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7 Attorneys for Plaintiffs ELIZABETH FUENTES, *et al.*

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ELIZABETH FUENTES, individually, )  
11 and on behalf of herself and others )  
12 similarly situated, )

13 Plaintiffs, )

14 vs. )

15 MAXIM HEALTHCARE SERVICES, )  
16 INC., a Maryland corporation; and )  
17 DOES 1 through 50 inclusive )

18 Defendants. )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

'17CV2178 CAB NLS

**CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:**

- 1. Failure to Pay State Overtime Wages;**
- 2. Failure to Pay State Minimum/Regular Wages;**
- 3. Failure to Make Payments Within the Required Time;**
- 4. Violation of Labor Code § 226;**
- 5. Failure to Maintain Required Records in Violation of California Labor Code §§ 1174, *et seq.*;**
- 6. Remedies Under Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, *et seq.*); and**
- 7. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)**

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1 Plaintiff, ELIZABETH FUENTES, on behalf of herself and acting for the  
2 interests of other current and former employees (“Represented Employees”), and all  
3 other similarly situated individuals (cumulatively “Plaintiffs”) allege the following:

4 **NATURE OF THE ACTION**

5 1. This is an unpaid wage and hour individual, Class, and representative  
6 action brought pursuant to Federal Rules of Civil Procedure Rule 23 and Labor Code  
7 Private Attorney General Act (“PAGA”), §§ 2698, 2699 of the California Labor  
8 Code.

9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over Plaintiffs’ claims pursuant to the Class  
11 Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1446, and 1453 because, upon  
12 information and belief, the overall damages that can be recovered exceeds \$5 million.

13 3. Supplemental jurisdiction exists over Plaintiffs’ state law claims  
14 pursuant to 28 U.S.C. § 1367.

15 4. The Court has personal jurisdiction over Defendants because Defendants  
16 presently and at all times relevant to this action have conducted substantial and  
17 continuous commercial activities including maintaining offices in California.

18 5. Venue is proper in the Southern District of California pursuant to 28  
19 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to  
20 this action occurred in this District and because this Court has personal jurisdiction  
21 over the Defendants.

22 **THE PARTIES**

23 6. Plaintiff ELIZABETH FUENTES is an individual that resides in the  
24 County of San Diego, California.

25 7. Defendant MAXIM HEALTHCARE SERVICES, INC. (“MAXIM”) is  
26 a Maryland corporation doing business in the County of San Diego, California.

27 8. The true names and capacities, whether individual, corporate, associate,  
28 or otherwise of the Defendants named herein as DOES 3 through 50, are unknown to

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1 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious  
2 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will  
3 seek leave to amend this Complaint to allege the true names and capacities of DOES  
4 3 through 50 when the correct identities are ascertained. Plaintiffs are informed and  
5 believe, and based thereon allege, that each of the DOE Defendants is in some  
6 manner liable to Plaintiffs for the events and actions alleged herein. All named  
7 Defendants and DOES 1 through 50 are collectively referred to as “Defendants.”

8 9. Plaintiffs are informed and believe, and based thereon allege, that at all  
9 times relevant herein, each Defendant was acting as an agent, joint venture, or as an  
10 integrated enterprise and/or alter ego for each of the other Defendants, and each was  
11 a co-conspirator with respect to the acts and the wrongful conduct alleged herein, so  
12 that each is responsible for the acts of the other in connection with the conspiracy and  
13 in proximate connection with the other Defendants.

14 10. Plaintiffs are informed and believe, and based thereon allege, that each  
15 Defendant was acting partly within and partly without the scope and course of their  
16 employment, and was acting with the knowledge, permission, consent, and  
17 ratification of every other Defendant.

18 11. Plaintiffs are informed and believe, and based thereon allege, that each  
19 of the Defendants was an agent, managing general partner, managing member,  
20 owner, co-owner, partner, employee, and/or representative of each of the Defendants,  
21 and were at all times material hereto, acting within the purpose and scope of such  
22 agency, employment, contract and/or representation, and that each of them are jointly  
23 and severally liable to Plaintiffs and the putative Class for the acts alleged herein.

24 12. Plaintiffs are informed and believe, and based thereon allege, that each of  
25 the Defendants are liable to Plaintiffs under legal theories and doctrines including but  
26 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter  
27 ego, based in part, on the facts set forth below.

28 13. Plaintiffs are informed and believe, and based thereon allege, that each

1 of the named Defendants are part of an integrated enterprise and have acted or  
2 currently act as the employer and/or joint employer of Plaintiffs and Class Members,  
3 making each of them liable for the wage and hour violations alleged herein.

4 **GENERAL ALLEGATIONS**

5 14. Defendants are in the healthcare business providing labor and services  
6 throughout the State of California.

7 15. From more than four years before the filing of this Complaint to on or  
8 about July 19, 2017, Defendants employed Plaintiff FUENTES in San Diego County  
9 as a Licensed Vocational Nurse (“LVN”).

10 16. Defendants paid Plaintiff and similarly aggrieved employees hourly and  
11 considered them nonexempt.

12 17. Defendants assigned Plaintiff and similar Class Members a patient(s)  
13 whose home(s) Defendants required them to visit to provide medical care of the  
14 household member(s) residing at the home.

15 **Unpaid Wages**

16 18. From at least four years before the filing of this action and continuing to  
17 the present, and pursuant to company policy and/or practice and/or direction, Plaintiff  
18 and the putative Class worked more than 40 hours per week and/or eight hours in a  
19 workday but Defendants did not pay all its employees for overtime pay.

