period(s); and

21 c. Whether Defendant violated California Labor Code §§ 201-203 by failing to
22 provide all wages earned and due at the time of termination to California Subclass members;

1 and

2 d. Whether Defendant violated California Labor Code §512 and Labor Code §
3 226.7: Missed Meal and Break Penalties — One Hour of Pay For Each Violation, by failing
4 to provide Plaintiffs and the California Therapists Class work free and uninterrupted meal
5 breaks and thus owe the Plaintiffs and the putative class, one hour of pay for each day they
6 missed or were not able to take the requisite meal break; and

7 e. The proper measure of damages sustained by members of the California
8 Class and the restitution owed to them.

9 104. Plaintiffs' claims are typical of those of the California Therapists Class. Plaintiffs, like
10 other members of this putative class, were all subjected to Defendant's policy and practice of failing
11 to pay overtime compensation, including the De Facto policy of not recording more than eight (8)
12 hours per day or more than forty (40) hours in the week and being required to work overtime hours
13 off the clock and without regard to any individualized employee analysis.

14 105. Plaintiffs, like the other California Class members, were subjected to Defendant's
15 unlawful practice of failing to maintain and provide accurate itemized wage statements, all in
16 violation of California law, and being unable to take a full 30-minute uninterrupted meal break each
17 day, or two uninterrupted 15-minute breaks during the day.

18 106. Plaintiffs' job duties and compensation were also typical of other members of the
19 California Class providing therapy within their specialty and documenting the therapy sessions and
20 times in notes. All class members, including Plaintiffs were hourly, non-exempt employees.

21 107. Plaintiffs will fairly and adequately represent and protect the interests of the putative
22 members of the California Therapists Class because they have no disabling conflict(s) of interest
that would be antagonistic to those of the other class members.

108. Plaintiffs have retained counsel, Mitchell Feldman, Esq. and Feldman Legal Group who
are competent and experienced in class and collective action wage and hour litigation.

1 109. Defendant has acted on grounds that apply generally to the California Class in that it has
2 common policies and practices of: (a) refusing to pay overtime compensation; (b) failing to
3 maintain and provide accurate itemized wage statements to all members of the California Class; (c)
4 failing to accurately record and track work hours and engaged in the falsification and intentional
5 maintenance of inaccurate and underreported time records; failing to provide a 30 minute duty free
6 breaks each day. Accordingly, injunctive, and declaratory relief is appropriate for the California
7 Class as a whole.

8 110. Class treatment is superior to alternative methods to adjudicate this dispute because
9 Plaintiffs and the similarly situated California Therapist Employees suffered similar treatment and
10 harm as a result of systematic policies and practices, including unlawful pay practices such as being
11 permitted to suffer to work off the clock and submit falsified, underreported time sheets/records that
12 would not show more than 8 hours of paid work per day and 40 hours of paid time per week as well
13 as having to falsely report each day a 30 minute, uninterrupted, non-working meal break they never
14 took, because absent a class action, Defendant's unlawful conduct will likely continue un-remedied
15 and unabated given that the damages suffered by individual class members are small compared to
16 the expense and burden of individual litigation.

17 111. Class certification is also superior because it will obviate the need for unduly duplicative
18 litigation which might result in inconsistent judgments about Defendant's practices.

19
20 **FIRST CAUSE OF ACTION**
21 **Failure to Pay Overtime**

22 112. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
incorporate by reference all preceding paragraphs, as though fully set forth herein.

113. The foregoing conduct, as alleged, constitutes a violation of California's wage and hour
laws, *See* Labor Code, § 510. California law requires employers, such as Defendant, to pay
overtime compensation of one and a half times an employee's regular rate to all non-exempt

1 employees for all hours worked over forty (40) per week, or over eight (8) per day.

2 114. The California Therapist employees working for Defendant in the State of California
3 were, and presently are still, all treated and classified by Defendant as hourly paid, non-exempt
4 employees and who were not paid any premium pay for all the overtime hours worked

5 115. Plaintiffs superiors, the DOR (a manager), and the Defendant knew that they and other
6 Therapists routinely worked overtime hours, and that such hours were not reported and thus “off
7 the clock”.

8 116. Plaintiffs superiors, the DOR, and the company knew that they routinely worked each
9 day without taking 30 minutes of uninterrupted non-working meal breaks each day, and that the
10 time records were inaccurate, falsified and only showed this break time under company De Facto
11 (unwritten) policy that they had to show this time, or they would be subject to discipline and the
12 company would as well auto input 30 minutes of break time.

13 117. Throughout the four (4) year California Class Period, the California Class members
14 (California Therapists) routinely worked in excess of eight (8) hours in a workday and forty (40)
15 hours in a workweek and should have been paid a premium for all such hours incurred.

16 118. Plaintiffs and other members of the class at times worked in excess of ten (10) hours in
17 a workday.

