

Aaron Kaufmann, State Bar No. 148580
Amy Endo, State Bar No. 272998
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Telephone: (510) 272-0169
Facsimile: (510) 272-0174
E-mail: akaufmann@leonardcarder.com
E-mail: aendo@leonardcarder.com

Attorneys for Plaintiffs
[Additional Counsel for Plaintiffs Listed on Following Page]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

TONISHA DAILEY and LUCKY JIAHUI
FAN, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

EXAMINATION MANAGEMENT
SERVICES, INC. and DOES 1 to 10
inclusive,

Defendants.

Case No.

RG14713179

CLASS ACTION

ORIGINAL COMPLAINT FOR:

- (1) OVERTIME (Labor Code §§ 510, 1194);
- (2) MINIMUM WAGE & LIQUIDATED DAMAGES (Labor Code §§ 1194, 1194.2, 1197);
- (3) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§ 226.7, 512, I.W.C. Wage Order No. 4);
- (4) FAILURE TO AUTHORIZE & PERMIT PAID REST PERIODS (Labor Code § 226.7, I.W.C. Wage Order No. 4);
- (5) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code § 2802);
- (6) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§ 226, 226.3);
- (7) WAITING TIME PENALTIES (Labor Code §§ 201-203); and
- (8) UNFAIR COMPETITION (Bus. & Prof. Code § 17200, *et seq.*)

JURY TRIAL DEMANDED

ENDORSED
FILED
ALAMEDA COUNTY

FEB - 7 2014

CLERK OF THE SUPERIOR COURT
MARGARET L. DOWNING
Deputy

1 Harvey Sohnen, State Bar No. 62850
2 Patricia M. Kelly, State Bar No. 99837
3 LAW OFFICES OF SOHNEN & KELLY
4 2 Theatre Square, Suite 230
5 Orinda, CA 94563-3346
6 Telephone: (925) 258-9300
7 Facsimile: (925) 258-9315
8 hsohnen@sohnenandkelly.com
9 pkelly@sohnenandkelly.com

6 J. Derek Braziel
7 Meredith Mathews
8 LEE & BRAZIEL, LLP
9 1801 N. Lamar Street, Suite 325
10 Dallas, TX 75202
11 Telephone: (214) 749-1400
12 Facsimile: (214) 749-1010
13 jdbraziel@l-b-law.com
14 *Pro hac vice application pending*

11 Chris R. Miltenberger
12 THE LAW OFFICE OF CHRIS R. MILTENBERGER, PLLC
13 1340 N. White Chapel Blvd., Suite 100
14 Southlake, TX 76092
15 Telephone: (817) 416-5060
16 Facsimile: (817) 416-5062
17 chris@crmlawpractice.com
18 *Pro hac vice application pending*

1 Plaintiffs Tonisha Dailey and Lucky Jiahui Fan allege as follows on behalf of themselves
2 and all others similarly situated in the State of California:

3 **I. INTRODUCTION**

4 1. This is an action for unpaid overtime, minimum wage, missed meal and rest period
5 pay, expense reimbursement, and related penalties brought against Defendant Examination
6 Management Services, Inc. ("EMSI") on behalf of current and former paramedical examiners and
7 collectors.

8 2. EMSI provides medical information, risk management and investigative services to
9 the insurance, healthcare, legal, wellness and business communities. Its services include
10 paramedical examinations, application fulfillment, and inspections to life and health insurance
11 customers. It employs phlebotomists and other medical technicians, such as Plaintiffs, to perform
12 these services across the country, including throughout California.

13 3. EMSI has engaged Plaintiffs and similarly situated paramedical examiners and
14 collectors (collectively "Class Members" and/or "Examiners and Collectors") to perform
15 paramedical exams, complete medical histories, and collect samples for drug and alcohol screens
16 and tests on behalf of EMSI's clients. This includes but is not limited to those individuals who
17 may have had the title of Mobile Drug and Alcohol Screeners, Paramedical Examiners,
18 Paramedical Examiner (Phlebotomists), Collector, Insurance Examiner or other similar titles. The
19 Class Members travel to and from individuals' homes and places of business to perform these
20 services. They use their own vehicles and provide other equipment and supplies, for which they
21 are not fully reimbursed by EMSI. EMSI pays Class Members on a piece-rate basis (per-visit or
22 per-exam basis) only, and does not track hours worked, pay overtime premium pay, or pay
23 minimum wage for work that is not directly tied to completing the exams and collections. EMSI
24 also fails to provide legally compliant off-duty meal periods and does not authorize and permit paid
25 rest periods.

26 4. Plaintiffs bring claims under California law for unpaid overtime compensation,
27 minimum wage, missed meal and rest period pay, reimbursement of business expenses, waiting
28 time penalties, restitution, disgorgement, statutory penalties, interest, and attorneys' fees and costs.

