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BY _____ *[Signature]*

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11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13 JUAN MOREYRA, as an individual and on
14 behalf of others similarly situated,

15 Plaintiff,

16 v.

17 FRESenius MEDICAL CARE HOLDINGS,
INC. d/b/a FRESenius MEDICAL CARE
18 NORTH AMERICA, a New York
corporation; BIO-MEDICAL APPLICATIONS
19 OF MISSION HILLS, INC., a Delaware
corporation; FRESenius MEDICAL CARE
20 NORTH AMERICA LIMITED PARTNERSHIP,
a Delaware limited partnership;
21 FRESenius MEDICAL CARE NORTH
AMERICA HOLDINGS LIMITED
22 PARTNERSHIP, a Delaware limited
partnership; and DOES 1 THROUGH 100,
23 inclusive;

24 Defendants.

Case No.: SACV10-517 JVS (RZx)

[Assigned to Hon. James V. Selna,
Courtroom 10C]

CLASS ACTION

**THIRD AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF FOR:**

- (1) VIOLATION OF LABOR CODE §226.7;
- (2) VIOLATION OF LABOR CODE §227.3;
- (3) VIOLATION OF LABOR CODE §226;
- (4) FAILURE TO PAY WAGES;
- (5) FAILURE TO PAY OVERTIME WAGES;
- (6) UNFAIR BUSINESS PRACTICES (Violation of California Business & Professions Code §17200, *et seq.*).

DEMAND FOR JURY TRIAL

1 itemized wage statements.

2 4. Plaintiffs are informed and believe and based thereon allege that
3 Defendants have engaged in, among other things a system of willful violations of the
4 California Labor Code, Business and Professions Code and applicable IWC wage
5 orders by creating and maintaining policies, practices and customs that knowingly deny
6 employees the opportunity to take meal periods, payment for all hours worked, deny
7 employees meal break premium pay, deny employees their vested vacation wages, and
8 deny employees accurate itemized wage statements.

9 5. The policies, practices and customs of Defendants described above
10 and below have resulted in unjust enrichment of Defendants and an unfair business
11 advantage over businesses that routinely adhere to the strictures of the California Labor
12 Code, Business and Professions Code and applicable IWC wage orders.

13 **JURISDICTION AND VENUE**

14 6. The Court has jurisdiction over the violations of the California
15 Labor Code §§ 201-204, 226, 226.7, 227.3, 1194, and California Business and
16 Professions Code § 17200, *et seq.*, (Unfair Practices Act) and the applicable wage
17 order(s) issued by the Industrial Welfare Commission including IWC Wage Order No.
18 4 § 11 claims alleged herein pursuant to Defendants' removal under the Class Action
19 Fairness Act ("CAFA"), 28 U.S.C. §§ 1332, 1441(a) & 1446.

20 7. This case was originally filed in the Superior Court for the County
21 of Orange County, and was subsequently removed to the District Court for the Central
22 District of California, Southern Division, pursuant to CAFA.

23 8. Venue is proper because at least one of Defendants is not qualified
24 to do business in California, but has physical operations and does business in Orange
25 County.

26 **PARTIES**

27 9. Plaintiff Juan Moreyra is informed and believes and thereupon
28 alleges he was employed as a non-exempt employee by Defendant FMCNA until

1 October 2008, and paid through one of FMCNA's payroll entities, specifically,
2 Defendant Bio-Medical Applications Of Mission Hills, Inc. Juan Moreyra was subject
3 to the payroll and human resource policies of FMCNA. Juan Moreyra was and is a
4 victim of the policies, practices and customs of Defendants complained of in this action
5 in ways that have deprived him of the rights guaranteed him by California Labor Code
6 §§ 201-204, 226, 226.7, 227.3, 1194, and California Business and Professions Code
7 §17200, *et seq.*, (Unfair Practices Act) and the applicable wage order(s) issued by the
8 Industrial Welfare Commission including IWC Wage Order No. 4 § 11.

9 10. Plaintiff Stacy Haddakin is informed and believes and thereupon
10 alleges she was employed as a non-exempt employee by Defendant FMCNA until
11 according to company records she was terminated in September 2008, and paid through
12 one or more of FMCNA's payroll entities, specifically including, Defendant Bio-
13 Medical Applications Of California, Inc. Ms. Haddakin was subject to the payroll and
14 human resource policies of FMCNA. Ms. Haddakin was and is a victim of the policies,
15 practices and customs of Defendants complained of in this action in ways that have
16 deprived her of the rights guaranteed him by California Labor Code §§ 201-204, 226,
17 226.7, 1194, and California Business and Professions Code §17200, *et seq.*, (Unfair
18 Practices Act) and the applicable wage order(s) issued by the Industrial Welfare
19 Commission including IWC Wage Order No. 4 § 11.

20 11. Plaintiffs are informed and believe and based thereon allege
21 Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America,
22 was and is a New York corporation that regularly does business in the State of
23 California, including owning and operating dialysis clinics throughout the state and
24 including in Orange County and manufacturing dialysis products and performing
25 laboratory services throughout the state.

26 12. Plaintiffs are informed and believe and based thereon allege that the
27 payroll and human resources of FMCNA that were applied to them also applied to other
28 workers who worked at other Fresenius facilities throughout the State of California,

1 including its divisions called Fresenius Medical Services, Products & Hospital Group,
2 Extracorporeal Alliance, Dialysis Products Group, and Spectra Renal Management.