20 19. On or about December 2, 2016, for example, Defendants paid Plaintiff  
21 FUENTES a, upon information and belief, nondiscretionary bonus payment of \$76,  
22 which money Defendants did not add into Plaintiff’s regular rate of pay for overtime  
23 pay purpose despite Defendants’ requirement under California law. (See § 49.1.1 of  
24 the California Division of Labor Standards and Enforcement Policies and  
25 Interpretations Manual, “In California, as with the federal FLSA, overtime is  
26 computed based on the regular rate of pay. The regular rate of pay includes many  
27 different kinds of remuneration, for example: hourly earnings, salary, piecework  
28 earnings, commissions, *certain bonuses*, and the value of meals and lodging.”

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1 [Emphasis added.]

2 20. Likewise, on or about January 6, 2017, Defendants paid Plaintiff  
3 FUENTES a, upon information and belief, nondiscretionary bonus payment of \$76,  
4 which money Defendants did not add into Plaintiff's regular rate of pay for overtime  
5 pay purpose despite Defendants' requirement under California law.

6 21. For the pay period ending July 22, 2017, Plaintiff FUENTES' paystub  
7 said she worked four hours of overtime, but she was paid only \$9.50 for each hour  
8 when Defendants should have paid her \$28.50 per hour.

### 9 **Paystub Claims**

10 22. From at least four years before the filing of this action and continuing to  
11 the present, and pursuant to company policy and/or practice and/or direction,  
12 Defendants issued inaccurate wage and earning statements to the Plaintiff, and upon  
13 information and belief, the putative Class, which wage and earning statements failed  
14 to identify Plaintiff's correct rates of pay and/or her correct gross and net earnings  
15 during the applicable pay period.

16 23. During the October 23, 2016 to October 29, 2016 pay period, for  
17 example, Defendants issued Plaintiff a wage and earning statement that erroneously  
18 indicated Plaintiff's overtime rate of pay was \$42.75 per hour when she worked four  
19 hours of overtime during this pay period, but her real overtime rate of pay should  
20 have shown \$28.50.

21 24. Similarly, during the October 30, 2016 to November 5, 2016 pay period,  
22 Defendants issued Plaintiff a wage and earning statement that erroneously indicated  
23 Plaintiff's overtime rate of pay was \$42.75 per hour when she worked four hours of  
24 overtime during this pay period, but her real overtime rate of pay should have shown  
25 \$28.50.

26 25. Likewise, during the November 6, 2016 to November 12, 2016 pay  
27 period, Defendants issued Plaintiff a wage and earning statement that erroneously  
28 indicated Plaintiff's overtime rate of pay was \$42.75 per hour when she worked four

1 hours of overtime during this pay period, but her real overtime rate of pay should  
2 have shown \$28.50.

3 26. Similarly, during the November 13, 2016 to November 19, 2016 pay  
4 period, Defendants issued Plaintiff a wage and earning statement that erroneously  
5 indicated Plaintiff's overtime rate of pay was \$42.75 per hour when she worked three  
6 and a half hours of overtime, but her real overtime rate of pay should have shown  
7 \$28.50.

8 27. Likewise, during the November 20, 2016 to November 26, 2016 pay  
9 period, Defendants issued Plaintiff a wage and earning statement that erroneously  
10 indicated Plaintiff's overtime rate of pay was \$42.75 per hour when her overtime rate  
11 of pay should have shown \$28.50 per overtime hour.

12 28. These are a few of dozens of similar examples of inaccurate pay stubs.

13 29. Plaintiff has no reason to believe she is the only victim to these  
14 inaccuracies and she alleges that, upon information and believe, there are numerous  
15 similarly situated aggrieved employees

16 **Facts Relating to Derivative Claims**

17 30. Pursuant to the above-mentioned policies, Defendants failed to pay  
18 Plaintiffs time and a half for all the overtime hours they worked and/or was not paid  
19 all wages to which Plaintiffs were entitled as required by law.

20 31. When Defendants terminated Plaintiffs' employment, Defendants failed  
21 to provide Plaintiffs and putative Class Members all unpaid wages in their final  
22 paycheck or in a timely manner.

23 32. To date, Defendants have not paid Plaintiffs all of Plaintiffs' wages due  
24 and payable, in an amount to be proven at trial.

25 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

26 33. This is a wage and hour representative action filed pursuant to PAGA,  
27 §§ 2698, 2699 generally consisting of the following represented group:

28 **All current or former nonexempt employees who worked in**

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1                   **California from October 24, 2016 to the present as or in connection**  
2                   **with home caregivers or similar occupations and/or who Defendants**  
3                   **issued inaccurate paystubs.**

4           34. All members of the represented groups will be referred to as the  
5 “Represented Employees.”

6           35. The “Representative Period” means from **October 24, 2016** to the  
7 present, the timeframe where the scope of statute allows Plaintiff to recover wages  
8 and penalties.

9           36. The duties and business activities of the Represented Employees were  
10 essentially the same as the duties and activities of the Plaintiff described above.

11           37. At all times during the Class Period, Defendants employed the  
12 Represented Employees in the same or similar job as the Plaintiff and were paid in  
13 the same manner and under the same standard employment procedures and practices  
14 as the Plaintiff.

15           38. On information and belief, current and former employees of Defendants  
16 were subject to Labor Code violations by Defendants, including but not limited to  
17 failing to be paid for all wages due.

18           39. California law provides that an employee may file an action against an  
19 employer for penalties for violations of the Labor Code and Wage Orders provided  
20 the aggrieved employee files an action on behalf of him or herself and similarly  
21 situated current and former employees.