1 These claims are brought under Code of Civil Procedure § 382 on behalf of a class of Examiners
2 and Collectors employed with Defendants during the period commencing four years prior to the
3 filing of this action.

4 II. JURISDICTION

5 5. This Court has subject matter jurisdiction because the total amount of damages
6 sought exceeds \$25,000 and the relief requested is within the jurisdiction of this Court.

7 III. VENUE

8 6. Venue as to Defendant EMSI is proper in the County of Alameda, pursuant to Code
9 of Civil Procedure § 395.5. Defendant EMSI maintains a branch office, transacts business, and/or
10 has agents in Alameda County, and Defendant is otherwise within this Court's jurisdiction for
11 purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs
12 and those similarly situated within the State of California and within Alameda County. Defendant
13 has employed numerous Class Members in Alameda County, including Plaintiffs Dailey and Fan,
14 who have worked uncompensated overtime, been denied minimum wage, were not paid for missed
15 meal and rest periods, and incurred unreimbursed business as part of carrying out Defendant
16 EMSI's business in Alameda County during the Class Period.

17 IV. PARTIES

18 A. PLAINTIFFS

19 7. Plaintiff Tonisha Dailey resides in Rodeo, California. She served as a paramedical
20 examiner for EMSI from approximately November 2011 to November 2012. For the first few
21 months of her tenure, she worked out of her residence in Stockton, performing exams and
22 collections in the greater Stockton and Sacramento areas. She then moved to Rodeo, began
23 working out of EMSI's Oakland branch office, and provided exam and collection services for
24 EMSI throughout the East Bay and beyond. Throughout her tenure, she was paid flat rates per type
25 of exam or collection, and was not paid overtime premium pay, did not receive at least minimum
26 wage for non-piece rate work, was not provided meal periods, was not permitted and authorized to
27 take paid rest periods, and incurred business expenses for which she was not fully reimbursed.

28 8. Plaintiff Lucky Jiahui Fan, also known as Jiahui Fan, resides in Richmond,

1 California. She served as a drug and alcohol collector and paramedical examiner for EMSI from
2 approximately March, 2011 to January 29, 2014. She worked out of EMSI's Oakland branch
3 office, and provided exam and collection services for EMSI through the East Bay and beyond.
4 Throughout her tenure, she was paid flat rates per type of exam or collection, and was not
5 ordinarily paid overtime premium pay, did not receive at least minimum wage for non-piece rate
6 work, missed meal and rest periods, and incurred business expenses for which she was not fully
7 reimbursed.

8 **B. DEFENDANTS**

9 9. Defendant Examination Medical Services, Inc. is a for-profit company incorporated
10 under the laws of Nevada. It has its headquarters in Scottsdale, Arizona. Defendant EMSI is and
11 at all relevant times has been an employer covered by the Labor Code and IWC wage order No. 4.

12 10. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendant sued herein as DOES 1 through 10, inclusive, are currently unknown to
14 Plaintiffs, who therefore sue Defendant by such fictitious names. Plaintiffs are informed and
15 believe, and based thereon allege, that each of the Defendants designated herein as a DOE is
16 legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek
17 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
18 designated hereinafter as DOES when such identities become known. Hereinafter Defendant and
19 the DOE Defendants shall be referred to collectively as "Defendants."

20 11. Plaintiffs are informed and believe, and on such information and belief allege, that
21 each Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
23 each Defendant is legally attributable to the other Defendants.

24 **V. FACTUAL BACKGROUND**

25 12. Defendant EMSI is in the business of gathering medical information and samples—
26 including blood, urine, hair, and breath from individuals and providing it to EMSI's clients, which
27 are usually insurance companies and employers. Defendant provides these services throughout the
28 country, including through 16 branch offices in California, according to EMSI's website. These

1 offices in California are geographically dispersed, and include a location in Oakland.

2 13. During the Class Period, EMSI has employed scores of Examiners and Collectors in
3 California, including in or about Alameda County. The Examiners and Collectors travel to
4 individual's homes or place of residence to perform the paramedical examinations (usually
5 involving one or more of the following: weighing and measuring the individual, taking their pulse
6 and blood pressure, performing a lung function test, and running an EKG, among other things),
7 obtain details of the individual's medical history, and/or collect blood, urine, hair, and/or breath
8 samples. The Class Members have to complete the paperwork to memorialize the details of their
9 exams and/or collections. For the collected samples, the Class Members complete lab slips,
10 process the samples—sometimes requiring running the samples through a centrifuge, and prepare
11 them for shipping to a lab. If the collection is taken at a location that is not convenient to a EMSI
12 branch office, the Class Member has to take it to a Fed Ex or similar shipping facility and ship it
13 themselves.