3 13. Plaintiffs are informed and believe and based thereon allege that the
4 payroll and human resources of FMCNA that were applied to them also applied to other
5 workers who worked at other Fresenius dialysis clinics throughout the State of
6 California.

7 14. Plaintiffs are informed and believe and based thereon allege Bio-
8 Medical Applications Of Mission Hills, Inc., Bio-Medical Applications of Long Beach,
9 Inc., Bio-Medical Applications of California, Inc., Bio-Medical Applications of
10 Camarillo, Inc., Bio-Medical Applications of Carson, Inc., Bio-Medical Applications of
11 Eureka, Inc., Bio-Medical Applications of Fremont, Inc., Bio-Medical Applications of
12 Fresno, Inc., Bio-Medical Applications of Glendora, Inc., Bio-Medical Applications of
13 Los Gatos, Inc., Bio-Medical Applications of Oakland, Inc., Bio-Medical Applications
14 of Ukiah, Inc., Conejo Valley Dialysis, Inc., San Diego Dialysis Services, Inc., and
15 Santa Barbara Community Dialysis Center, Inc. (collectively "BMA Entities") were and
16 are Delaware Corporations that regularly do business in the State of California.
17 Individually, each of the BMA Entities may be referred to as a BMA Entity. Thus,
18 when referred to as a "BMA Entity" that signifies reference to each of the 15 BMA
19 Entities on an individual, rather than collective, basis.

20 15. Plaintiffs are informed and believe and based thereon allege that
21 each of these BMA Entities are corporations wholly owned by FMCNA. Plaintiffs are
22 informed and believe and based thereon allege that each of these BMA Entities are not
23 necessary for certification as Plaintiffs and each member of the putative classes and
24 subclasses were employees of FMCNA, however, because FMCNA paid employee
25 payroll through the BMA Entities, the BMA Entities are included out of an abundance
26 of caution.

27 16. Plaintiffs are informed and believe and based thereon allege
28 National Medical Care, Inc., was and is a Delaware Corporation that regularly does

1 business in the State of California, including owning and operating dialysis clinics in
2 Orange County and manufacturing dialysis products and performing laboratory services
3 throughout the state. Plaintiffs are also informed and believe and based thereon allege
4 that National Medical Care, Inc. has surrendered its right to transact business in the
5 State of California.

6 17. Plaintiffs are informed and believe and thereon allege that at all
7 times herein mentioned Defendants and DOES 1 through 100, are and were
8 corporations, business entities, individuals, and partnerships, licensed to do business
9 and actually doing business in the State of California.

10 18. Defendant FMCNA owns and operates dialysis clinics,
11 manufactures dialysis products and performs laboratory services and employs over a
12 hundred employees such as Plaintiffs at any given time in the state of California.

13 19. As such, and based upon all the facts and circumstances incident to
14 Defendants' businesses in California, Defendants are subject to California Labor Code
15 §§ 201-204, 226, 226.7, 227.3, 1194, and California Business and Professions Code §
16 17200, *et seq.*, (Unfair Practices Act) and the applicable wage order(s) issued by the
17 Industrial Welfare Commission including IWC Wage Order No. 4 § 11.

18 20. Plaintiffs do not know the true names or capacities, whether
19 individual, partner or corporate, of the Defendants sued herein as DOES 1 through 100,
20 inclusive, and for that reason, said Defendants are sued under such fictitious names, and
21 Plaintiffs pray leave to amend this complaint when the true names and capacities are
22 known. Plaintiffs are informed and believe and thereon allege that each of said
23 fictitious Defendants was responsible in some way for the matters alleged herein and
24 proximately caused Plaintiffs and members of the general public and class to be subject
25 to the illegal employment practices, wrongs and injuries complained of herein.

26 21. At all times herein mentioned, each of said Defendants participated
27 in the doing of the acts hereinafter alleged to have been done by the named Defendants;
28 and furthermore, the Defendants, and each of them, were the agents, servants and

1 employees of each of the other Defendants, as well as the agents of all Defendants, and
2 at all times herein mentioned, were acting within the course and scope of said agency
3 and employment.

4 22. Plaintiffs are informed and believe and based thereon allege that at
5 all times material hereto, each of the Defendants named herein was the joint employer,
6 agent, employer, alter ego and/or joint venturer of, or working in concert with each of
7 the other Co-Defendants and was acting within the course and scope of such agency,
8 employment, joint venture, or concerted activity. To the extent said acts, conduct, and
9 omissions were perpetrated by certain Defendants, each of the remaining Defendants
10 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

11 23. At all times herein mentioned, Defendants, and each of them, were
12 members of, and engaged in, a joint venture, partnership and common enterprise, and
13 acting within the course and scope of, and in pursuance of, said joint venture,
14 partnership and common enterprise.

15 24. At all times herein mentioned, the acts and omissions of various
16 Defendants, and each of them, concurred and contributed to the various acts and
17 omissions of each and all of the other Defendants in proximately causing the injuries
18 and damages as herein alleged. At all times herein mentioned, Defendants, and each of
19 them, ratified each and every act or omission complained of herein. At all times herein
20 mentioned, the Defendants, and each of them, aided and abetted the acts and omissions
21 of each and all of the other Defendants in proximately causing the damages as herein
22 alleged.

23 25. Defendant FMCNA is the employer of each member of each of the
24 Classes and Subclasses plead in this matter as FMCNA directly or indirectly, or through
25 an agent or any other person, engages, suffers, or permits each member of the Classes
26 and Subclasses to work, or exercises control over the wages, hours, or working
27 conditions of each member of the Classes and Subclasses.