22           40. At all material times, Defendants were and/or are Represented  
23 Employees’ employers or persons acting on behalf of Represented Employees’  
24 employer, within the meaning of California Labor Code § 558, who violated or  
25 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or  
26 any provision regulating hours and days of work in any Order of the Industrial  
27 Welfare Commission and, as such, are subject to penalties for each underpaid  
28 employee as set for in Labor Code § 558.

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1 41. As set forth in further detail below, Plaintiffs’ attorneys sent letter(s) to  
2 the California Labor and Workforce Development Agency (the “LWDA”) and to  
3 Defendants informing Defendants of their claims and intent to pursue litigation.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 42. As to penalty claims under the Private Attorney General Act, on  
6 **October 24, 2017**, Plaintiffs, via counsel, sent the statutorily required  
7 correspondence to the LWDA via certified U.S. Mail, indicating Plaintiffs’ intention  
8 of pursuing the claims alleged in this Complaint.

9 43. The statutory period for Plaintiffs has not expired for the  
10 letter(s)/correspondence alleged above and the LWDA did not serve Plaintiffs with  
11 notice of intent to assume jurisdiction over the applicable penalty claims and did not  
12 provide notice as set forth in Labor Code § 2699.3 (a)(2)(A) within the statutory  
13 period.

14 44. Therefore, once the statutory period expires, Plaintiffs will have  
15 exhausted Plaintiffs’ administrative remedies to pursue claims and remedies as  
16 authorized by PAGA.

17 45. The Causes of Action alleged herein are appropriately suited for a  
18 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 19 a. This action involves allegations of violations of provisions of the  
20 California Labor Code that provides for a civil penalty to be assessed  
21 and collected by the LWDA or any departments, divisions,  
22 commissions, boards, agencies or employees;
- 23 b. Plaintiff FUENTES is an “aggrieved employee” because Plaintiff  
24 FUENTES was employed by the alleged violator and had one or  
25 more of the alleged violations committed against them; and
- 26 c. Plaintiff has satisfied the procedural requirements of Labor Code §  
27 2699.3, as set forth above.  
28

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**CLASS ACTION ALLEGATIONS**

1  
2 46. Plaintiffs bring this action on behalf of herself and all others similarly  
3 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

4 47. Plaintiffs seek to represent a class composed of and defined as follows:

5 **Class No. 1**

6 **All California-based employees who at any time from October 24, 2013**  
7 **to the present (“Class Period”) received paystubs from the Defendants**  
8 **in violation of § 226 of the Labor Code.**

9 **Class No. 2**

10 **All California-based nonexempt employees who at any time from**  
11 **October 24, 2013 to the present (“Class Period”) worked as or worked**  
12 **with homecare givers or jobs with similar titles (the “Class Members”).**

13 48. Plaintiffs also seek to represent the following subclasses composed of  
14 and defined as follows:

15 **Minimum/Regular Wage Subclass:** All Members of the Plaintiff Class  
16 who during the relevant period, worked for Defendants less than eight  
17 hours per day and/or less than 40 hours per week.

18 **Overtime Subclass:** All Members of the Plaintiff Class who, during the  
19 relevant period, worked for Defendants more than eight hours per day  
20 and/or more than 40 hours per week.

21 **Waiting Time Penalty Subclass:** All Members of the Plaintiff Class who  
22 worked for Defendants during the applicable limitations period, but were  
23 terminated and/or resigned.

24 **Wage Statement Subclass:** All Members of the Plaintiff Class who,  
25 during the applicable statute of limitations period, worked for Defendants  
26 and received inaccurate itemized wage statements.

27 **Recordkeeping Subclass:** All Members of the Plaintiff Class, whose  
28 records, during the applicable statutory period, Defendants failed to  
maintain per the requirements of California law.

**UCL Subclass:** All Members of the Plaintiff Class, who, during the  
relevant period, are owed restitution because of Defendants’ uniform pay

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1 policies and procedures.

2  
3 49. Plaintiffs reserve the right under the California Rules of Court, to amend  
4 or modify the class description with greater specificity or further division into  
5 subclasses or limitation to particular issues.

6 50. This action is brought and may properly be maintained as a Class Action  
7 under the provisions of § 382 of the Code of Civil Procedure because there is a  
8 well-defined community of interest in the litigation and the proposed Class Members  
9 are easily ascertainable.

10 **A. Numerosity**

11 51. The potential members of the Class as defined are so numerous or many,  
12 that joinder of all the members of the Class is impracticable.

13 52. While the precise number of Class Members has not been determined at  
14 the time, Defendants currently employ, and during the relevant time periods  
15 employed, over 100 Class Members.

16 53. Accounting for employee turnover during the relevant periods  
17 necessarily increases the number substantially.

18 **B. Commonality**

19 54. There are questions of law and fact common to the Class that  
20 predominates over any questions affecting only individual Class Members.