18 119. During the California Class Period, Defendant underpaid California Class members by
19 failing to pay overtime wages for hours they knew and had reasons to know were being worked but
20 not reported, including but not limited to the 30 minutes of meal breaks each day which would
21 alone, put Plaintiffs and other Therapists upwards of 2.5 hours each week of unpaid overtime, and
22 thus 42.5 hours for the workweek.

120. California wage laws require the overtime rates be paid to non-exempt employees at
one and one half (1.5) times the employee's regular rate of pay for overtime up to and including
twelve (12) hours in a work day.

1 121. Plaintiffs and the class of similarly situated California present and former employees of
2 Defendant routinely worked overtime hours during the four (4) year class period without being
3 paid a premium for their hours worked in excess of forty (40) in a workweek or eight (8) hours in a
4 workday.

5 122. Plaintiffs' schedule, like all similarly situated California Employees, was such that the
6 work could not be performed in under forty (40) hours in a work week or eight (8) hours in a day,
7 given the amount of time treating patients and completing all required documentation.

8 123. As Defendant's computer systems and databases recorded the times California
9 Therapists entered their notes, Defendants knew that the Therapist Employees were working more
10 than forty (40) hours in a work week and more than eight (8) hours in a day.

11 124. Further, Defendant failed to properly track and record the work hours of Plaintiffs, and
12 all other similarly situated Therapist Employees from four (4) years preceding this lawsuit and
13 continuing through the present day.

14 125. Defendant also did not utilize an accurate and reliable system for Therapist employees
15 to record and track all their work hours, as they knowingly discouraged accurate self-reporting of
16 work hours, did not have hourly employee clock in and out start times, end times and any real
17 break times as the program Rehab Optima is designed to use, and discouraged accurate reporting
18 of actual hours and breaks not taken.

19 126. Defendant knew, or should have known, that Plaintiffs and the other California
20 Therapists who comprise the putative class of similarly situated were routinely working overtime
21 hours during the four (4) year class period.

22 127. Defendant maintained a scheme to avoid the overtime wage laws of California through
the practice of willfully, and without good faith, requiring Therapists to work overtime hours off
the clock, and discouraging Therapists from reporting their overtime hours worked pursuant to a
Company De Facto policy.

1 128. As a direct and proximate result of Defendant's willful, reckless and unlawful conduct,
2 including the pressuring of Therapists to work off the clock and not report overtime hours worked,
3 and failure to pay a premium for overtime hours worked as set forth herein, Plaintiffs and the
4 California Class members have sustained damages including: loss of wages for all overtime hours
5 worked on behalf of Defendant in an amount to be established at trial, prejudgment interest, and
6 costs and attorney's fees, pursuant to statute and other applicable law.

7 129. All California class members are entitled to be paid overtime wages owed at one and
8 one half (1.5) times their regular rates of pay for all hours worked over eight (8) hours in a work
9 day and forty (40) hours in each and every work week, plus an equal sum in liquidated damages,
10 prejudgment interest and attorney's fees.

11 **SECOND CAUSE OF ACTION**
12 **Failure to Provide Off-Duty Meal Breaks**

13 130. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
14 incorporate by reference all preceding paragraphs, as though fully set forth herein.

15 131. Plaintiffs and all other California Therapist Employees were required to work at least 8
16 hours of clocked time each day, for 5 days in each workweek, and have a productivity rate (%)
17 related to their billable Medicare hours.

18 132. Thus, for a 95% productivity rate, for each 8 hour work day, Plaintiffs and other
19 Therapists who had the same productivity rate were expected and required to have 7.5 or 7.6 hours
20 of Medicare billable time for each day. If the productivity was higher, so too was the Medicare
21 billable time requirement.

22 133. To meet this productivity requirement, Plaintiffs and full time, staff Therapists working
at Defendant's facilities had to work more than 40 hours during each respective workweek.
Defendant likewise expected Plaintiffs and other Therapists to generally and routinely work 8
hours per day and 40 hours per week in a normal business week.

1 134. Plaintiffs and all other California Therapist Employees also had to keep up with the
2 required daily contemporaneous medical or therapy notes or documentation each day.

3 135. Spending time completing notes, including treatment plans, initial evaluations,
4 discharge summaries, and general therapy notes takes hours each week to do, in addition to the
5 therapy performed.

6 136. Moreover, Plaintiffs and all other similarly situated Therapists were required to attend
7 routine meetings and had numerous other incidental activities and job responsibilities related to the
8 patients which took additional time not accounted for in just the Medicare billable time.

9 137. Defendant knew, at a minimum from all the DOR supervising Plaintiffs and all the
10 California Therapists, that the daily work could not be reasonably completed in 8 hours, and within
11 40 hours of clocked time for the week with the corporate set high and unrealistic productivity
12 requirements Plaintiffs and those similarly situated would a) work off the clock overtime hours, b)
13 forego the minimum required uninterrupted thirty (30) minute breaks, and c) forego rest breaks.

