

ZELDES HAEGGQUIST & ECK, LLP

1 ZELDES HAEGGQUIST & ECK, LLP  
2 ALREEN HAEGGQUIST (221858)  
alreenh@zhlaw.com  
3 AARON M. OLSEN (259923)  
aaron@zhlaw.com  
4 225 Broadway, Suite 2050  
5 San Diego, CA 92101  
6 Telephone: 619-342-8000  
7 Facsimile: 619-342-7878

8 Attorneys for Plaintiff and the Proposed Class

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MARIA T. GONZALEZ, on Behalf  
12 of Herself and All Others Similarly  
13 Situated,

14 Plaintiffs,

15 v.

16 EXAMINATION MANAGEMENT  
17 SERVICES, INC., a Nevada  
Corporation;  
18 LABORATORY CORPORATION  
19 OF AMERICA HOLDINGS, a  
Delaware Corporation; and  
20 DOES 1 through 10, inclusive,

21 Defendants.  
22

Case No.: '17CV1077 JLS JLB

CLASS ACTION

CLASS ACTION COMPLAINT

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DEMAND FOR JURY TRIAL

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1 Plaintiff Maria T. Gonzalez (“Plaintiff”), by her attorneys, brings this action  
2 on behalf of herself and all others similarly situated against Defendants  
3 Examination Medical Services, Inc. (“EMSI”) and Laboratory Corporation of  
4 America (“LabCorp”) and DOES 1 through 10, inclusive (collectively,  
5 “Defendants”). Plaintiff makes the following allegations upon information and  
6 belief (except those allegations as to the Plaintiff or her attorneys, which are based  
7 on personal knowledge), based upon an investigation that is reasonable under the  
8 circumstances, which allegations are likely to have evidentiary support after a  
9 reasonable opportunity for further investigation and/or discovery.

10 **NATURE OF ACTION**

11 1. “The misclassification of employees as independent contractors  
12 presents one of the most serious problems facing affected workers, employers and  
13 the entire economy.” *United States Department of Labor, Wage and Hour Division*  
14 (“DOL”).<sup>1</sup> This class action is brought on behalf of Plaintiff and The Class<sup>2</sup>  
15 because of Defendants’ systemic misclassification and mistreatment of California  
16 phlebotomists as independent contractors in violation of California’s wage and  
17 hour laws.

18 2. EMSI, one of the nation’s largest medical information services  
19 companies, and LabCorp, one of the world’s largest health care diagnostics  
20 companies, unlawfully profits off the backs of its misclassified phlebotomists –  
21 who comprise an integral part of Defendants’ business. Together, Defendants are  
22 the joint employers of these misclassified independent contractors.

23 3. To redress the harms suffered, Plaintiff, on behalf of herself and The  
24 Class, brings claims for: (1) willful misclassification in violation of Labor Code

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27 <sup>1</sup> See <https://www.dol.gov/whd/workers/misclassification/> (last visited  
28 5/2/2017).

<sup>2</sup> “The Class” is defined in ¶¶36 and 37 below.

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1 §226.8; (2) failure to pay minimum wage in violation of Labor Code §§1194, 1197;  
2 (3) failure to pay all wages due and owing, Labor Code §218; (4) failure to  
3 accurately maintain records and failure to provide accurate wage statements in  
4 violation of Labor Code §§226, 1174; (5) failure to provide timely payment of all  
5 wages upon discharge or resignation in violation of Labor Code §§201-203; and  
6 (6) violation of the Unfair Competition Law (“UCL”), Business & Professions  
7 Code §17200, *et seq.*

8 **JURISDICTION**

9 4. This Court has original jurisdiction over this action under 28 U.S.C.  
10 §1332(a) as well as the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2)  
11 (“CAFA”), as to the named Plaintiff and every member of The Class, because the  
12 proposed Class contains more than 100 members, the aggregate amount in  
13 controversy exceeds \$5 million, and Class members reside in California and are  
14 therefore diverse from Defendants. The Court has supplemental jurisdiction over  
15 Plaintiff’s state law claims pursuant to 28 U.S.C. §1367(a).

16 5. This Court has personal jurisdiction over Defendants because they do  
17 a substantial amount of business in California, including in this District; are  
18 authorized to conduct business in California, including in this District; and have  
19 intentionally availed themselves of the laws and markets of this District through  
20 the promotion, sale, marketing, and/or distribution of their products and services.

21 6. Venue is proper in this District pursuant to 28 U.S.C. §1391(b),  
22 because a substantial part of the events or omissions giving rise to Plaintiff’s  
23 claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a),  
24 because Defendants transact a substantial amount of its business in this District.