21 55. Common questions of law and fact include, without limitation and  
22 subject to possible further amendment, the following:

- 23 a. Whether Defendants' policy or practice of not paying Plaintiff and  
24 putative Class Members overtime compensation for the hours they  
25 worked over 40 in a workweek or eight hours in a day is illegal under  
26 Labor Code §§ 510, 1194, and the applicable Wage Order;
- 27 b. Whether Defendants violated the Labor Code by not fully  
28 compensating Plaintiff and the Class by failing to pay state

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- 1 minimum/regular/contract wages as required by law;
- 2 c. Whether Defendants' policy or practice of not paying hourly
- 3 employees all their wages due in their final paychecks immediately
- 4 upon involuntary termination or when 72 hours' notice was provided
- 5 before voluntary resignation, is unlawful under Labor Code §§ 201,
- 6 202 and/or 203;
- 7 d. Whether Defendants violated Labor Code §§ 226 by not providing
- 8 accurate paystubs;
- 9 e. Whether Defendants violated Labor Code §§ 1174 by not
- 10 maintaining required personnel records; and
- 11 f. Whether Plaintiff and the members of the Class are entitled to
- 12 remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

13 **C. Typicality**

14 56. Plaintiffs' claims are typical of the claims of the Class because Plaintiff

15 FUENTES and all members of the proposed Plaintiff Class and subclasses sustained

16 similar injuries and damages arising out of and caused by Defendants' common

17 course of conduct and policies in violation of laws, regulations that have the force

18 and effect of law and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 57. Plaintiff FUENTES does not have any conflicts of interest with other

21 Class Members, and will prosecute the case vigorously on behalf of the Class.

22 58. Counsel representing Plaintiff FUENTES and the putative Class are

23 competent and experienced in litigating employment class actions, including wage

24 and overtime class actions.

25 59. Plaintiff FUENTES will fairly and adequately represent and protect the

26 interests of the Class Members.

27 **E. Superiority of Class Action and Manageability**

28 60. A class action is superior to other available means for the fair and

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1 efficient adjudication of the controversy because individual joinder of all Class  
2 Members is not practicable, and questions of law and fact common to the Class  
3 predominate over any questions affecting only individual members of the Class.

4 61. Each Class Member has been damaged or suffered injury and is entitled  
5 to recovery because of Defendants’ illegal policies and/or practices.

6 62. Class Action treatment will allow those similarly situated persons to  
7 litigate their claims in the manner that is most efficient and economical for the parties  
8 and the judicial system.

9 63. Plaintiff is unaware of any difficulties that are likely to be encountered  
10 in the management of her action that would preclude maintenance as a Class Action.

11 64. At the appropriate time, Plaintiffs will present a trial methodology and  
12 plan that will streamline the action, base liability and damages on common evidence  
13 and common modes of proof through Defendants’ corporate records, testimony of  
14 corporate common policy and practices, representative evidence, sampled and  
15 presented in a manner consistent with recognized scientific and statistical principles.

16 65. Such methodology may include bifurcation of liability and damages, the  
17 use of professionally administered survey evidence, seeking adjudication of class-  
18 wide legal issues of particular claims or preliminary factual issues and other methods  
19 and proposals to manage class-wide determinations common to all persons in the  
20 proposed Plaintiff Class.

21 66. For the reasons alleged in this Complaint, this action should be certified  
22 as a Class Action.

23 **FIRST CAUSE OF ACTION**

24 **Individual and Representative Claim for**  
25 **Failure to Pay State Overtime and/or Double-Time Compensation in**  
26 **Violation of California Labor Code §§ 510, 1194, 1194.2, and**  
27 **§ 3(A) of the applicable Wage Order**  
28 **(Against all Defendants)**

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1           67. Plaintiffs re-allege and incorporate by reference the foregoing  
2 allegations as though set forth herein.

3           68. California law requires an employer to pay each employee accurately. If  
4 hourly, the employer is required to compensate the employee for the actual hours  
5 worked. (*See* Cal. Labor Code §§ 200, 226.)

6           69. During all times relevant, an IWC Wage Order applied to Plaintiffs’  
7 employment with Defendants.

8           70. Pursuant to the applicable Wage Order, most likely § 2(K), “hours  
9 worked” include the time during which an employee is “suffered or permitted to  
10 work, whether or not required to do so.”

11           71. For each hour (or fraction thereof) an employee works up to forty (40)  
12 hours in a week and eight (8) hours in a day, the employer must pay the employee’s  
13 regular hourly wage. For each hour (or fraction thereof) an employee works over  
14 forty (40) hours in a week or in excess of eight (8) hours in a workday the employer  
15 must pay the rate of one and a half times the employee’s regular hourly wage.

16           72. For each hour (or fraction thereof) an employee works in excess of twelve  
17 (12) hours in one day or in excess of eight (8) hours a day on the seventh consecutive  
18 day of work, the employee must be compensated at the rate of no less than twice the  
19 regular rate of pay for that employee.

20           73. According to § 49.1.1 of the California Division of Labor Standards and  
21 Enforcement Policies and Interpretations Manual, “In California, as with the federal  
22 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay  
23 includes many different kinds of remuneration, for example: hourly earnings, salary,  
24 piecework earnings, commissions, *certain bonuses*, and the value of meals and  
25 lodging.” (Emphasis added.)

26           74. From at least four years before the filing of this action and continuing to  
27 the present, and pursuant to company policy and/or practice and/or direction,  
28 Defendants required Plaintiff and the putative Class to work more than 40 hours per

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1 week and/or eight hours in a workday and Defendants did not pay Plaintiff and the  
2 putative Class all overtime compensation to which they should have received.

3 75. At all material times, Defendants were and/or are Represented  
4 Employees' employers or persons acting on behalf of Represented Employees'  
5 employer, within the meaning of California Labor Code §§ 558 and 558.1, who  
6 violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
7 Labor Code or any provision regulating hours and days of work in any Order of the  
8 Industrial Welfare Commission and, as such, are subject to penalties for each  
9 underpaid employee as set for in Labor Code § 558.