14 14. Class Members typically perform multiple exams and/or collections a day. Using
15 their own vehicles, they travel to and from the individuals' residences and places of business.
16 Between the exams and collections, the Class Members typically make stops at the branch offices,
17 or, if not convenient, at their residences and shipping facilities, where they can complete the
18 processing of any samples and prepare the packages for shipping.

19 15. The Examiners and Collectors perform other work at their residences, typically
20 before they travel to their appointments and after they have completed their appointments for the
21 day. Such work includes downloading their assignments, planning their schedule and mapping out
22 their destinations, calling individuals to make and/or confirm their appointments, and completing
23 paperwork.

24 16. EMSI pays the Examiners and Collectors on a piece-rate basis, with the flat rates of
25 pay varying with type of service performed. Plaintiffs and other Class Members typically do not
26 receive compensation for services they are not able to complete, such as failed attempts to schedule
27 appointments, when they drive to a scheduled appointment and the individual is not available, or
28 the individual cannot complete the service required.

1 17. EMSI does not track the hours worked by the Examiners and Collectors. However,
2 Plaintiffs and others similarly situated have regularly worked in excess of eight hours in a day and
3 40 hours in a week. EMSI does not pay the Examiners and Collectors any premium pay for
4 working these overtime workers.

5 18. While EMSI pays some mileage reimbursement to the Class Members for use of
6 their own vehicles for their jobs, the reimbursement has not been sufficient to reimburse them for
7 all of the miles driven in performing their assigned tasks for EMSI.

8 19. Class Members also sometimes use their own personal equipment and supplies in
9 performing their examination and collection jobs, including such items as centrifuges,
10 stethoscopes, and home-office equipment and supplies. Class Members sometimes have paid for
11 such equipment and supplies out of their own pockets. However, EMSI does not reimburse the
12 Class Members for use of such equipment and supplies.

13 20. As a result of Defendants' payment schemes, they have willfully and knowingly
14 failed to pay premium overtime compensation to Plaintiffs and similarly situated Examiners and
15 Collectors for hours worked in excess of eight hours per day and/or 40 hours per week.

16 21. As a result of Defendants' payment schemes, they have willfully and knowingly
17 failed to pay minimum wage compensation to Plaintiffs and similarly situated Examiners and
18 Collectors for all hours worked.

19 22. As a result of Defendants' reimbursement policies and practices, they have failed to
20 reimburse Plaintiffs and similarly situated Examiners and Collectors for employment-related
21 expenses, including the costs of medical equipment, and for home-office equipment and supplies;
22 Defendants have also failed to fully reimburse Class Members for the mileage for driving to and
23 from examination and collection appointments, and all operation costs associated with the vehicle,
24 including fuel, maintenance and repair.

25 23. Defendants have also regularly failed to provide a 30 minute off-duty meal period to
26 Plaintiffs and similarly situated Examiners and Collectors who worked more than five hours in a
27 day. Defendants have also regularly failed to provide a second 30 minute meal period to Plaintiffs
28 and similarly situated Examiners and Collectors who worked more than 10 hours in a day.

1 24. Defendants have failed to authorize and permit Plaintiffs to take a paid rest period
2 during each four hour segments of work.

3 25. Defendants have also failed to record the actual hours worked by Plaintiffs and
4 similarly situated Examiners and Collectors during the Class Period. Consequently, Defendants
5 have failed to itemize the gross wages earned and total hours worked on wage statements furnished
6 to Plaintiffs and similarly situated Examiners and Collectors.

7 26. Defendants have willfully and knowingly failed to pay Plaintiffs, and similarly
8 situated Examiners and Collectors, upon termination of employment, all accrued compensation,
9 including payment of overtime, minimum wage, and missed meal and rest period compensation.

10 **VI. CLASS ACTION ALLEGATIONS.**

11 27. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
12 as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiffs seek to
13 represent is composed of and defined as:

14 Defendants' current and former employees, regardless of specific title, who
15 completed mobile drug screens, clinical trial and insurance exams, for
16 Defendants' clients and were paid on a per visit/per exam basis in California
17 any time from four years of the filing of this class action complaint. This
18 includes but is not limited to those individuals who gather/ed medical history
19 information, vitals, and blood, urine, or hair samples and who may have had
20 title of Mobile Drug and Alcohol Screeners, Paramedical Examiners,
21 Paramedical Examiner (Phlebotomists), Insurance Examiner or other similar
22 titles.

23 28. This action has been brought and may properly be maintained as a class action
24 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
25 litigation, the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the
26 Class:

27 a. Ascertainability and Numerosity: The potential Class Members, as defined
28 herein, are so numerous that joinder would be impracticable. Plaintiffs are informed and believe
and on such information and belief allege that Defendants have employed scores of Class Members
in California during the Class Period. The names and addresses of the Class are available to the
Defendants. Notice can be provided to the Class Members via first class mail and electronic mail

1 using techniques and a form of notice similar to those customarily used in class action lawsuits of
2 this nature.