28 **CLASS ACTION ALLEGATIONS**

1 26. Definition: The named individual Plaintiffs bring this action on
2 behalf of themselves and the class pursuant to Fed. R. Civ. P. Rules 23(a) and (b)(3).
3 The Class consists of

4 (1) All persons who worked for FMCNA in California, who were classified as
5 non-exempt from overtime and who were paid on an hourly basis at any time from
6 November 19, 2005 to the present and who worked in a Fresenius dialysis clinic;

7 Plaintiffs further seeks certification of the following Subclasses:

8 As an alternative to Class 1,

9 Subclass 1(a):

10 all persons who worked for FMCNA in California, who were classified as
11 non-exempt from overtime, who were paid on an hourly basis at any time from
12 November 19, 2005 to the present and whose clock in time to begin a shift and clock
13 out time to end a shift was rounded to the nearest quarter hour and who worked in a
14 Fresenius dialysis clinic;

15 As an alternative to Subclass 1(a),

16 Subclass 1(b): all persons who worked for FMCNA in California,
17 who were classified as non-exempt from overtime, who worked in excess of eight (8)
18 hours in a workday and who were paid on an hourly basis at any time from November
19 19, 2005 to the present and who worked in a Fresenius dialysis clinic;

20 As a further alternative to Class 1,

21 Subclass 1(c): all persons who worked for FMCNA in California, who
22 were classified as non-exempt from overtime, whose time records reflect they worked a
23 shift in excess of six (6) hours in a workday without a recorded clock out and in for a
24 minimum 30 actual minutes meal break (including no meal break at all) and who were
25 paid on an hourly basis at any time from November 19, 2005 to the present and who
26 worked in a Fresenius dialysis clinic;

27 As an alternative to Subclass 1(c),

28 Subclass 1(d): all persons who worked for FMCNA in California,

1 who were classified as non-exempt from overtime, whose time records reflect an
2 automatic deduction of time and who were paid on an hourly basis at any time from
3 November 19, 2005 to the present and who worked in a Fresenius dialysis clinic;

4 As a further alternative to Class 1,

5 Subclass 1(e): all persons who worked for FMCNA in California, who
6 were paid on an hourly basis and classified as non-exempt from overtime, whose
7 employment terminated between November 19, 2005 to the present and who at time of
8 termination forfeited unused, vested vacation pay, including vested personal day
9 vacation pay and who worked in a Fresenius dialysis clinic;

10 As an alternative to Subclass 1(e),

11 Subclass 1(f): all persons who worked for FMCNA in California,
12 who were paid on an hourly basis and classified as non-exempt from overtime, whose
13 employment terminated between November 19, 2005 to the present and who were
14 eligible to participate in Defendants' Paid Time Off policy and who worked in a
15 Fresenius dialysis clinic;

16
17 (2) all past and present persons who were paid on an hourly basis and
18 classified as non-exempt from overtime who worked in a Fresenius dialysis clinic from
19 November 19, 2005 to the present;

20 Plaintiffs further seeks certification of the following Subclasses:

21 As an alternative to Class 2,

22 Subclass 2(a): all past and present persons who were paid on an hourly
23 basis and classified as non-exempt from overtime who worked in a Fresenius dialysis
24 clinic from November 19, 2005 to the present and whose clock in time to begin a shift
25 and clock out time to end a shift was rounded to the nearest quarter hour;

26 As an alternative to Subclass 2(a),

27 Subclass 2(b): all past and present persons who were paid on an
28 hourly basis and classified as non-exempt from overtime who worked in a Fresenius

1 dialysis clinic from November 19, 2005 to the present and who worked in excess of
2 eight (8) hours in a workday and whose clock in time to begin a shift and clock out time
3 to end a shift was rounded to the nearest quarter hour;

4 As a further alternative to Class 2,

5 Subclass 2(c): all past and present persons who were paid on an hourly
6 basis and classified as non-exempt from overtime who worked in a Fresenius dialysis
7 clinic from November 19, 2005 to the present and whose time records reflect they
8 worked a shift in excess of six (6) hours in a workday without a recorded clock out and
9 in for a minimum 30 actual minutes meal break (including no meal break at all);

10 As an alternative to Subclass 2(c),

11 Subclass 2(d): all past and present persons who were paid on an
12 hourly basis and classified as non-exempt from overtime who worked in a Fresenius
13 dialysis clinic from November 19, 2005 to the present and whose time records reflect an
14 automatic deduction of time;

15 As a further alternative to Class 2,

16 Subclass 2(e): all persons who worked in a Fresenius dialysis clinic from
17 November 19, 2005 to the present, who were paid on an hourly basis and classified as
18 non-exempt from overtime and who at time of termination forfeited unused, vested
19 vacation pay, including vested personal day vacation pay and who worked in a dialysis
20 clinic(s);

21 As an alternative to Subclass 2(e),

22 Subclass 2(f): all persons who were paid on an hourly basis and
23 classified as non-exempt from overtime who worked in a Fresenius dialysis clinic, who
24 were terminated from employment from between November 19, 2005 to the present,
25 who were paid on an hourly basis and classified as non-exempt from overtime and who
26 were eligible to participate in FMCNA's Paid Time Off policy;

27
28 (3) all past and present persons who were paid on an hourly basis and

1 classified as non-exempt from overtime who worked for FNCMA and whose paystubs
2 reflect Bio-Medical Applications of California, Inc. as the payor, from November 19,
3 2005 to the present;