10 76. In committing the violations of state law as herein alleged, Defendants  
11 have knowingly and willfully refused to perform their obligations to compensate  
12 Represented Employees for all wages earned and all hours worked.

13 77. As a direct result, Plaintiff, the Represented Employees, and the Putative  
14 Class have suffered and continue to suffer, substantial losses related to the use and  
15 enjoyment of such compensation, wages, lost interest on such monies and expenses  
16 and attorney's fees in seeking to compel Defendants to full perform their obligation  
17 under state law, all to their respective damage in amounts according to proof at trial  
18 and within the jurisdictional limitations of this Court.

19 78. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
20 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay  
21 period for the initial violation and two hundred (\$200.00) for each aggrieved  
22 employee per pay period for each subsequent violation in which Defendants violated  
23 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558  
24 and 1194, the exact amount of the penalties sought is in an amount to be shown  
25 according to proof at trial.

26 79. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover  
27 from Defendants, and each of them, penalties, attorneys' fees, and costs incurred  
28 herein.

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1 80. Based on the misconduct alleged in this Complaint, Plaintiff and similarly  
2 situated members of the Class have suffered damages in an amount to be proven at  
3 trial.

4 81. Plaintiffs on behalf of themselves and the Class request the unpaid wages,  
5 all penalties to which they are entitled, interest, attorneys' fees, costs, liquidated  
6 damages, and any other remedies allowed by law in an amount to be proven at trial.

7 **SECOND CAUSE OF ACTION**

8 **Individual and Representative Claim for**

9 **Failure to Pay State Minimum/Regular Wages in Violation of**  
10 **California Labor Code §§ 216, 218, 218.5, 223, 225.5, 1182.12, 1194,**  
11 **1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage Order**

12 (Against all Defendants)

13 82. Plaintiffs re-allege and incorporates by reference the foregoing  
14 allegations as though set forth herein.

15 83. Pursuant to Labor Code §§ 216, 218, 218.5, 223, 225.5, 1182.12, 1194,  
16 1194.2, 1197, 1197.1 and 1198, it is unlawful for a California employer to suffer or  
17 permit an employee to work without paying wages for all hours worked, as required  
18 by the applicable Industrial Welfare Commission ("IWC") Wage Order.

19 84. During all times relevant, Defendants agreed to pay Plaintiffs their  
20 respective hourly rate for all hours worked.

21 85. During all times relevant, IWC Wage Order No. 4-2001 applied to  
22 Plaintiffs' and the Class Members' employment with Defendants.

23 86. Pursuant to the applicable Wage Order, "hours worked" include the time  
24 during which an employee is "suffered or permitted to work, whether or not required  
25 to do so."

26 87. Under state law, every employer was required to pay each employee  
27 \$8.00 per hour effective January 1, 2008 until July 1, 2015, at which time the  
28 required minimum wage pay increased to \$9.00 per hour and increased again to

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1 \$10.00 per hour effective January 1, 2016, and is presently effective unless the rate is  
2 higher as required under local law.

3 88. During all times relevant, Defendants promised to pay Plaintiff and the  
4 putative Class Members a regular rate of pay higher than the minimum wage rate  
5 required under California law under most circumstances.

6 89. During all times relevant, Defendants did not pay Plaintiff and the  
7 putative Class minimum/regular wages for all hours suffered or permitted to work in  
8 violation of state law.

9 90. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover  
10 wages because of the payment of a wage less than the minimum wage fixed by IWC  
11 Wage Orders, an employee is entitled to recover liquidated damages in an amount  
12 equal to the wages unlawfully unpaid and interest thereon.

13 91. At all material times, Defendants were and/or are Represented  
14 Employees' employers or persons acting on behalf of Represented Employees'  
15 employer, within the meaning of California Labor Code §§ 558 and 558.1, who  
16 violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
17 Labor Code or any provision regulating hours and days of work in any Order of the  
18 Industrial Welfare Commission and, as such, are subject to penalties for each  
19 underpaid employee as set for in Labor Code § 558.

20 92. In committing the violations of state law as herein alleged, Plaintiff is  
21 informed and believe based there upon allege that Defendants have knowingly and  
22 willfully refused to perform their obligations to compensate Represented Employees  
23 for all wages earned and all hours worked.

24 93. As a direct result, Represented Employees have suffered and continue to  
25 suffer, substantial losses related to the use and enjoyment of such compensation,  
26 wages, lost interest on such monies and expenses and attorneys' fees in seeking to  
27 compel Defendants to fully perform their obligations under state law, all to their  
28 respective damage in amounts according to proof at trial and within the jurisdictional

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1 limitations of this Court.

2 94. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
3 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay  
4 period for the initial violation and two hundred (\$200.00) for each aggrieved  
5 employee per pay period for each subsequent violation in which Defendants violated  
6 the minimum wage and/or regular wage provisions of the Labor Code, including but  
7 not limited to §§ 216, 218, 218.5, 558, 1182.12, 1194, 1194.2, and 1197, the exact  
8 amount of the applicable penalty is all in an amount to be shown according to proof  
9 at trial.

10 95. Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class  
11 Members seek to recover from Defendants, and each of them, penalties, attorneys'  
12 fees and costs incurred herein.

13 96. Upon information and belief, Class Members including Plaintiff should  
14 have received minimum/regular wages in a sum according to proof during all times  
15 relevant to this action.

16 97. Upon information and belief, Defendants intentionally failed and  
17 refused, and continue to fail and refuse, to pay Class Members including Plaintiff  
18 minimum wages for all time suffered or permitted to work including but not limited  
19 to commute time.