14 138. Even when Plaintiffs and the other California Therapist Employees could take a break,
15 it was primarily and routinely under thirty (30) minutes, and not uninterrupted or duty free, as
16 during this break time, Plaintiffs would perform work related to her reporting duties, provide
17 therapy, attend meetings, complete medical records and charts; otherwise, Plaintiffs and the
18 California Therapist Employees would wind up working hours into the evening hours and even
19 more hours off the clock.

20 139. Defendant was required by California Labor Code §512 to provide a thirty (30) minute,
21 duty free break time to all California Therapist Employees if they worked more than five (5) hours.

22 140. California Labor Code §512 also requires Defendant to: (a) relieve employees of all
duty during this break time; (b) relinquish control over the employee's activities; (c) permit them a
reasonable opportunity to take an uninterrupted 30-minute break; and (d) not impede or discourage
the employee from doing so.

1 141. Defendant knowingly or with reckless disregard for Section 512, failed to provide
2 Plaintiffs and the class of similarly situated California Therapist Employees the required daily
3 thirty (30) minutes of uninterrupted, duty free work break time as required by law.

4 142. As a direct and proximate result of Defendant's unrealistic and unreasonably high
5 productivity requirement percentage (%) and scheduling, Plaintiffs and the Class of similarly
6 situated California Therapist Employees suffered harm and were not provided the requisite duty
7 free thirty (30) minute breaks.

8 143. Defendant's actions in failing to provide the required breaks was a willful violation of
9 this section of California's Labor Code section and law.

10 144. Pursuant to California Labor Code §226.7, employers who fail to provide meal or rest
11 periods required by statute or Wage Order must pay employees one (1) FULL ADDITIONAL
12 HOUR OF PAY at each employee's regular rate of pay for each daily failure to provide the
13 requisite meal or rest periods.

14 145. As per California Labor Code §226.7, Defendant owes Plaintiffs and the class of
15 similarly situated California Therapist Employees one (1) full hour of wages at their regular hourly
16 rate of pay, plus an equal sum in liquidated damages, attorney's fees and expenses for each day
17 they missed a meal break as required by Section 512.

18 146. Alternatively, for each and every workweek in which Plaintiffs and each California
19 Therapist employee class member missed or was unable to take this full 30 minute meal break
20 which would have caused any Plaintiffs to incur overtime hours for the additional time, Defendant
21 owes to each California Therapist employee, including Plaintiffs, one and a half times their regular
22 rate of pay for each missed meal break, plus an equal sum in liquidated damages as required by
Section 512.

THIRD CAUSE OF ACTION

1 **Failure to Provide Rest Breaks**

2 147. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
3 incorporate by reference all preceding paragraphs, as though fully set forth herein.

4 148. Plaintiffs and all other California Therapists regularly worked in shifts that exceeded
5 3.5 hours per day.

6 149. Plaintiffs and all other California Therapists also had productivity requirements that
7 could not reasonably be met within the schedule and thus did not routinely receive a rest break.

8 150. Even when Plaintiffs and the other California Recall Employees could take a break, it
9 was primarily and routinely under ten (10) minutes, and not uninterrupted or duty free, as during
10 this break time, Plaintiffs would perform work related to completing their notes and
11 documentation.

12 151. At all times herein relevant, Labor Code § 226.7 and California Code of Regulations
13 Title 8 § 11070 have applied and continue to apply to Plaintiffs’ and the Class Members’
14 employment with Defendants. Labor Code § 226.7 states “No employer shall require any employee
15 to work during any [...] rest period mandated by an applicable order of the Industrial Welfare
16 Commission.” Labor Code § 226.7(a).

17 152. In addition, Section 12 of Wage Order No. 7 provides in relevant part that:

18 (A) Every employer shall authorize and permit all employees to take
19 rest periods, which insofar as practicable shall be in the middle of
20 each work period. The authorized rest period time shall be based on
21 the total hours worked daily at the rate of ten (10) minutes net rest
22 time per four (4) hours or major fraction thereof. However, a rest
period need not be authorized for employees whose total daily work
time is less than three and one-half (3 ½) hours. Authorized rest
period time shall be counted, as hours worked, for which there shall
be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the employer
shall pay the employee one (1) hour of pay at the employee’s regular

1 rate of compensation for each work day that the rest period is not
2 provided.

3 153. Defendant knowingly or with reckless disregard, failed to permit Plaintiffs and the class
4 of similarly situated California Therapists, adequate rest periods as required by law.

5 154. As a direct and proximate result of Defendant's job requirements, scheduling, and
6 productivity requirements, Plaintiffs, and the Class of similarly situated California Therapists
7 suffered harm and were not provided the requisite duty free rest periods.

8 155. Defendant's actions in failing to provide the required breaks was a willful violation of
9 this section.

10 156. Pursuant to California Labor Code §226.7, employers who fail to provide meal or rest
11 periods required by statute or Wage Order must pay employees one additional hour of pay at their
12 regular rate of pay for each daily failure to provide meal or rest periods.