4 Plaintiffs further seeks certification of the following Subclasses:

5 As an alternative to Class 3,

6 Subclass 3(a): all past and present persons who were paid on an hourly
7 basis and classified as non-exempt from overtime who worked for FNCMA and whose
8 paystubs reflect Bio-Medical Applications of California, Inc. as the payor, from
9 November 19, 2005 to the present and whose clock in time to begin a shift and clock
10 out time to end a shift was rounded to the nearest quarter hour from November 19, 2005
11 to the present;

12 As an alternative to Subclass 3(a),

13 Subclass 3(b): all past and present persons who were paid on an
14 hourly basis and classified as non-exempt from overtime who worked for FNCMA and
15 whose paystubs reflect Bio-Medical Applications of California, Inc. as the payor and
16 who worked in excess of eight (8) hours in a workday and whose clock in time to begin
17 a shift and clock out time to end a shift was rounded to the nearest quarter hour at any
18 time from November 19, 2005 to the present;

19 As a further alternative to Class 3,

20 Subclass 3(c): all past and present persons who were paid on an hourly
21 basis and classified as non-exempt from overtime who worked for FNCMA and whose
22 paystubs reflect Bio-Medical Applications of California, Inc. as the payor and whose
23 time records reflect they worked a shift in excess of six (6) hours in a workday without
24 a recorded clock out and in for a minimum 30 actual minutes meal break (including no
25 meal break at all) from November 19, 2005 to the present;

26 As an alternative to Subclass 3(c),

27 Subclass 3(d): all past and present persons who were paid on an
28 hourly basis and classified as non-exempt from overtime who worked for FNCMA and

1 whose paystubs reflect Bio-Medical Applications of California, Inc. as the payor and
2 whose time records reflect an automatic deduction of time from November 19, 2005 to
3 the present;

4
5 (4) all past and present persons who were paid on an hourly basis and
6 classified as non-exempt from overtime who worked for FNCMA and whose paystubs
7 reflect Bio-Medical Applications of Mission Hills, Inc. as the payor, from November
8 19, 2005 to the present;

9 Plaintiffs further seeks certification of the following Subclasses:

10 As an alternative to Class 4,

11 Subclass 4(a): all past and present persons who were paid on an hourly
12 basis and classified as non-exempt from overtime who worked for FNCMA and whose
13 paystubs reflect Bio-Medical Applications of Mission Hills, Inc. as the payor, from
14 November 19, 2005 to the present and whose clock in time to begin a shift and clock
15 out time to end a shift was rounded to the nearest quarter hour from November 19, 2005
16 to the present;

17 As an alternative to Subclass 4(a),

18 Subclass 4(b): all past and present persons who were paid on an
19 hourly basis and classified as non-exempt from overtime who worked for FNCMA and
20 whose paystubs reflect Bio-Medical Applications of Mission Hills, Inc. as the payor and
21 who worked in excess of eight (8) hours in a workday and whose clock in time to begin
22 a shift and clock out time to end a shift was rounded to the nearest quarter hour at any
23 time from November 19, 2005 to the present;

24 As a further alternative to Class 4,

25 Subclass 4(c): all past and present persons who were paid on an hourly
26 basis and classified as non-exempt from overtime who worked for FNCMA and whose
27 paystubs reflect Bio-Medical Applications of Mission Hills, Inc. as the payor and whose
28 time records reflect they worked a shift in excess of six (6) hours in a workday without

1 a recorded clock out and in for a minimum 30 actual minutes meal break (including no
2 meal break at all) from November 19, 2005 to the present;

3 As an alternative to Subclass 4(c)

4 Subclass 4(d): all past and present persons who were paid on an
5 hourly basis and classified as non-exempt from overtime who worked for FNCMA and
6 whose paystubs reflect Bio-Medical Applications of Mission Hills, Inc. as the payor and
7 whose time records reflect an automatic deduction of time from November 19, 2005 to
8 the present;

9 As a further alternative to Class 4,

10 Subclass 4(e): all past and present persons who were paid on an hourly
11 basis and classified as non-exempt from overtime who worked for FNCMA and whose
12 paystubs reflect Bio-Medical Applications of Mission Hills, Inc. as the payor, whose
13 employment terminated between November 19, 2005 to the present and who at time of
14 termination forfeited unused, vested vacation pay, including vested personal day
15 vacation pay;

16 As an alternative to Subclass 4(e)

17 Subclass 4(f): all persons who were paid on an hourly basis and
18 classified as non-exempt from overtime who worked for FNCMA and whose paystubs
19 reflect Bio-Medical Applications of Mission Hills, Inc. as the payor, whose
20 employment terminated between November 19, 2005 to the present and who were
21 eligible to participate in Defendants' Paid Time Off policy and who worked in a
22 dialysis clinic(s);

23
24
25 27. Numerosity: The members of the class exceed 100 persons and are
26 so numerous that joinder of all members would be impractical, if not impossible. The
27 identity of the members of the class is readily ascertainable by review of Defendants'
28 records, including payroll records. Plaintiffs are informed and believe and based

1 thereon allege that (a) class members were regularly denied meal breaks, (b) had vested
2 vacation wages forfeited in violation of California Labor Code § 227.3, (c) class
3 members were not provided accurate itemized wage statements pursuant to California
4 Labor Code § 226, (d) class members were regularly suffered and/or permitted to work
5 without appropriate overtime wages for all hours worked, (e) class members were
6 regularly and uniformly subject to an inconsistent quarter-hour rounding rule when
7 calculating wages calculated to be to the detriment of the class and the benefit of
8 Defendants, and (f) class members were regularly subject to a uniform practice and/or
9 policy having the time of a meal period automatically deducted from their pay.