3 b. Commonality and Predominance of Common Questions: There are
4 questions of law and fact common to Plaintiffs and the Class that predominate over any questions
5 affecting only individual Class Members. These common questions of law and fact include,
6 without limitation:

7 i. Whether Defendants have required, encouraged, or permitted Class
8 Members to work in excess of eight hours per day, 12 hours per day, and/or 40 hours per week;

9 ii. Whether Defendants knew or should have known that the Class
10 Members regularly worked in excess of eight hours per day, 12 hours per day, and/or 40 hours per
11 week;

12 iii. Whether Defendants have failed to pay the Class Members overtime
13 wages at the rate of at least one and a half times their full regular rate of pay for all hours worked
14 over eight in a day and 40 in a workweek, and at the rate of at least two times their full regular rate
15 of pay for all hours worked over 12 in a day.

16 iv. Whether Defendants have violated IWC wage order No. 4, § 3 and
17 Labor Code §§ 510 and 1194 by their failure to pay Class Members overtime compensation;

18 v. Whether Defendants' failure to pay overtime premium pay to Class
19 Members constitutes an unlawful, unfair, and/or fraudulent business practice under Business &
20 Professions Code § 17200, *et seq.*;

21 vi. Whether, as a result of Defendants' piece rate compensation scheme,
22 Defendants have failed to pay the Class Members minimum wage for all hours worked.

23 vii. Whether Defendants have violated IWC wage order No. 4, § 4. the
24 IWC Minimum Wage Order, and Labor Code § 1194 by their failure to pay Class Members
25 minimum wage for all hours worked;

26 viii. Whether Defendants' failure to pay minimum wage to Class
27 Members for all hours worked constitutes an unlawful, unfair, and/or fraudulent business practice
28 under Business & Professions Code § 17200, *et seq.*;

ix. Whether Defendants have failed to provide Class Members adequate off-duty meal periods in violation of Labor Code §§ 226.7 and 512 and IWC wage order No. 4, § 11;

x. Whether Defendants have failed to pay premium pay to Class Members for missed meal periods at the rate of one hour of pay at Class Members' full regular rate of pay in violation of Labor Code §§ 226.7 and 512 and IWC wage order No. 4, § 11;

xi. Whether Defendants' failure to provide Class Members adequate meal periods and meal period compensation constitutes an unlawful, unfair, and/or fraudulent business practice under Business & Professions Code § 17200, *et seq.*;

xii. Whether Defendants have failed to authorize and permit Class Members to take paid rest periods in violation of Labor Code § 226.7 and IWC wage order No. 4, § 12;

xiii. Whether Defendants have failed to pay premium pay to Class Members for missed rest periods at the rate of one hour of pay at Class Members' full regular rate of pay in violation of Labor Code § 226.7 and IWC wage order No. 4, § 12;

xiv. Whether Defendants' failure to authorize and permit paid rest periods for Class Members and failure to pay proper premium compensation for missed rest periods constitute an unlawful, unfair, and/or fraudulent business practice under Business & Professions Code § 17200, *et seq.*;

xv. Whether Defendants have knowingly and intentionally failed to provide Class Members with an itemized statement accurately showing total hours worked with each payment of wages, as required by Labor Code § 226 and IWC wage order No. 4, § 7;

xvi. Whether Defendants' failure to provide an itemized statement accurately showing gross wages earned and total hours worked with each payment of wages constitutes an unlawful, unfair, and/or fraudulent business practice under Business & Professions Code § 17200, *et seq.*;

xvii. Whether Defendants have violated Labor Code §§ 201-203 by failing, upon termination, to timely pay Class Members wages that were due for overtime,

1 minimum wage for all hours worked, missed meal periods, and/or missed rest periods; and

2 xviii. The proper formula for calculating restitution, damages, and waiting
3 time and other statutory penalties owed to Plaintiffs and the Class alleged herein.

4 c. Typicality: Plaintiffs' claims are typical of the claims of the Class.
5 Defendants' common course of unlawful conduct has caused Plaintiffs and similarly situated Class
6 Members to sustain the same or similar injuries and damages. Plaintiffs' claims are thereby
7 representative of and co-extensive with the claims of the Class.

8 d. Adequacy of Representation: Plaintiffs are all members of the Class.
9 Plaintiffs do not have any conflicts of interest with other Class Members, and will prosecute the
10 case vigorously on behalf of the Class. Plaintiffs will fairly and adequately represent and protect
11 the interests of the Class Members. Plaintiffs' counsel are competent and experienced in litigating
12 large employment class actions, including large wage and hour class actions.