13 157. As per California Labor Code §226.7, Defendants owe Plaintiffs and the class of
14 similarly situated California Therapists one (1) hour of overtime wages at time and one half each
15 person's regular rate of pay, plus an equal sum in liquidated damages, attorney's fees and expenses
16 for each day they missed a meal break as required by Section 512.

17 **FOURTH CAUSE OF ACTION**
18 **Failure to Pay All Hours Worked**

19 158. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
20 incorporate by reference all preceding paragraphs, as though fully set forth herein.

21 159. Throughout the Class Period, Defendant has a pattern and practice of requiring
22 Plaintiffs and all other California Therapists to work as many hours as needed off the clock to meet
productivity goals, and to complete all their job duties and required reporting forms and medical
notes.

1 160. At all times herein relevant, Labor Code §§ 204, 1194, and 1197, Wage Order 7 and
2 California Code of Regulations Title 8 § 11070 have applied and continue to apply to Plaintiffs and
3 Class Members' employment with Defendants. Wage Order 7 states that "every employer shall pay
4 to each employee wages ... for all hours worked." Cal. Code Regs., Tit 8, § 11070 (4)(A).

5 161. "Hours worked" is defined at the California Code of Regulations Title 8, § 11070
6 (2)(G) as "the time during which an employee is subject to the control of an employer, and
7 includes all the time the employee is suffered or permitted to work, whether or not required to do
8 so." Under this definition of "hours worked," the time spent by Plaintiffs and Class Members to
9 write all patient notes and attend all meetings, while treating patients, are "hours worked" and must
10 be compensated.

11 162. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
12 Plaintiffs and the California Class Members have sustained damages, including but not limited to
13 loss of earnings. Plaintiffs seek to recover unpaid wages and penalties, attorney's fees and costs of
14 suit under Labor Code §§ 1194, 1194.2, and 218 and further relief, as described below.

15 **FIFTH CAUSE OF ACTION**
16 **Failure to Provide Accurate Wage Statements**

17 163. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
18 incorporate by reference all preceding paragraphs, as though fully set forth herein.

19 164. Labor Code § 226 (a) provides that, at the time of each payment of wages, an employer
20 shall provide each employee with a wage statement itemizing, among other things, the total hours
21 worked by the employee in the pay period.

22 165. Labor Code § 226 (e) provides that an employee suffering injury as a result of a
knowing and intentional failure by an employer to comply with Labor Code § 226 (a) is entitled to
recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in

1 which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up
2 to a maximum of \$4,000), in addition to attorney's fees and costs.

3 166. Defendants knowingly and intentionally failed to provide timely, accurate, and
4 itemized wage statements to Plaintiffs and California Class Members in accordance with Labor
5 Code § 226. The statements provided to Plaintiffs and California Class Members have not
6 accurately reflected actual hours worked, actual gross wages earned, the total hours worked by
7 employees, including meal and rest period premiums. Plaintiffs and the California Class are
8 therefore entitled to the damages and penalties provided for under Labor Code § 226 (e).

9 **SIXTH CAUSE OF ACTION**
Unlawful Business Practices Under California Unfair Competition Act

10 167. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
11 incorporate by reference all preceding paragraphs, as though fully set forth herein.

12 168. The unlawful and unfair business practices and acts of Defendant, described above,
13 have injured Plaintiffs and the California Class members in that they were wrongfully denied the
14 payment of earned regular and overtime wages.

15 169. Defendant's actions and conduct in willfully violating California Labor Codes Sections
16 203, 226, 1174, 510, 512 and 1198, by: a) failing to pay overtime wages, b) failing to record daily
17 work hours, c) failure to provide required thirty (30) minute duty free breaks, d) failure to pay the
18 required one (1) hour of pay for unpaid meal breaks, e) requiring Plaintiffs and all others similarly
19 situated to work off the clock and submit inaccurate, under-reported time sheets as set forth in the
20 above Counts I, II, III, demonstrate unfair and deceptive business practices committed by
21 Defendant against Plaintiffs and the class of similarly situated California Therapist Employees.

22 170. Upon information and belief, Defendant continues to knowingly and willfully engage in
continued unfair and deceptive business practices since the filing of this Complaint, as they have

1 not sought to comply with California Labor Code §§203, 226, 1174, 512, 510 and 1198 or change
2 their unlawful pay practices against the putative class of California Therapist Employees.

3 171. Under California law, wages unlawfully withheld from employees constitutes an unfair
4 business practice in violation of Section 17200.

5 172. Upon information and belief, these unfair business practices date back at least 4 to 5
6 years or more, and with certainty, three (3) plus years from the date of the filing of this Complaint.

7 173. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
8 justice for Plaintiffs and California Class Members if Defendant were to retain the property of
9 Plaintiffs and Class Members, entitling Plaintiffs and the proposed Class to restitution of the unfair
10 benefits obtained and disgorgement of Defendant's ill-gotten gains.

11 174. As a result of Defendant's unlawful and unfair business practices, Plaintiffs and
12 California Class Members are entitled to and seek restitution and disgorgement, and other
13 appropriate relief available under Bus. & Prof. Code §§ 17200 et. seq.