10 28. Adequacy of Representation: The named Plaintiffs are fully
11 prepared to take all necessary steps to represent fairly and adequately the interests of the
12 class defined above. Plaintiffs' attorneys are ready, willing and able to fully and
13 adequately represent the class and individual Plaintiffs. Plaintiffs' attorneys have
14 prosecuted and settled wage-and-hour class actions in the past and currently have a
15 number of wage-and-hour class actions pending in California courts.

16 29. Defendants uniformly administered a corporate policy, practice
17 and/or custom concerning staffing levels, duties, responsibilities of the class members,
18 which required that the class members to work through the legally required meal
19 breaks. Plaintiffs are informed and believe and based thereon allege this corporate
20 conduct is accomplished with the advance knowledge and designed intent to willfully
21 withhold appropriate wages for work performed by class members. In addition,
22 Defendants uniformly administered a corporate policy, practice and/or custom that
23 failure comply with Labor Code § 227.3. Plaintiffs are informed and believe and based
24 thereon allege this corporate conduct is accomplished with the advance knowledge and
25 designed intent to willfully fail to pay all vested vacation wages to employees. In
26 addition, Defendants uniformly administered a corporate policy, practice and/or custom
27 that failure comply with Labor Code § 226. Plaintiffs are informed and believe and
28 based thereon allege this corporate conduct is accomplished with the advance

1 knowledge and designed intent to willfully fail to pay proper rates of pay for work
2 performed, pay premium wages, and pay vacation and PTO earned by class members.
3 In addition, Defendants uniformly administered a corporate policy, practice and/or
4 custom that failure comply with Labor Code § 1194. Plaintiffs are informed and
5 believe and based thereon allege this corporate conduct is accomplished with the
6 advance knowledge and designed intent to willfully fail to pay all overtime wages due
7 to the incorrect calculation of time or unlawful cutting of time.

8 30. Plaintiffs are informed and believe and based thereon allege that
9 Defendants, in violation of California Labor Code §§ 201 and 202, *et seq.*, respectfully,
10 had a consistent and uniform policy, practice and custom of willfully failing to comply
11 with Labor Code § 203. Plaintiffs and other members of the class did not secret or
12 absent themselves from Defendants, nor refuse to accept the earned and unpaid wages
13 from Defendants. Accordingly, Defendants are liable for waiting time compensation
14 for the unpaid wages to separated employees pursuant to California Labor Code § 203.

15 31. As a pattern and practice, in violation of the aforementioned labor
16 laws and wage orders, Defendants did not maintain adequate records pertaining to when
17 Plaintiffs and the members of the class began and ended each work period, meal period,
18 the total daily hours worked, and the total hours worked per pay period and applicable
19 rates of pay in violation of California Labor Code §§ 226 and 1174 and the applicable
20 IWC wage order including IWC Wage Order No. 4-2001.

21 32. Common Question of Law and Fact: There are predominant
22 common questions of law and fact and a community of interest amongst Plaintiffs and
23 the claims of the class concerning Defendants' (a) failure to ensure all proper meal
24 breaks, (b) forfeiture of class members' vested vacation wages, (c) failure to keep and
25 provide accurate payroll records in violation of Labor Code §226, (d) failure to pay
26 overtime for all overtime hours worked, (e) autodeduction of time, (f) detrimental
27 rounding of time, and (g) engaging in unfair business practices.

28 33. Typicality: The claims of Plaintiffs are typical of the claims of all

1 members of the class. Plaintiffs are members of the class and have suffered the alleged
2 violations of California Labor Code §§ 201-204, 226, 226.7, 227.3, 1194, and
3 California Industrial Welfare Commission wage orders including IWC Wage Order No.
4 4.

5 34. The California Labor Code and Wage Order provisions upon which
6 Plaintiffs bases their claims are broadly remedial in nature. These laws and labor
7 standards serve an important public interest in establishing minimum working
8 conditions and standards in California. These laws and labor standards protect the
9 average working employee from exploitation by employers who may seek to take
10 advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment.

12 35. The nature of this action and the format of laws available to
13 Plaintiffs and members of the class identified herein make the class action format a
14 particularly efficient and appropriate procedure to redress the wrongs alleged herein. If
15 each employee were required to file an individual lawsuit, the corporate Defendants
16 would necessarily gain an unconscionable advantage since it would be able to exploit
17 and overwhelm the limited resources of each individual plaintiff with their vastly
18 superior financial and legal resources. Requiring each class member to pursue and
19 individual remedy would also discourage the assertion of lawful claims by employees
20 who would be disinclined to file an action against their former and/or current employer
21 for real and justifiable fear of retaliation and permanent damage to their careers at
22 subsequent employment.

23 36. The prosecution of separate actions by the individual class members,
24 even if possible, would create a substantial risk of (a) inconsistent or varying
25 adjudications with respect to individual class members against the Defendants and
26 which would establish potentially incompatible standards of conduct for the
27 Defendants, and/or (b) adjudications with respect to individual class members which
28 would, as a practical matter, be dispositive of the interest of the other class members not

1 parties to the adjudications or which would substantially impair or impede the ability of
2 the class members to protect their interests. Further, the claims of the individual
3 members of the class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses.