13 e. Superiority of Class Action: A class action is superior to other available
14 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
15 Members is not practicable, and questions of law and fact common to the Class predominate over
16 any questions affecting only individual Class Members. Each Class Member has been damaged or
17 may be damaged in the future by reason of Defendants' unlawful policies and practices resulting in
18 violations of California requirements for overtime, meal period, rest period, and business expense
19 reimbursement. Certification of this case as a class action will allow those similarly situated
20 persons to litigate their claims in the manner that is most efficient and economical for the parties
21 and the judicial system. Certifying this case as a class action is superior because it will allow for
22 efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by failing to pay
23 overtime; failing to pay minimum wage for all hours worked; failing to provide off-duty meal
24 periods and/or paying the proper premium pay for missed meal periods; failing to authorize and
25 permit paid rest periods and/or paying the proper premium pay for missed rest periods; and failing
26 to fully reimburse for all business-related expenses. Class treatment will thereby effectuate
27 California's strong public policy of protecting employees from deprivation or offsetting of
28 compensation earned in their employment. If this action is not certified as a class action, it will be

1 impossible as a practical matter for many or most Class Members to bring individual actions to
2 recover monies unlawfully withheld from their wages.

3 **VII. DAMAGES**

4 29. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiffs and
5 similarly situated Examiners and Collectors are owed overtime compensation plus interest,
6 minimum wage and liquidated damages plus interest, premium pay for missed meal periods plus
7 interest, premium pay for missed rest periods plus interest, business expense reimbursements plus
8 interest, waiting time penalties under Labor Code § 203, and other statutory penalties, the precise
9 amount of which will be proven at trial.

10 **VIII. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
13 **(LABOR CODE §§ 510, 1194, *ET SEQ.*, IWC WAGE ORDER NO. 4)**
14 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

15 30. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
17 the above-described Class of similarly situated Examiners and Collectors employed by Defendants
18 in California.

19 31. By failing to pay overtime compensation to Plaintiffs and similarly situated Class
20 Members as alleged above, Defendants have violated and continue to violate Labor Code § 510
21 and IWC wage order No. 4, § 3, which require overtime compensation for non-exempt employees.

22 32. As a result of Defendants' unlawful acts, Plaintiffs and similarly situated Class
23 Members have been deprived of overtime compensation in an amount to be determined at trial,
24 and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
25 under Labor Code § 1194.

26 33. By violating Labor Code § 510, Defendants are liable for attorneys' fees and costs
27 under Labor Code § 1194.
28

1 34. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
2 request relief as described below.

3
4 **SECOND CAUSE OF ACTION**

5 **MINIMUM WAGE**
6 **(LABOR CODE §§ 1182.11, 1194, *ET SEQ.*, IWC WAGE ORDER NO. 4,**
7 **MINIMUM WAGE ORDER)**
8 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

9 35. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
11 the above-described Class of similarly situated Examiners and Collectors employed by Defendants
12 in California.

13 36. At all times relevant to this complaint, Labor Code §§ 1182.11, 1182.12 and 1197,
14 Wage Order No. 4, and the Minimum Wage Order were in full force and effect and required that
15 Defendants' California nonexempt employees receive the minimum wage for all hours worked
16 irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate
17 \$8.00 per hour commencing January 1, 2008.

18 37. At various times throughout the relevant statutory period, Defendants have paid
19 Plaintiffs and Class Members flat rates of pay for completion of certain examinations and
20 collections. Defendants have not paid compensation for work that did not culminate in a
21 completed examination or collection or other work that was not directly related to completing
22 particular examination or collection. As a result, Defendants have failed to pay at least minimum
23 wage for all hours worked, as required by law.

24 38. As a direct and proximate result of the acts and/or omissions of Defendants,
25 Plaintiffs and Class Members have been deprived of minimum wages due in amounts to be
26 determined at trial, and to additional amounts as liquidated damages, pursuant to Labor Code §§
27 1194 and 1194.2.
28

1 39. By violating Labor Code §§ 1182.11, 1182.12 and 1197, IWC wage order No. 4, §
2 4, and the Minimum Wage Order, Defendants are also liable for reasonable attorneys' fees and
3 costs under Labor Code § 1194.

4 40. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
5 request relief as described below.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**
8 **(LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 4)**
9 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

10 41. The allegations of each of the preceding paragraphs are realleged and incorporated
11 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
12 the above-described Class of similarly situated Examiners and Collectors employed by Defendants
13 in California.

14 42. Plaintiffs and similarly situated Examiners and Collectors have regularly worked in
15 excess of five (5) hours a day without being provided at least a half-hour meal period in which
16 they were relieved of all duties, as required by Labor Code §§ 226.7 and 512, and IWC wage
17 order No. 4, § 11(A).