14 **SEVENTH CAUSE OF ACTION**

15 **Failure to Pay Earned Wages Upon Discharge**

16 *(Brought By Plaintiffs, On Behalf of Themselves and A Subclass Of The California Class)*

17 175. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
18 incorporate by reference all preceding paragraphs, as though fully set forth herein.

19 176. Under California Labor Code § 201, if an employer discharges an employee, all wages
20 earned and unpaid at the time of discharge are due and payable immediately. Under California
21 Labor Code § 202, if an employee quits, all wages are due and payable not later than 72 hours
22 thereafter (or immediately at the time of quitting if the employee has given seventy-two (72) hours
previous notice of the intention to quit).

177. Plaintiffs and subclass members are no longer still employed by Defendant in that they
were either discharged or resigned from Defendant's employment.

1 178. Defendant willfully failed to pay, within the time constraints imposed by Labor Code
2 §§ 201 and 202, all overtime compensation due to them, Plaintiffs and the subclass comprised of
3 California Class members no longer employed by Defendant.

4 179. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
5 Plaintiffs and the subclass comprised of California Class members no longer employed by
6 Defendant have sustained damages, including loss of earnings, in an amount to be established at
7 trial.

8 180. As penalties for these violations, Plaintiffs and the subclass comprised of California
9 Class members no longer employed by Defendant are entitled to and seek to recover up to thirty
10 (30) days of their wages at their regular rates, as provided by California Labor Code § 203.

11 **EIGHTH CAUSE OF ACTION**
12 **Violations of the FLSA § 207 and**
13 **Declaratory Action Pursuant to 28 U.S.C. §§ 2201 and 2202**

14 181. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
15 incorporate by reference paragraphs 1-93, as though fully set forth herein.

16 182. Defendant has willfully and intentionally engaged in a common company pattern and
17 practice of violating the provisions of the FLSA, by failing to pay Plaintiffs, and all other similarly
18 situated Therapists the required overtime wages and premiums for all hours worked over 40 in
19 each and every work week.

20 183. Plaintiffs, and all similarly hourly paid Therapists routinely worked off the clock and as
21 all such time should have been counted as compensable overtime hours during any workweek that
22 Plaintiffs and all others similarly situated therapists worked.

184. Defendant knew that Plaintiffs, and other Therapists routinely performed overtime
hours off the clock.

1 185. For Therapists, this included completing required notes on tablets while off the clock, at
2 or away from the facility, which was permitted and performed with the knowledge and acceptance
3 of the DOR.

4 186. For Therapists, including Plaintiffs, this also meant working during the day without
5 taking a 30 minute, uninterrupted, non-working meal break, or being forced to falsely report
6 untaken meal breaks under threats or warnings of the automatic deductions and disciplinary action
7 for not putting in a falsified 30 minute meal break.

8 187. Defendant could see, and was keenly aware of the access times to the notes and
9 software and programs by Plaintiffs, and all their Therapists while they were off the clock.

10 188. Defendant had a duty and obligation under the FLSA, and as per CFR part 516, to
11 contemporaneously track and record all work hours of hourly non-exempt employees, including
12 Therapists and other persons performing similar roles under any job titles.

13 189. Similarly Defendant had a duty to accurately track and report meal breaks, but their
14 unlawful policy and practice of commanding falsified time records for meal breaks never taken, or
15 to auto deduct 30 minutes for meal breaks never taken means their records are inaccurate,
16 underreported, and falsified and thus violates the FLSA and its regulations for accurately recording
17 and documenting hourly paid employees work hours.

18 190. Defendant's conduct and actions of turning a blind eye, ignoring the fact that time
19 sheets showing eight (8) hours every day, and forty (40) hours every week were clearly known to
20 be inaccurate and an understatement of Plaintiffs' and all other Therapists actual working hours,
21 resulted in willful violations of the overtime wage law of Section 207 of the FLSA.

22 191. Defendant's actions constitute permitting Plaintiffs and all other Therapists to
unlawfully suffer to work off the clock without being paid for all hours.

192. The FLSA requires any employer who has actual or constructive knowledge of
employees working off the clock to either cease and stop the conduct or be held liable and

1 responsible for paying the overtime premiums for such off the clock hours, in addition to double
2 the sum as liquidated damages.

3 193. Said differently, while Defendant had a so-called policy to prevent and deter Therapists
4 from working off the clock, Defendant knowingly, actively and/or constructively permitted
5 Plaintiffs and all others similarly situated to suffer to work off the clock and without being paid for
6 all such overtime hours while reaping the benefits of their unpaid labor and sweat.

7 194. The FLSA holds that such off the clock work Defendant knew of or had reasons to
8 know but did nothing to preclude or halt, and which was encouraged and permitted is compensable
9 overtime hours due to be paid to Plaintiffs and all others similarly situated who worked overtime
10 hours without pay during the preceding 3 years, and up through to the date of trial.