5 37. Such a pattern, practice and uniform administration of corporate
6 policy regarding illegal employee compensation described herein is unlawful and
7 creates an entitlement to recovery by Plaintiffs and the class identified herein, in a civil
8 action, for the unpaid balance of the full amount of unpaid premium compensation for
9 missed meal periods pursuant to Labor Code § 226.7 and IWC Wage Order No. 4 §
10 11(B), forfeited vacation wages, unpaid overtime wages, including interest thereon,
11 applicable damages and penalties, reasonable attorney’s fees, and costs of suit
12 according to the mandate of California Labor Code § 218.5 and Code of Civil
13 Procedure § 1021.5.

14 38. Proof of a common business practice or factual pattern, which the
15 named Plaintiffs experienced and are representatives of, will establish the right of each
16 of the members of the Plaintiff class to recovery on the causes of action alleged herein.

17 39. The Plaintiff class is commonly entitled to a specific fund with
18 respect to the compensation illegally and unfairly retained by Defendants. The Plaintiff
19 class is commonly entitled to restitution of those funds being improperly withheld by
20 Defendants. This action is brought for the benefit of the entire class and will result in
21 the creation of a common fund.

22 **FIRST CLAIM FOR RELIEF**

23 **For Failure to Provide Meal Breaks in Violation of Labor Code Sections 226.7 and**
24 **IWC Wage Order No. 4**

25 **(Against All Defendants by All Plaintiffs)**

26 40. Plaintiffs re-allege and incorporate by reference paragraphs 1
27 through 39 as though fully set for herein.

28 41. Defendants failed in their affirmative obligation to ensure that all of

1 their employees, including Plaintiffs and other members of the class, were actually
2 relieved of all duties, not performing any work, and free to leave the premises during
3 meal periods. Plaintiffs and the class were suffered and permitted to work through
4 legally required meal breaks. As such, Defendants are responsible for paying premium
5 compensation for missed meal periods pursuant to Labor Code § 226.7 and IWC Wage
6 Order No. 4 § 11(B). Defendants shall pay the each affected employee one (1) hour of
7 pay at the employee's regular rate of compensation for each meal break.

8 42. Plaintiffs and class members regularly worked in excess of six (6)
9 hours per day and accordingly had a right to take a 30-minute meal period each day
10 worked in excess of six (6) hours. Plaintiffs and class members regular worked in
11 excess of ten (10) hours per day and accordingly had a right to take two 30-minute meal
12 periods each day worked in excess of ten (10) hours.

13 43. As a pattern and practice, Defendants' employees were suffered and
14 permitted to work through legally required meal breaks.

15 44. Plaintiffs are informed and believe and based thereon allege
16 Defendants willfully failed to pay employees who were not provided the opportunity to
17 take meal breaks the premium compensation set out in Labor Code § 226.7 and IWC
18 Wage Order No. 4 § 11(B). Plaintiffs are informed and believe and based thereon
19 allege Defendants' willful failure to provide Plaintiffs and other members of the class
20 the wages due and owing them upon separation from employment results in a continued
21 payment of wages up to thirty (30) days from the time the wages were due. Therefore,
22 Plaintiffs and other members of the class who have separated from employment are
23 entitled to compensation pursuant to Labor Code § 203.

24 45. As a pattern and practice, in violation of the aforementioned labor
25 laws and wage orders, Plaintiffs are informed and believe and based thereon allege
26 Defendants did not properly maintain records pertaining to when Plaintiffs began and
27 ended each meal period in violation of California Labor Code §§ 226 and 1174 and
28 Section 6 of the applicable IWC Wage Order(s).

1 members of the class to forfeit vested vacation wages of Plaintiff and the class,
2 including vested personal day, floating holidays, and other paid-time-off/vacation pay.

3 51. Such a pattern, practice and uniform administration of corporate
4 policy regarding illegal employee compensation as described herein is unlawful and
5 creates an entitlement to recovery by Plaintiff in a civil action for damages and wages
6 owed and for costs and attorney's fees.

7 **THIRD CLAIM FOR RELIEF**

8 **For Violation of Labor Code § 226 Regarding Record Keeping**

9 **(Against All Defendants by All Plaintiffs)**

10 52. Plaintiffs re-allege and incorporate by reference paragraphs 1
11 through 51 as though fully set for herein.

12 53. Defendants, as a matter of uniform policy and practice and
13 procedure, did not maintain and keep accurate records of their California non-exempt
14 hourly employees in violation of Labor Code § 226.

15 54. For example, as a matter of policy and practice, among the
16 violations of Labor Code § 226, Defendants failed to keep accurate records of
17 Plaintiffs' and the class members' rates of pay and gross and net wages earned.

18 55. Such a pattern, practice and uniform administration of corporate
19 policy as described herein is unlawful and creates an entitlement to recovery by
20 Plaintiffs and the class identified herein, in a civil action, for all damages and/or
21 penalties pursuant to Labor Code § 226, including interest thereon, penalties, reasonable
22 attorney's fees, and costs of suit according to the mandate of California Labor Code §
23 226.

24 56. Defendants' wrongful and illegal conduct in failing to accurately
25 record the hours worked in accordance with Labor Code § 226 despite the clear legal
26 obligation to do so, unless and until enjoined and restrained by order of this court, will
27 cause great and irreparable injury to Plaintiffs and all members of the class in that the
28 Defendants will continue to violate these California laws, represented by labor statutes,

1 unless specifically ordered to comply with same. This expectation of future violations
2 will require current and future employees to repeatedly and continuously seek legal
3 redress in order to gain compensation to which they are entitled under California law.
4 Plaintiffs have no other adequate remedy at law to insure future compliance with the
5 California labor laws and wage orders alleged to have been violated herein.