20 98. Plaintiffs on behalf of themselves and the Class request the recovery of  
21 the unpaid minimum wages, all penalties to which they are entitled, liquidated  
22 damages, interest, attorneys' fees, and costs in an amount to be determined at trial.

23 **THIRD CAUSE OF ACTION**

24 **Individual and Representative Claim for**  
25 **Failure to Pay Timely Earned Wages during Employment and**  
26 **Upon Separation of Employment in Violation of**  
27 **California Labor Code §§ 201, 201.3, 202, 203, 204**  
28 **and/or 204b, 210, 218.5, and 218.6**

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(Against all Defendants)

1  
2 99. Plaintiffs re-allege and incorporate by reference the foregoing allegations  
3 as though set forth herein.

4 100. Pursuant to Labor Code § 201, “If an employer discharges an employee,  
5 the wages earned and unpaid at the time of discharge are due and payable  
6 immediately.”

7 101. Pursuant to Labor Code § 202, “If an employee not having a written  
8 contract for a definite period quits his or her employment, his or her wages shall  
9 become due and payable not later than 72 hours thereafter, unless the employee has  
10 given 72 hours previous notice of his or her intention to quit, in which case the  
11 employee is entitled to his or her wages at the time of quitting.”

12 102. Labor Code § 203 provides, in pertinent part: “If an employer willfully  
13 fails to pay, without abatement or reduction, ... any wages of an employee who is  
14 discharged or who quits, the wages of the employee shall continue as a penalty from  
15 the due date thereof at the same rate until paid or until an action therefore is  
16 commenced; but the wages shall not continue for more than 30 days. ...”

17 103. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought  
18 for the nonpayment of wages and fringe benefits.

19 104. Plaintiff and the Class were not properly paid pursuant to the  
20 requirements of Labor Code §§ 201, 202, and/or 201.3 and thereby seek all remedies  
21 available to them.

22 105. To date, for example, Defendants have not paid Plaintiffs all earned  
23 wages as required by law.

24 106. Plaintiff is informed and believes and based thereon alleges that  
25 Defendants willfully failed to pay Plaintiff’s wages pursuant to the requirements of  
26 Labor Code §§ 201, 201.3, and 202 after Plaintiff’s demand, and therefore Plaintiff  
27 and the Class are entitled the associated unpaid wages and waiting time penalties.

28 107. Plaintiff is informed and believes and based thereon alleges that

1 Defendants did this with the intent to secure for himself, herself and itself a discount  
2 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or  
3 defraud Plaintiffs.

4 108. At all material times, Defendants were and/or are Represented  
5 Employees' employers or persons acting on behalf of Represented Employees'  
6 employer, within the meaning of California Labor Code § 558, who violated or  
7 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or  
8 any provision regulating hours and days of work in any Order of the Industrial  
9 Welfare Commission and, as such, are subject to penalties for each underpaid  
10 employee as set for in Labor Code § 558.

11 109. In committing the violations of state law as herein alleged, Defendants  
12 have knowingly and willfully refused to perform their obligations to compensate  
13 Represented Employees for all wages earned and all hours worked.

14 110. As a direct result, Represented Employees have suffered and continue to  
15 suffer, substantial losses related to the use and enjoyment of such compensation,  
16 wages, lost interest on such monies and expenses and attorney's fees in seeking to  
17 compel Defendants to full perform their obligation under state law, all to their  
18 respective damage in amounts according to proof at trial and within the jurisdictional  
19 limitations of this Court.

20 111. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
21 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay  
22 period for the initial violation and two hundred (\$200.00) for each aggrieved  
23 employee per pay period for each subsequent violation in which Defendants violated  
24 Labor Code §§ 201, 201.3, 202, and 203, the exact amount of the applicable penalty  
25 is all in an amount to be shown according to proof at trial.

26 112. Plaintiff and the Class were deprived of their rightfully earned wages as  
27 a direct and proximate result of Defendants' failure and refusal to pay said  
28 compensation and for the reasons alleged in this Complaint.

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1 113. Plaintiff and Class Members request the unpaid wages, waiting time  
2 penalties, interest, attorneys’ fees, costs, damages, and other remedies in an amount  
3 to be proven at trial.

4 **FOURTH CAUSE OF ACTION**

5 **Individual and Representative Claim for**  
6 **Violations of California Labor Code §§ 226, 1198,**  
7 **and the applicable IWC Wage Order**

8 (Against All Defendants)

9 114. Plaintiffs re-allege and incorporate by reference the foregoing  
10 allegations as though set forth herein.

11 115. Plaintiff alleges that Labor Code § 226 subdivision (a) requires, in  
12 pertinent part, that “Every employer shall, semimonthly or at the time of each  
13 payment of wages, furnish each of his or her employees, either as a detachable part of  
14 the check, draft, or voucher paying the employee's wages, or separately when wages  
15 are paid by personal check or cash, an accurate itemized statement in writing showing  
16 (1) gross wages earned, (2) total hours worked by the employee, except for any  
17 employee whose compensation is solely based on a salary and who is exempt from  
18 payment of overtime under subdivision (a) of § 515 or any applicable order of the  
19 Industrial Welfare Commission, (3) the number of piece-rate units earned and any  
20 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
21 provided that all deductions made on written orders of the employee may be  
22 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of  
23 the period for which the employee is paid, (7) the name of the employee and only the  
24 last four digits of his or her social security number..., (8) the name and address of the  
25 legal entity that is the employer, and (9) all applicable hourly rates in effect during  
26 the pay period and the corresponding number of hours worked at each hourly rate by  
27 the employee. . .” (Labor Code § 226 subdivision (a).)