11 195. Defendant maintained a De Facto Policy to discourage reporting and claiming overtime
12 hours, but meanwhile reaped the benefits of the additional work activities and work hours of
13 Therapists, and the savings in many many millions of dollars in labor costs.

14 196. Defendant made it known to Plaintiffs and all other Therapists working during the
15 relevant FLSA class period that if they clocked in or reported their overtime hours, their company
16 required productivity standards for Therapists, as high as 120% or 125%, would fail or fall below
17 the required performance and they would be subject to disciplinary action, including termination of
18 employment.

19 197. Thus, Therapists, including Plaintiffs were encouraged and pressured to not report or
20 clock their overtime hours which was enforced by DOR and the Regional Managers.

21 198. Plaintiffs and the FLSA Class were permitted to suffer to work these hours off the
22 clock, and as per numerous other Plaintiffs who have already opted into this action, this unlawful
pay practice Defendant knew was going on in facilities and locations across the U.S.

1 199. At any given time throughout the preceding 3 year period, DOR were aware of Plaintiff
2 and many other Therapists working off the clock and that their time sheets were inaccurate and not
3 capturing all their work hours.

4 200. Similarly, at any given time throughout the preceding 3 year period, regional managers
5 or other executives, managers and superiors of Therapists were aware Therapists were working off
6 the clock and that their time sheets were inaccurate and not capturing all their work hours.

7 201. Indeed, Therapists, including Plaintiffs were intimidated against reporting the extra
8 compensable overtime hours and told to focus on their productivity goals and responsibilities while
9 simultaneously being pressured to keep up or be subject to disciplinary action, including
10 termination of their employment.

11 202. The Defendant intentionally created a work environment that was oppressive, laced
12 with fear and intimidation against reporting overtime hours and complaining about not being paid
13 for all overtime hours, as claiming overtime hours worked would draw ire and scrutiny of
14 management.

15 203. Defendant has willfully and with reckless disregard for the requirements of the FLSA
16 and its regulations, failed to pay Plaintiff and the Putative FLSA Class, comprised of all current
17 and former similarly situated, hourly, non-exempt Therapists a premium or overtime wages for all
18 work hours over (40) hours in one or more work weeks as mandated by FLSA §207.

19 204. Defendant does not have a good faith basis for these described unlawful pay practices,
20 such that Plaintiffs and each and every member of the putative class is entitled to be paid an equal
21 sum in overtime wages owed at rates of one and one half times their respective regular rates of pay
22 as liquidated damages. *See Johnson v. Big Lots Stores, Inc.*, 604 F.Supp.2d 903 at 925 (E.D. La.
2009).

205. Defendant knowingly and willfully failed to track the hours worked by Plaintiffs and
the class of similarly situated employees who comprise the Putative and proposed FLSA Class.

1 206. Defendant encouraged and pressured Therapists to work as many hours as they needed
2 to off the clock in order to handle all their job duties and responsibilities and has direct, if not
3 constructive knowledge of Therapists working overtime hours.

4 207. By failing to record, report, and/or preserve records of all minutes and hours worked by
5 Plaintiffs and the class of similarly situated, the Defendant has failed to make, keep, and preserve
6 records with respect to each of its employees sufficient to determine their wages, hours, and other
7 conditions of employment in violation of the FLSA 29 USC 201 et seq., including 29 USC Sec.
8 211(c) and 215 (a).

9 208. Defendant knew or should have known that the act of permitting Therapists to work off
10 the clock, including working on weekends, was insufficient and evades the wage and hour
11 requirements of the FLSA such that a three (3) year statute of limitations applies.

12 209. To summarize, Defendant has willfully and lacking in good faith, violated the FLSA by
13 the following unlawful pay practices applicable to Plaintiff, and the class of similarly situated
14 persons: a) maintaining a De Facto policy against Therapists reporting all overtime hours worked
15 and foreclosing them from reporting any more than 40 hours for the week; and b) permitting
16 Plaintiffs and all other hourly paid Therapists to suffer to work off the clock without being paid for
17 all hours worked; and c) deducting 30 minutes each day for meal breaks they knew were not taken
18 by Therapists or commanding and requiring Therapists to self report deduct 30 minutes of time
19 each day for meal breaks they did not take, costing them upwards of 2.5 hours of unpaid overtime
20 hours each week.

21 210. As a result of Defendant's willful violations of the FLSA, Plaintiffs and the FLSA Class
22 of similarly situated comprised of all other present and former Therapists have suffered economic
damages by Defendant's failure to pay overtime compensation in accordance with FLSA §207.

23 211. Due to Defendant's willful violations of the FLSA, a three-year statute of limitations
applies to the FLSA violations pursuant to 29 U.S.C. §255(a).

1 212. As a result of Defendant's unlawful acts and pay practices described herein, Plaintiffs
2 and the Putative FLSA Class of all other similarly situated non-exempt employees have been
3 deprived of overtime compensation in amounts to be determined at trial; and are entitled to
4 recovery of such amounts, liquidated damages in amount equal to the overtime wages due,
5 prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. §216(b),
6 as well as injunctive relief pursuant to 29 U.S.C. §217.