6 **FOURTH CAUSE OF ACTION**

7 **For Violation Of Labor Code § 218 for Failure to Pay Wages**

8 **(Against All Defendants by All Plaintiffs)**

9 57. Plaintiffs re-allege and incorporate by reference paragraphs 1
10 through 56 as though fully set for herein.

11 58. At all times relevant herein, DEFENDANTS were required to
12 compensate their non-exempt employees correct and proper regular wages for all
13 regular hours worked.

14 59. As a pattern and practice, DEFENDANTS regularly paid Plaintiffs
15 and members of the class less than the amount of time they actually worked, based upon
16 an inaccurate amount of time worked due to the improper rounding of employees' time
17 punch and break time records and the improper automatic deduction from employee
18 time worked records.

19 60. Plaintiffs are informed and believe and based thereon allege that
20 DEFENDANTS willfully failed to comply with Labor Code § 218 toward their
21 California employees. Plaintiffs are informed and believe and based thereon allege that
22 DEFENDANTS' willful failure to provide Plaintiffs and other members of the class the
23 proper wages owed based on the correct time records, due and owing them upon
24 separation from employment results in a continued payment of wages up to thirty (30)
25 days from the time the wages were due. Therefore, Plaintiffs and other members of the
26 class who were employed in California and who have separated from employment are
27 entitled to compensation pursuant to Labor Code § 203.
28

1 66. As a pattern and practice, DEFENDANTS regularly failing to
2 include all hour worked in Defendants’ overtime wage calculations for Plaintiffs and
3 members of the class. In particular, Defendants used an inconsistent quarter-hour
4 rounding rule when calculating wages calculated to be to the detriment of the class and
5 the benefit of Defendants. Defendants would round beginning of day and end of day
6 punches for employees, but would round *and deduct* the total time employees took for
7 their meal breaks based on their actual meal punch times. If employees did not take
8 meal breaks, Defendants would automatically deduct a meal period from their
9 employees’ pay. Plaintiffs and class members regularly worked shifts in excess of 8
10 hours in a workday. As a result, Plaintiffs and class members were not compensated for
11 all overtime hours they were subject to the control of Defendants including all time they
12 were suffered or permitted to work.

13 67. As a pattern and practice, Defendants regularly failed to pay
14 Plaintiffs and class members compensation for overtime hours worked. Plaintiffs are
15 informed and believe and thereon allege that Defendants reduced their labor costs by
16 not paying their employees the appropriate pay. This corporate conduct is
17 accomplished with the advance knowledge and designed intent to save labor costs by
18 required Plaintiffs and members of the class to work without proper overtime
19 compensation.

20 68. As a pattern and practice, in violation of the aforementioned labor
21 laws and wage orders, Plaintiffs are informed and believe and based thereon allege
22 Defendants did not properly maintain records pertaining to the proper and accurate
23 hours worked in violation of California Labor Code §§ 226 and 1174.

24 69. Plaintiffs are informed and believe and based thereon allege
25 Defendants’ regular business custom and practice of requiring overtime work and not
26 paying for said work according to the overtime mandates of California law is, and at all
27 times herein mentioned was in violation of California Labor Code §1194 and California
28 Industrial Welfare Commission wage order(s). Defendants’ employment policies and

1 practices wrongfully and illegally failed to compensate Plaintiffs for overtime
2 compensation earned as required by California law.

3 70. Plaintiffs are informed and believe and based thereon allege
4 Defendants willfully failed to pay employees proper compensation for all overtime
5 hours worked. Plaintiffs are informed and believe and based thereon allege
6 Defendants' willful failure to provide overtime wages due and owing them upon
7 separation from employment results in a continued payment of wages up to thirty (30)
8 days from the time the wages were due. Therefore, Plaintiffs and other members of the
9 class who have separated from employment are entitled to compensation pursuant to
10 Labor Code § 203.

11 71. Such a pattern, practice and uniform administration of corporate
12 policy regarding illegal employee compensation as described herein is unlawful and
13 creates an entitlement to recovery by Plaintiffs in a civil action, for the unpaid balance
14 of the full amount of overtime premiums owing, including interest thereon, penalties,
15 reasonable attorneys fees, and costs of suit according to the mandate of California
16 Labor Code §1194, *et seq.*

17 **SIXTH CLAIM FOR RELIEF**

18 **For Violations of Business and Professions Code § 17200, *et seq.***

19 **(Against All Defendants by All Plaintiffs)**

20 72. Plaintiffs re-allege and incorporate by reference paragraphs 1
21 through 71 as though fully set for herein.

22 73. Defendants, and each of them, have engaged and continue to engage
23 in unfair business practices in California by practicing, employing and utilizing the
24 employment practices outlined above, inclusive, to wit, by their: (a) failure to provide
25 all proper breaks, (b) forfeiture of class members' vested vacation wages, including
26 personal days, floating holidays and other PTO/vacation wages, (c) failure to keep and
27 provide accurate payroll records in violation of Labor Code §226, and (d) failure to pay
28 overtime wages for all hours worked.