25 **THE PARTIES**

26 7. Plaintiff Maria T Gonzalez is now, and at all relevant times was, a  
27 resident of San Diego, State of California. Plaintiff brings this action in her  
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1 individual capacity and on behalf of all others similarly situated. Plaintiff worked  
 2 for Defendants from about June 22, 2016 to about October 15, 2016 as a  
 3 phlebotomist. Defendants misclassified Plaintiff as an IRS Form 1099 independent  
 4 contractor, when she should have been an IRS Form W-2 employee. Defendants  
 5 integrated Plaintiff into its workforce: she worked alongside properly classified  
 6 phlebotomists, sharing the same supervisors, performing the same or materially  
 7 the same functions, working the same core work days and hours, offered the same  
 8 meal and rest breaks, offered overtime compensation for hours worked more than  
 9 eight hours per day, and offered mileage reimbursement. Plaintiff was generally  
 10 scheduled to work five days per week (Monday through Friday), from 8:00 a.m.  
 11 to 5:00 p.m. Plaintiff worked on-site at LabCorp’s offices, located at 450 4th  
 12 Avenue, Chula Vista, California 91911. As set forth below, Defendants had the  
 13 right to control and direct Plaintiff, not only as to the result to be accomplished by  
 14 the work but also as to the details and means by which that result was  
 15 accomplished. That is, Plaintiff was subject to the will and control of Defendants  
 16 not only as to what was required to be done, but how it was to be done.

17 8. Defendant EMSI is a Nevada corporation with its principle place of  
 18 business located at 3050 Regent Boulevard, Suite 400, Irving, Texas 75063. EMSI  
 19 touts that it is “a medical information services provider serving health plans, life  
 20 and property/casualty insurers and employers.”<sup>3</sup>

21 9. Defendant LabCorp is a Delaware corporation with its principle place  
 22 of business located at 531 South Spring Street, Burlington, North Carolina 27215.  
 23 LabCorp touts that it is a provider of “leading-edge medical laboratory tests and  
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27 <sup>3</sup> <https://www.emsinet.com/> (EMSI’s online homepage) (last visited on  
 28 5/3/2017).

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1 services through a national network of primary clinical laboratories and specialty  
2 testing laboratories.”<sup>4</sup>

3 10. Together, Defendants EMSI and LabCorp are the joint employers of  
4 Plaintiff and The Class. Based on information and belief, Defendant EMSI is a  
5 “labor contractor” within the meaning of Labor Code §2810.3(a)(3) because it  
6 supplies the client employer (LabCorp) with workers to perform labor within the  
7 client employer’s usual course of business.

8 11. Based on information and belief, Defendant LabCorp is a “client  
9 employer” within the meaning of Labor Code §2810.3(a)(1)(A) because it is a  
10 business entity with a workforce greater than 25 workers that obtains or is provided  
11 workers to perform labor within its usual course of business from a labor  
12 contractor. Accordingly, Defendants share joint liability pursuant to Labor Code  
13 §2810.3(b).

14 12. In addition, Defendants are joint employers of Plaintiff and The Class  
15 because, based on information and belief, they both have equal right to control the  
16 manner and means, and the terms, conditions, and privileges of Plaintiff’s and The  
17 Class’ employment.

18 13. The true names and capacities of defendants sued herein as Does 1  
19 through 10, inclusive, are presently not known to Plaintiff, who therefore sues  
20 these defendants by such fictitious names. Plaintiff will seek to amend this  
21 complaint and include these Doe Defendants true names and capacities when they  
22 are ascertained. Each of the fictitiously named defendants is responsible in some  
23 manner for the conduct alleged herein and for the injuries suffered by Plaintiff and  
24 The Class.

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28 <sup>4</sup> <https://www.labcorp.com/about-us> (LabCorp’s About Us webpage) (last  
visited on 5/3/2017).

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**FACTUAL ALLEGATIONS**

**Background**

14. Plaintiff and The Class are current and former “Phlebotomists” who worked for Defendants.<sup>5</sup> Plaintiff and The Class, as Phlebotomists, are an integral part of Defendants’ business operations of providing healthcare solutions to patients. According to Defendants, “Phlebotomists are the *catalysts* of our organization.”<sup>6</sup> They “play an *essential role*” in Defendants’ customers’ “overall healthcare experience.” *Id.* Collectively, Phlebotomists’ “work contributes to 70% of the healthcare decisions nationwide.”

15. Unfortunately, as set forth in further detail below, despite playing an integral role in Defendants’ business, Defendants willfully misclassified Plaintiff and The Class as independent contractors to cut costs and avoid compliance with labor laws.

**Defendants Misclassified Plaintiff and The Class  
as Independent Contractors**

16. In California, pursuant to the Labor Code, any person rendering service for another is presumed to be an employee. Labor Code §§2750.5, 3357. Plaintiff and The Class were employees of Defendants because they rendered services for Defendants and they do not meet the definition of independent contractors as set forth in Labor Code §§2750.5, 3353. Rather, Defendants had the right to control the manner and means in which the services for Defendants were performed by Plaintiff and The Class.