7 **NINTH CAUSE OF ACTION**
8 **Violation of the Record Keeping Requirements of the FLSA and**
9 **Declaratory Action Pursuant to 28 U.S.C. §§ 2201 and 2202**

10 213. Plaintiffs and on behalf of all employees similarly situated, refer to and hereby
11 incorporate by reference paragraphs 1-93, as though fully set forth herein.

12 214. All employers subject to the FLSA must maintain and preserve certain records
13 describing the wages, hours and working conditions of their employees.

14 215. Evidence reflecting the precise number of overtime hours worked by Plaintiffs and
15 every member of the FLSA Class, as well as the applicable compensation rates, is in the
16 possession of Defendant.

17 216. To the extent records are unavailable, Plaintiffs and members of the Class may
18 establish the hours they worked solely by their testimony and the burden of overcoming such
19 testimony shifts to the employer. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

20 217. With respect to an employee subject to the FLSA provisions, the following records
21 must be kept as per 29 CFR part 516:

- 22 a. Personal information, including employee's name, home address,
occupation, sex, and birth date if under nineteen (19) years of age;
- b. Hour and day when workweek begins;
- c. Regular hourly pay rate for any week when overtime is worked;

- d. Total hours worked each workday and each workweek;
- e. Total daily or weekly straight-time earnings;
- f. Total overtime pay for the workweek;
- g. Deductions from or additions to wages;
- h. Total wages paid each pay period; and
- i. Date of payment and pay period covered

218. Failure to comply with the recordkeeping requirements is a violation of the FLSA for which criminal or civil sanctions may be imposed, whether or not other statutory violations exist. *See*, 29 U.S.C. §215(a)(5); *See also*, *Dunlop v. Gray-Goto, Inc.*, 528 F.2d 792 (10th Cir. 1976).

219. Accurate records are not only required for regulatory purposes, they are critical to an employer's defense of claims that it violated the FLSA. An employer that fails to maintain the required records cannot avoid liability in a wage-hour case through argument that there is insufficient evidence of the claimed hours worked. *See Wirtz v. First State Abstract Ins. Co.*, 362 F.2d 83 (8th Cir. 1966); *Boekemeier v. Fourth Universalist Soc'y*, 86 F. Supp. 2d 280 (S.D.N.Y. 2000).

220. An employer's failure to maintain records may create a presumption in the aggrieved employee's favor. *See Myers v. The Copper Cellar Corp.*, 192 F.3d 546, 551 n.9 (7th Cir. 1999), citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

221. Defendant has failed to accurately record, track and report the Plaintiff's and Class of similarly situated members' time and work hours as required under the FLSA.

222. Defendant has failed to make, keep and preserve records, with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of 29 CFR §516.2 and 29 U.S.C. §§211, 216 and related laws.

1 223. As a direct result of Defendant's record keeping violations of the FLSA and specifically
2 CFR part 516, the Court should declare Defendant's pay records to be inaccurate, unreliable and
3 inadmissible, or at a minimum, a jury instruction given to such an effect.

4 **RELIEF SOUGHT**

5 **WHEREFORE**, Plaintiffs REBECCA ANDERSON and TARA NUNALLY, individually,
6 and on behalf of all other similarly situated, employed within the preceding four years and for all
7 currently employed Therapists of Reliant Rehab seek the following relief:

- 8 a. Designation of this action as a Rule 23 Class action;
- 9 b. Designate Plaintiffs, Anderson and Nunally as Representatives of the Rule 23
10 California Class for purposes of engaging in mediation, with the authority to execute
11 any Class settlement agreement the parties might reach, which is subject to the
12 Court's approval before making any such agreement binding;
- 13 c. That Defendant is found to have violated Labor Code §§ 204, 1194, and 1197, and
14 Wage Order 7, as to the Plaintiffs and the California Class by failing to pay Plaintiffs
15 and the Class for all hours worked;
- 16 d. That Defendant is found to have violated Labor Code § 510, as to the Plaintiffs and
17 the California Class by failing to pay Plaintiffs and the Class for overtime hours
18 worked;
- 19 e. That Defendant is found to have violated Labor Code § 226 by not authorizing and
20 permitting adequate meal breaks to Plaintiffs and the California Class;
- 21 f. That Defendant is found to have violated Labor Code § 226 by not authorizing and
22 permitting adequate rest breaks to Plaintiffs and the California Class;
- g. That Defendant is found to have violated Labor Code § 203 for failing to pay wages
upon termination or voluntary quit;