1 or classes or subclasses;

2 3. For an order appointing Counsel for Plaintiff as class counsel;

3 4. Upon the First Claim For Relief, for consequential damages
4 according to proof as set forth in California Labor Code § 226.7 and IWC Wage Order
5 No. 4 § 11(B) related to break premiums;

6 5. Upon the First Claim For Relief, for waiting time compensation
7 according to proof pursuant to California Labor Code § 203;

8 6. Upon the First Claim For Relief, that Defendants be ordered to show
9 cause why they should not be enjoined and ordered to comply with the applicable
10 California Industrial Welfare Commission wage orders related to breaks and record
11 keeping for Defendants' employees related to same; and for an order enjoining and
12 restraining Defendants and their agents, servants and employees related thereto;

13 7. Upon the Second Claim For Relief, for all vested vacation wages
14 pursuant to Labor Code § 227.3 and for costs and attorney's fees and Labor Code § 203
15 waiting time wages;

16 8. Upon the Third Claim For Relief, for consequential damages and
17 penalties according to proof as set forth in California Labor Code § 226 related to
18 record keeping violations;

19 9. Upon the Third Claim For Relief, that Defendants be ordered to
20 show cause why they should not be enjoined and ordered to comply with the
21 requirements of Labor Code § 226 for Defendants' employees related to same; and for
22 an order enjoining and restraining Defendants and their agents, servants and employees
23 related thereto;

24 10. Upon the Fourth Claim for Relief, for consequential damages
25 according to proof;

26 11. Upon the Fourth Claim For Relief, for waiting time wages according
27 to proof pursuant to California Labor Code § 203;

28 12. Upon the Fifth Claim For Relief, for consequential damages

1 according to proof;

2 13. Upon the Fifth Claim For Relief, for waiting time wages according
3 to proof pursuant to California Labor Code § 203;

4 14. Upon the Sixth Claim For Relief, for restitution to Plaintiff and other
5 similarly effected members of the general public of all funds unlawfully acquired by
6 Defendants by means of any acts or practices declared by this Court to be violative of
7 the mandate established by California Business and Professions Code section 17200, *et*
8 *seq.*;

9 15. Upon the Sixth Claim For Relief, for an injunction to prohibit
10 Defendants to engage in the unfair business practices complained of herein;

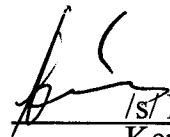
11 16. Upon the Sixth Claim For Relief, for an injunction requiring
12 Defendants to give notice to persons to whom restitution is owing of the means by
13 which to file for restitution;

14 17. For reasonable attorneys fees, expenses and costs as provided by
15 California Labor Code §§ 226, 1194 and/or 218.5 and Code of Civil Procedure §
16 1021.5; and

17 18. For such other and further relief the court may deem just and proper.
18
19

20 DATED: February 1, 2011

LAW OFFICES OF KENNETH H. YOON

21
22 By:  /s/ Kenneth H. Yoon
23 Kenneth H. Yoon
24 Attorney for Plaintiffs
JUAN MOREYRA and STACY HADDAKIN

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DEMAND FOR JURY TRIAL

Plaintiffs, for themselves and the class, hereby demand a jury trial as provided by California law.

DATED: February 1, 2011

LAW OFFICES OF KENNETH H. YOON

By: /s/ Kenneth H. Yoon
Kenneth H. Yoon
Attorney for Plaintiffs
JUAN MOREYRA and STACY HADDAKIN

PROOF OF SERVICE

1 **STATE OF CALIFORNIA**)
2) **ss.**
3 **COUNTY OF LOS ANGELES**)

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years
5 and not a party to the within action; my business address is One Wilshire Boulevard, Suite 2200, Los
6 Angeles, California 90017.

7 On February 7, 2011, I served the following document described as:

8 **THIRD AMENDED COMPLAINT**

9 on all interested parties in this action by placing true copies thereof enclosed in sealed envelopes
10 addressed as shown on the attached mailing list.

11 **(BY FACSIMILE)**

12 I am readily familiar with the business practices of this office. The telephone number of the
13 facsimile machine I used was (213) 489-9961. This facsimile machine complies with Rules 2003(3) of
14 the California Rules of Court. Upon transmission, no error was reported by the facsimile machine and
15 a printed copy of the machine's transmission record indicating that the transmission was successfully
16 completed is attached to this declaration.

17 By having copies **personally delivered to the designated party(ies)**.

18 By leaving, during usual business hours, copies in the office of the party(ies) served with the
19 person who apparently was in charge and thereafter mailing (by first class mail, postage prepaid) copies
20 to the party(ies) served at the place where the copies were left.

21 **(BY MAIL)**

22 I am familiar with my employer's mail collection and processing practices; know that mail is
23 collected and deposited with the United States Postal Services on the same day it is deposited in
24 interoffice mail; and know that postage thereon is fully prepaid.

25 **(BY FEDERAL EXPRESS COURIER)**

26 I am "readily familiar" with the firm's practice of collection and processing correspondence
27 for Federal Express delivery. Under that practice it would be deposited with the Federal
28 Express Courier on that same day at Los Angeles, California in the ordinary course of
business.

(State) I declare under penalty of perjury that the above is true and correct.

(Federal) I declare that I am employed in the office of a member the Bar of this Court at
whose direction the service was made.

Executed on February 7, 2011, at Los Angeles, California.



ELLY WONG

1 *Juan Moreyra v. Fresenius Medical Care Holdings, Inc., et al.*
2 **United States District Court, Central District of California Case No. SAC V 10-517 JVS (RZx)**

3
4 **SERVICE LIST**

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