28 116. Upon information and belief, during all times relevant to this action,

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1 Defendants did not provide accurate wage statements throughout the Class Period.

2 117. Plaintiff alleges that on numerous occasions, an exact amount by which  
3 will be proven at trial, Defendants violated various provisions of § 226, including but  
4 not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to  
5 provide Plaintiff and the Class accurate itemized statement in writing accurately  
6 showing gross wages earned, total hours worked by the employee, net wages earned,  
7 rates of pay, among other things.

8 118. At all material times Defendants were and/or are Represented  
9 Employees' employers or persons acting on behalf of Represented Employees'  
10 employer, within the meaning of California Labor Code §§ 558 and 558.1, who  
11 violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
12 Labor Code or any provision regulating business hours and days of work in any  
13 Order of the Industrial Welfare Commission and, as such, are subject to the greater of  
14 actual damages and/or penalties for each underpaid employee as set forth in Labor  
15 Code § 558.

16 119. In committing the violations of state law as herein alleged, Defendants  
17 have knowingly and willfully refused to perform their obligations to compensate  
18 Represented Employees for all wages earned and all hours worked.

19 120. As a direct result, Represented Employees have suffered and continue to  
20 suffer actual damages including substantial losses related to the use and enjoyment of  
21 such compensation, wages, lost interest on such monies and expenses and attorney's  
22 fees in seeking to compel Defendants to fully perform their obligations under state  
23 law, all to their respective damage in amounts according to proof at trial and within  
24 the jurisdictional limitations of this Court.

25 121. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
26 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay  
27 period for the initial violation and two hundred (\$200.00) for each aggrieved  
28 employee per pay period for each subsequent violation in which Defendants violated

1 Labor Code § 226, the exact amount of the applicable penalty is all in an amount to  
2 be shown according to proof at trial.

3 122. For Defendants’ misconduct as alleged in this Complaint, Plaintiff and  
4 the Class seek damages including actual damages, penalties, costs and attorneys’ fees  
5 pursuant to Labor Code §§ 226, 226.3, and 226.6 in an amount to be proven at trial.

6 123. For Defendants’ misconduct as alleged herein, Plaintiff and the Class  
7 seek attorneys’ fees, costs, and all penalties to which they are entitled including but  
8 not limited to those under §§ 226, 226.3, and 226.6 in an amount to be proven at trial.

9 **FIFTH CAUSE OF ACTION**

10 **Individual and Representative Claim for Failure to**  
11 **Maintain Required Records in Violation of California**

12 **Labor Code §§ 1174, 1174.5, 1175, 1198,**

13 **and/or the Applicable Wage Order**

14 **(Against Defendant MAXIM and DOES)**

15 124. Plaintiffs re-allege and incorporate by reference the foregoing  
16 allegations as though set forth herein.

17 125. The applicable IWC Wage Order, presumably § 7 requires every  
18 employer to maintain time and payroll records.

19 126. Plaintiffs are informed and believe and based thereon allege that during  
20 all times relevant, Defendants failed to comply with § 7 of the applicable IWC  
21 Order(s) and with Labor Code § 1174 by failing to maintain certain records which  
22 employers are required to maintain, including but not limited to, keeping records  
23 evidencing each and every hour worked by Plaintiffs and the Class.

24 127. For the reasons alleged herein, Plaintiffs seek any and all available  
25 remedies in an amount to be proven at trial including but not limited to damages,  
26 penalties, attorneys’ fees and costs, and interest pursuant to law including but not  
27 limited to Labor Code §§ 1174.5 and 1175.

28  
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**SIXTH CAUSE OF ACTION**

**Individual and Representative Claim for PAGA Penalties and Wage Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California Labor Code §§ 201, 201.3, 202, 203, 204 and/or 204b, 218.5, 223, 225.5, 226, 510, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and the Applicable Wage Order (Against all Defendants)**

128. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

129. Pursuant to law, Plaintiffs provided written notice to the LWDA and Defendants of the specific violations of the California Labor Code Defendants have violated and continue to violate.

130. Pursuant to Labor Code § 2699.3 and by the time an amended complaint is filed, no response was likely received from the LWDA within 65 days of the postmark date of the above-referenced written notice.

131. Plaintiffs therefore will have exhausted all administrative procedures required of them under Labor Code §§ 2698, 2699, and 2699.3, and, as a result, are justified as a matter of right in bringing forward this cause of action and are entitled to pursue penalties in a representative action for Defendants’ violations of the Labor Code.

132. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

133. Plaintiff FUENTES is an “aggrieved employee” because Plaintiff FUENTES was employed by the alleged violator and had one or more of the alleged

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1 violations committed against Plaintiff FUENTES, and therefore is properly suited to  
2 represent the interests of other current and former Represented Employees.

3 134. Because of the acts alleged above, Plaintiff FUENTES, on behalf of  
4 herself and others, seek penalties under Labor Code §§ 2698 and 2699 because of  
5 Defendants' violation of numerous provisions of the California Labor Code as  
6 alleged in this Complaint.

7 135. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
8 penalties for violating the Labor Code.

9 136. Labor Code § 558 establishes a civil penalty as follows: Any employer  
10 or other person acting on behalf of an employer who violates, or causes to be  
11 violated, a section of this chapter or any provision regulating hours and days of work  
12 in any order of the Industrial Welfare Commission (including the "Hours and Days of  
13 Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any  
14 initial violation, fifty dollars (\$50) for each underpaid employee for each pay period  
15 for which the employee was underpaid in addition to an amount sufficient to recover  
16 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for  
17 each underpaid employee for each pay period for which the employee was underpaid  
18 in addition to an amount sufficient to recover underpaid wages; and (3) wages  
19 recovered pursuant to this section shall be paid to the affected employee.