18 43. Because Defendants failed to provide proper meal periods, they are liable to
19 Plaintiffs and similarly situated Examiners and Collectors for one hour of additional pay at the
20 regular rate of compensation for each workday that the proper meal periods were not provided,
21 pursuant to Labor Code § 226.7(b) and IWC wage order No. 4, § 11(B).

22 44. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
23 request relief as described below.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS**
26 **(LABOR CODE § 226.7, IWC WAGE ORDER NO. 4)**
27 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

28 45. The allegations of each of the preceding paragraphs are realleged and incorporated
herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and

1 the above-described Class of similarly situated Examiners and Collectors employed by Defendants
2 in California.

3 46. Plaintiffs and similarly situated Examiners and Collectors have regularly worked in
4 excess of four (4) hours a day without Defendants authorizing and permitting them to take at least
5 a 10 minute paid rest period or have failed to pay them for rest periods taken, as required by Labor
6 Code § 226.7 and IWC wage order No. 4, § 12.

7 47. Because Defendants failed to authorize and permit proper paid rest periods, they are
8 liable to Plaintiffs and similarly situated Examiners and Collectors for one hour of additional pay
9 at the regular rate of compensation for each workday that the proper rest periods were not
10 authorized or permitted, pursuant to Labor Code § 226.7(b) and IWC wage order No. 4, § 12(B).

11 48. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
12 request relief as described below.

13 **FIFTH CAUSE OF ACTION**

14 **REIMBURSEMENT OF BUSINESS EXPENSES**
15 **(LABOR CODE § 2802)**

16 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

17 49. The allegations of each of the preceding paragraphs are realleged and incorporated
18 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
19 the above-described Class and Subclasses of similarly situated Examiners and Collectors
20 employed by Defendant in California.

21 50. While acting on the direct instruction of Defendants and discharging their duties for
22 them, Plaintiffs and similarly situated Class Members have incurred work-related expenses. Such
23 expenses include but are not limited to fuel, maintenance, and other vehicle operating costs;
24 medical equipment; and home-office equipment and supplies. Plaintiffs and Class Members
25 incurred these substantial expenses as a direct result of performing their job duties for Defendant.

26 51. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and
27 similarly situated Class Members for all of these expenditures and losses. By requiring those
28 employees to pay expenses that they incurred in direct consequence of the discharge of their duties

1 for Defendants and/or in obedience of Defendants' direction, Defendants have violated and
2 continue to violate Labor Code § 2802.

3 52. By unlawfully failing to pay Plaintiffs and other similarly situated Class Members
4 for these work-related expenses, Defendants are also liable for reasonable attorneys' fees and
5 costs under Labor Code § 2802(c).

6 53. As a direct and proximate result of Defendants' conduct, Plaintiffs and similarly
7 situated Examiners and Collectors have suffered substantial losses according to proof, as well as
8 pre-judgment interest, costs, and attorneys' fees for the prosecution of this action.

9 54. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
10 request relief as described below.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
13 **(LABOR CODE §§ 226 & 226.3; IWC WAGE ORDER NO. 4)**
(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)

14 55. The allegations of each of the preceding paragraphs are realleged and incorporated
15 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
16 the above-described Class of similarly situated Examiners and Collectors employed by Defendants
17 in California.

18 56. Labor Code § 226(a) and IWC wage order No. 4, § 7(B) require employers semi-
19 monthly or at the time of each payment of wages to furnish each California employee with a
20 statement itemizing, among other things, the gross wages earned and the total hours worked by the
21 employee. Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to
22 provide a statement itemizing, among other things, the gross wages earned and total hours worked
23 by the employee, then the employee is entitled to recover the greater of all actual damages or fifty
24 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
25 up to four thousand dollars (\$4,000).

26 57. Defendants knowingly and intentionally failed to furnish Plaintiffs and similarly
27 situated Examiners and Collectors with timely, itemized statements that accurately report the gross
28

1 wages earned and total hours worked, as required by Labor Code § 226(a) and IWC wage order
2 No. 4, § 7(B). As a result, Defendants are liable to Plaintiffs and similarly situated Examiners and
3 Collectors for the amounts provided by Labor Code § 226(b), including an award of costs and
4 reasonable attorneys' fees.

5 58. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
6 request relief as described below.

7 **SEVENTH CAUSE OF ACTION**
8 **WAITING TIME PENALTIES**
9 **(LABOR CODE §§ 201, 202, & 203)**
10 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

11 59. The allegations of each of the preceding paragraphs are realleged and incorporated
12 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
13 the above-described Class of similarly situated Examiners and Collectors who were employed by
14 Defendants in California but are no longer employed by Defendants.

15 60. Labor Code § 201 requires an employer who discharges a California employee to
16 pay all compensation due and owing to that employee immediately upon discharge.