- 1 h. That Defendant is found to have violated the record-keeping provisions of Labor
2 Code §§ 1174(d) and 226 as to Plaintiffs and the California Class;
- 3 i. That Defendant is found to have violated Labor Code § 226 for failing to provide
4 accurate wage statements to Plaintiffs and the California Class Members;
- 5 j. That Defendants are found to have violated Business and Professions Code § 17200
6 as to Plaintiffs and the California Class by failing to pay Plaintiffs and Members of
7 the Class for all hours worked and failing to keep timely, accurate, itemized records
8 of all hours worked and failing to permit and authorize adequate meal and rest breaks
9 to Plaintiffs and the California Class;
- 10 k. That Plaintiffs and the California Class be awarded civil penalties as specified by
11 Labor Code § 226.8 for each violation of the Labor Code as explained herein during
12 the applicable limitations period preceding the filing of the Complaint and up to and
13 including the present and until the date of compliance with the law;
- 14 l. That Plaintiffs and the Class be awarded damages for the amount of unpaid
15 compensation, including interest thereon, liquidated damages, and penalties subject
16 to proof at trial;
- 17 m. That Plaintiffs and the California Class be awarded civil penalties as specified by
18 Labor Code § 2699(f) for Plaintiffs and each current and former aggrieved employee
19 for each violation of the Labor Code as explained herein during the applicable
20 limitations period preceding the filing of the Complaint and up to and including the
21 present and until the date of compliance with the law;
- 22 n. That Plaintiffs and the California Class be awarded reasonable attorneys' fees and
costs pursuant to Labor Code §§ 226, and 1194, and California Code of Civil
Procedure § 1021.5;

- 1 o. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the
2 California Class due to Defendants' unlawful activities, pursuant to Business and
3 Professions Code §§ 17200 et seq.;
- 4 p. That the Court find and declare Defendant's violations of the California laws were
5 and are willful;
- 6 q. Award Plaintiffs and the California Class an equal sum in awarded or recovered
7 wages as liquidated damages;
- 8 r. That the Court award Plaintiffs Anderson and Nunally a Class Representative service
9 award for the justice they sought out for so many and their services in this case as
10 representatives for the putative class;
- 11 s. Award Prejudgment and post-judgment interest, as provided by California law;
- 12 t. Issue an Injunction barring Defendant from continuing its unlawful pay practices
13 complained of herein;
- 14 u. An order designating this action as a collective action and issuance of notice
15 pursuant to 29 U.S.C. §216(b) to all similarly situated individuals across the nation
16 with instructions to permit them to assert timely FLSA claims in this action by filing
17 individual Consents to Join this action as plaintiffs pursuant to §216(b) and that
18 notice be sent to all past and present employees of Defendant, any time during the
19 three (3) year period immediately preceding the filing of this suit, through and
20 including the date of this Court's issuance of the Court Supervised Notice;
- 21 v. An order awarding attorneys' fees and costs pursuant to §216 of the FLSA;
- 22 w. That the Court find Defendant in violation of the overtime compensation provisions
of the FLSA and that the Court find that Defendant's violations of the FLSA were
and are willful;

- 1 x. That the Court award Plaintiffs and the putative FLSA Class of all similarly situated
2 employees overtime compensation for all the previous hours worked over forty (40)
3 hours in each and every workweek at the rate of time and one half (1.5) their regular
4 rate of pay during the past three (3) years, AND an equal sum in liquidated damages.
5 In addition, interest on said award pursuant to §216 of the FLSA;
- 6 y. That the Court award Plaintiffs a collective action class representative fee or service
7 award fee for their efforts and time dedicated to bringing justice through this action;
- 8 z. That the Court declare Defendant’s record keeping practices are in violation of the
9 FLSA and specifically CFR part 516, and that the Court should declare Defendant’s
10 pay records to be inaccurate, unreliable and inadmissible, or at a minimum, a jury
11 instruction given to such an effect.
- 12 aa. That the Court appoint Mitchell Feldman, Esq. and the firm of Feldman Legal Group
13 as class counsel for both classes in the FLSA Collective action and the Rule 23
14 Class;
- 15 bb. That the Court award any other legal and equitable relief as this Court may deem
16 appropriate, including the value of underpaid matching funds in company pension or
17 401k plans.

18 **DEMAND FOR JURY TRIAL**

19 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a
20 trial by jury on all questions of fact raised by this Complaint.

21 Respectfully submitted June 28, 2022

22 /s/Mitchell Feldman, Esq.
Mitchell L. Feldman, Esquire

1 (admitted *pro hac vice*)
Florida Bar No.: 0080349
2 FELDMAN LEGAL GROUP
6916 W. Linebaugh Ave, #101
3 Tampa, Florida 33625
Tel: 813-639-9366 -
4 Fax: 813-639-9376
mfeldman@flandgatrialattorneys.com
mail@feldmanlegal.us
5 Attorney for Plaintiffs and the Classes
of similarly situated
6

7 **CERTIFICATE OF SERVICE**

8 I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed
9 and served via transmission of Notice of Electronic Filing generated by the CM/ECF system on all
10 counsel or parties of record.

11
12 /s/Mitchell Feldman, Esq.
Mitchell L. Feldman, Esquire
13
14
15
16
17
18
19
20
21
22