20 137. Plaintiffs seek penalties for Defendants' conduct as alleged herein as  
21 permitted by law.

22 138. Specifically, Plaintiffs seek penalties under Labor Code § 2699, for the  
23 following Violations of California Labor Code: §§ 201, 201.3, 202, 203, 204 and/or  
24 204b, 218.5, 223, 225.5, 226, 510, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1,  
25 1198, and the Applicable Wage Order.

26 139. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover  
27 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiffs and other  
28 current and former Represented Employees as alleged herein in an amount to be

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1 shown according to proof at trial and within the jurisdictional limits of this Court.

2 **SEVENTH CAUSE OF ACTION**

3 **Violations of California Business and Professions Code § 17200, *et seq.***

4 (Against All Defendants)

5 140. Plaintiffs re-allege and incorporate by reference the foregoing  
6 allegations as though set forth herein.

7 141. Defendants are “persons” as defined under Business and Professions  
8 Code § 17021.

9 142. Plaintiff alleges that Defendants committed the unfair business  
10 practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the laws  
11 alleged to have been violated in this Complaint and which allegations are  
12 incorporated herein by reference and which allegations include, but are not limited to:

- 13 a. Failing to provide the Class and Plaintiff an accurate itemized wage  
14 statement in violation of § 226 of the Labor Code; and
- 15 b. Failing to pay the Class and Plaintiff all wages due and owing  
16 including minimum wages and overtime compensation in violation of  
17 state law.

18 143. Defendants’ conduct, as alleged above, constitutes unlawful, unfair, and  
19 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

20 144. Plaintiff has suffered injury in fact, lost money or property because of  
21 the aforementioned unfair competition and, as such, seeks restitution and any other  
22 remedies permitted by law from the Defendants.

23 145. Because of their improper acts, Defendants, and each of them, have  
24 reaped and continue to reap unfair benefits and illegal profits at the expense of  
25 Plaintiff and other employees and former employees of Defendants, and each of  
26 them.

27 146. Defendants, and each of them, should be made to disgorge these ill-gotten  
28 gains and restore to Plaintiff and the Class the wrongfully withheld wages, pursuant

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1 to Business and Professions Code §§ 17202 and/or 17203.

2 147. Plaintiff and the Class have also incurred and continue to incur  
3 attorneys’ fees and legal expenses in an amount according to proof at the time of trial  
4 and for which they seek compensation pursuant to law including but not limited to  
5 Code of Civil Procedure § 1021.5.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 8 1. That the Court issue an Order that this action may be maintained as a class  
9 action and certify the Class and subclasses herein, appointing the named  
10 Plaintiff as representative of all others similarly situated, and appointing the  
11 law firms representing the named Plaintiff as counsel for the members of  
12 the Class and Subclasses;
- 13 2. For pre-judgment interest as allowed by law;
- 14 3. For all reasonable costs, litigation expenses and attorneys’ fees as required  
15 by the Labor Code and applicable law;
- 16 4. For damages in an amount according to proof;
- 17 5. For an award of reasonable attorneys’ fees and litigation costs as permitted  
18 by law;
- 19 6. For all remedies available to Plaintiffs under the applicable Industrial  
20 Welfare Commission Order, and Labor Code provisions alleged in this  
21 Complaint including an award of unpaid expenses, attorneys’ fees, costs,  
22 interest, liquidated damages, damages, and penalties according to proof to  
23 the extent permitted by law;
- 24 7. For maximum civil penalties available under the Labor Code and the  
25 applicable Wage Order as described more particularly in this Complaint,  
26 representative PAGA claims;
- 27 8. For an accounting, under administration of Plaintiff and/or the receiver and  
28 subject to Court review, to determine the amount to be returned by

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- Defendants, and the amounts to be paid to members of the Class and Plaintiff who are owed monies by Defendants;
- 9. For an Order requiring Defendants to make full restitution and payment to the Class due to unfair competition, including disgorgement of their wrongfully withheld reimbursements pursuant to California Business and Professions Code §§ 17203 and 17204;
- 10. For the creation of an administrative process or constructive trust wherein each injured member of the Class and Subclasses may submit a claim in order to receive his/her money;
- 11. That Defendants, and or any other proper form of declaratory or equitable relief to the full extent permitted by the UCL; and
- 12. For such other and further relief that the Court deems just.

LAW OFFICES OF THOMAS D. RUTLEDGE

Dated: October 24, 2017

By:   /s/   Thomas D. Rutledge \_\_\_\_\_  
/s/Thomas D. Rutledge, Esq.  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

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

LAW OFFICES OF THOMAS D. RUTLEDGE

Dated: October 24, 2017

By:   /s/   Thomas D. Rutledge \_\_\_\_\_  
/s/Thomas D. Rutledge, Esq.  
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ELIZABETH FUENTES

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Thomas D. Rutledge (SBN 200497), 500 West Harbor Drive, Suite 1113, San Diego, CA 92101 619-886-7224

DEFENDANTS

MAXIM HEALTHCARE SERVICES, INC.

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Rule 23 and CAFA
Brief description of cause: Wage and hour class action.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 10/24/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Thomas D. Rutledge, Esquire

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Maxim Healthcare Service Miscalculated Overtime Pay, Lawsuit Claims](#)

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