17 61. Labor Code § 202 requires an employer to pay all compensation due and owing to a
18 California employee who quits within 72 hours of that employee's quitting, unless the employee
19 provides at least 72 hours notice of quitting, in which case all compensation is due at the end of
20 the employee's final day of work.

21 62. Labor Code § 203 provides that if an employer willfully fails to pay compensation
22 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting
23 time penalties in the form of continued compensation of up to 30 work days.

24 63. Defendants willfully failed and refused to timely pay compensation and wages,
25 including unpaid overtime pay, minimum wage for all hours worked, unpaid premium pay for
26 missed meal periods, and unpaid premium pay for missed rest periods, to Plaintiffs and similarly
27 situated Examiners and Collectors whose employment terminated. As a result, Defendants are
28

1 liable to Plaintiffs and similarly situated Examiners and Collectors for waiting time penalties
2 under Labor Code § 203.

3 64. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
4 request relief as described below.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
7 **(BUSINESS & PROFESSIONS CODE §§ 17200-09)**
8 **(ON BEHALF OF PLAINTIFFS AND ALL CLASS MEMBERS)**

9 65. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and
11 the above-described Class of similarly situated Examiners and Collectors and in a representative
12 capacity under Business & Professions Code § 17204.

13 66. Business & Professions Code § 17200 prohibits unfair competition in the form of
14 any unlawful, unfair, or fraudulent business act or practice.

15 67. Business & Professions Code § 17204 allows “any person acting for the interests of
16 itself, its members or the general public” to prosecute a civil action for violation of the UCL.

17 68. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to the
18 filing of this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and
19 practices as defined by Business & Professions Code § 17200, by engaging in the following:

20 f. failing to pay overtime compensation to Plaintiffs and similarly situated
21 Examiners and Collectors;

22 g. failing to pay minimum wage to Plaintiffs and similarly situated Examiners
23 and Collectors for all hours worked;

24 h. failing to provide adequate off-duty meal periods to Plaintiffs and similarly
25 situated Examiners and Collectors and failing to pay them premium pay for missed meal periods;

26 i. failing to authorize and permit adequate, paid rest periods to Plaintiffs and
27 similarly situated Examiners and Collectors and failing to pay them premium pay for missed rest
28 periods; and

1 j. failing to reimburse Plaintiffs and similarly situated Examiners and
2 Collectors for employment-related business expenses; and

3 69. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate
4 acts and practices for purposes of Business & Professions Code § 17200.

5 70. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent
6 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
7 belonging to Plaintiffs and Examiners and Collectors. As a direct and proximate result of
8 Defendants' unlawful business practices, Plaintiffs and Examiners and Collectors have suffered
9 economic injuries including, but not limited to loss of overtime wages, failure to receive minimum
10 wage for all hours worked, compensation for missed meal and rest periods, unreimbursed business
11 expenses, and waiting time penalties. Defendants have profited from its unlawful, unfair, and/or
12 fraudulent acts and practices in the amount of unpaid overtime, minimum wage for all hours
13 worked, unpaid compensation for missed meal and rest periods, and interest accrued by Plaintiffs
14 and similarly situated Examiners and Collectors.

15 71. Plaintiffs and similarly situated Examiners and Collectors are entitled to restitution
16 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid overtime, minimum
17 wage, missed meal and rest period compensation, waiting time penalties, and interest since four
18 years prior to the filing of this action.

19 72. Plaintiffs and similarly situated Examiners and Collectors are entitled to enforce all
20 applicable penalty provisions of the Labor Code pursuant to Business & Professions Code §
21 17202.

22 73. Plaintiffs' success in this action will enforce important rights affecting the public
23 interest. In this regard, Plaintiffs sue on behalf of the public as well as on behalf of themselves
24 and others similarly situated. Plaintiffs seek and are entitled to the unpaid compensation,
25 declaratory relief, civil penalties, and any other appropriate remedy.

26 74. In order to prevent Defendants from profiting and benefiting from their wrongful
27 and illegal acts and continuing those acts, Plaintiffs seek an order requiring Defendants to
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1 disgorge all the profits and gains they have reaped and restore such profits and gains to Examiners
2 and Collectors, from whom they were unlawfully taken.

3 75. Plaintiffs have assumed the responsibility of enforcement of the laws and lawful
4 claims specified herein. There is a financial burden incurred in pursuing this action which is in
5 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Code of Civil
6 Procedure § 1021.5.

7 76. By all of the foregoing alleged conduct, Defendants have committed, and are
8 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
9 meaning of Business & Professions Code §17200, *et seq.*

10 77. As a direct and proximate result of the unfair business practices described above,
11 Plaintiffs, other Examiners and Collectors, and members of the general public have all suffered
12 significant losses and Defendants have been unjustly enriched.

13 78. Pursuant to Business & Prof. Code §17203, Plaintiffs, other Examiners and
14 Collectors, and members of the general public are entitled to: (a) restitution of money acquired by
15 Defendants by means of their unfair business practices, in amounts not yet ascertained but to be
16 ascertained at trial; and (b) a declaration that Defendants' business practices are unfair within the
17 meaning of the statute.

18 79. Plaintiffs, on behalf of themselves and similarly situated Examiners and Collectors,
19 request relief as described below.

20 **IX. REQUEST FOR JURY TRIAL**

21 80. Plaintiffs request a trial by jury on behalf of themselves and the above described
22 Class of similarly situated Examiners and Collectors.

23 **X. PRAYER FOR RELIEF**

24 81. WHEREFORE, Plaintiffs on behalf of themselves and the above-described Class of
25 similarly situated Examiners and Collectors, request relief as follows:

26 A. That the Court determine that this action may be maintained as a class action under
27 Code of Civil Procedure § 382, and define the Class as requested herein;

28 B. Provision of class notice to all Class Members;

1 C. A declaratory judgment that Defendants have knowingly and intentionally violated
2 the following provisions of law:

3 1. Labor Code §§ 510, 1194, *et seq.*, and IWC wage order No. 4 by failing to
4 pay proper overtime compensation to Examiners and Collectors;

5 2. Labor Code § 1194, *et seq.*, IWC wage order No. 4 and the Minimum Wage
6 Order by failing to pay minimum wage to Examiners and Collectors for all hours worked;

7 3. Labor Code §§ 226.7 and 512, and IWC wage order No. 4 by failing to
8 provide meal periods to Plaintiffs and Class Members;

9 4. Labor Code § 226.7 and IWC wage order No. 4 by failing to authorize and
10 permit paid rest periods to Plaintiffs and Class Members;

11 5. Labor Code § 2802 by failing to indemnify Plaintiffs and Class Members for
12 all necessary business expenses and losses;

13 6. Labor Code § 226 and IWC wage order No. 4, § 7(B) by failing to provide
14 Plaintiffs and Class Members with accurate itemized statements of gross wages earned and total
15 hours worked with each payment of wages;

16 7. Labor Code §§ 201-203, for willfully failing to pay overtime, minimum
17 wage for all hours worked, missed meal period compensation, and missed rest period compensation
18 at the time of termination of employment, resulting in unpaid waiting time penalties; and

19 8. Business & Professions Code §§ 17200-17208, by failing to pay its
20 Examiners and Collectors overtime and minimum wage compensation under California law, by
21 failing to provide meal periods and/or pay missed meal period compensation to Examiners and
22 Collectors, by failing to authorize and permit paid rest periods and/or pay missed rest period
23 compensation to Examiners and Collectors, by failing to reimburse Examiners and Collectors for
24 business expenses incurred while carrying out their duties for EMSI, and by failing to provide
25 Examiners and Collectors with itemized wage statements showing all hours worked;

26 D. A declaratory judgment that Defendants' violations as described above were willful;

27 E. An equitable accounting to identify, locate, and restore to all current and former
28 Examiners and Collectors the wages that are due;

1 F. An award to Plaintiffs and the Class Members of damages in the amount of unpaid
2 overtime compensation, minimum wage and liquidated damages, missed meal period
3 compensation, missed rest period compensation, expense reimbursement, including interest
4 thereon, subject to proof at trial;

5 G. An award to Plaintiffs and the Class Members of statutory penalties because of
6 Defendants' failure to provide Plaintiffs and the Class Members with itemized wage statements
7 that comply with the requirements of Labor Code § 226, subject to proof at trial;

8 H. An award of waiting time penalties to Plaintiffs and those Class Members who have
9 left Defendants' employ, pursuant to Labor Code § 203;

10 I. An order requiring Defendants to pay restitution of all amounts owed to Plaintiffs
11 and similarly situated Examiners and Collectors for Defendants' failure to pay legally required
12 overtime pay, minimum wage for all hours worked, missed meal period pay, missed rest period
13 pay, and interest thereon, in an amount according to proof, pursuant to Business & Professions
14 Code § 17203.

15 L. An award to Plaintiffs and the Class Members of reasonable attorneys' fees and
16 costs, pursuant to Labor Code §§ 1194, 2802, Code of Civil Procedure § 1021.5 and/or other
17 applicable law; and

18 M. An award to Plaintiffs and the Class Members of such other and further relief as this
19 Court deems just and proper.

20 DATED: February 6, 2014

21 LEONARD CARDER, LLP

22 LAW OFFICES OF SOHNEN & KELLY

23 LEE & BRAZIEL, LLP

24 LAW OFFICE OF CHRIS R. MILTENBERGER,
25 PLLC

26 By: 

AARON KAUFMANN

27 Attorneys for Plaintiffs
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