<sup>5</sup> The term “Phlebotomists” is defined in ¶135(c) below.

<sup>6</sup> <https://jobs.labcorp.com/category/phlebotomy-jobs/668/4893/1> (last visited 5/9/2017)

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1           17. The following work characteristics which Defendants voluntarily and  
2 knowingly dictated and mandated, illustrate that Plaintiff and The Class were  
3 employees who were unlawfully classified as independent contractors:

4           (a) Plaintiff and The Class performed integral services within  
5 Defendants’ usual course of business, which was to provide phlebotomy services  
6 for Defendants’ clients, and did so under Defendants’ specific direction;

7           (b) Defendants supervised and controlled the quantity and quality  
8 of Plaintiff’s and The Class’ work on a daily basis;

9           (c) Defendants determined the rate and method of Plaintiff’s and  
10 The Class’ compensation;

11           (d) Plaintiff and The Class were required to adhere to the work  
12 schedules and work hours dictated and mandated by Defendants and Plaintiff and  
13 The Class could not change their work schedules or hours without permission by  
14 Defendants;

15           (e) Defendants mandated Plaintiff and The Class arrive at least ten  
16 minutes prior to their shift start time;

17           (f) Plaintiff and The Class were not allowed to leave work early  
18 or take time off without advance approval from Defendants;

19           (g) Plaintiff and The Class were required to work at LabCorp’s  
20 work sites or otherwise at the location of Defendants’ choosing;

21           (h) Plaintiff and The Class were required to adhere to Defendants’  
22 dress code and dress professionally, including wearing lab coats or medical scrubs,  
23 and closed toe shoes;

24           (i) Plaintiff and The Class were required to use Defendants’ time  
25 sheets to track their hours of work and submit the time sheets daily to Defendants;

26           (j) Plaintiff and The Class were required to get their supervisors  
27 to sign their daily time sheets;

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1 (k) Plaintiff and The Class were required to use the materials and  
2 tools on-site provided by Defendants, including Defendants’ blood kits, supplies,  
3 gloves, computers, paperwork, and equipment;

4 (l) In addition to drawing blood, Defendants mandated Plaintiff  
5 and The Class restock the office draw rooms, to clean the draw rooms, and to  
6 process and complete paperwork according to Defendants’ procedures and  
7 policies;

8 (m) Plaintiff and The Class were required to have daily access to  
9 email, internet, and cell phones;

10 (n) Plaintiff and The Class were not allowed to use their cell  
11 phones while at work;

12 (o) Defendants placed time limits on the completion and  
13 submission of Plaintiff’s and The Class’ work;

14 (p) Defendants had the right and power to hire and discharge  
15 Plaintiff and The Class at will;

16 (q) Plaintiff’s and The Class’ job duties were not project based, but  
17 rather, performed on a continual and indefinite basis as they are an integral part of  
18 Defendants’ business operations;

19 (r) Defendants integrated Plaintiff and The Class into its  
20 workforce: they worked alongside properly classified employees, sharing the same  
21 supervisors, performing the same or materially the same functions, working the  
22 same core work days and hours, receiving the same meal and rest breaks, receiving  
23 overtime compensation for hours worked more than eight hours per day, and  
24 receiving mileage reimbursement;

25 (s) Defendants provided Plaintiff and The Class with training on  
26 its specific procedures and policies, which Plaintiff and The Class were required  
27 to adhere to;

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1 (t) Defendants required Plaintiff and The Class to attend  
2 mandatory online training;

3 (u) Defendants determined and controlled which customers  
4 Plaintiff and The Class could service, including the time, place, and manner of  
5 service; and

6 (v) Defendants retained control over the operations as a whole.

7 18. In other words, Defendants had the right to control and direct Plaintiff  
8 and The Class, not only as to the result to be accomplished by the work but also as  
9 to the details and means by which that result was accomplished. That is, Plaintiff  
10 and The Class, were subject to the will and control of Defendants not only as to  
11 what was required to be done, but how it was to be done.

12 19. Defendants’ misclassification of Plaintiff and The Class as  
13 independent contractors was done knowingly and voluntarily. Because of  
14 Defendants’ willful misclassification, Defendants violated, *inter alia*, California’s  
15 Labor Code, Wage Orders, and Regulations.

16 **Defendants’ Unlawful Conduct Harmed Competition,**  
17 **Plaintiff and The Class**

18 20. “The misclassification of workers as independent contractors creates  
19 an unfair playing field for responsible employers who honor their lawful  
20 obligations to their employees.” *State of California Department of Industrial*  
21 *Relations*.<sup>7</sup> In addition, “employee misclassification generates substantial losses  
22 to the federal government and state governments in the form of lower tax revenues,  
23 as well as to state unemployment insurance and workers’ compensation funds.”  
24 DOL.<sup>8</sup> The loss of payroll tax revenue to the state of California because of such

25 \_\_\_\_\_  
26 <sup>7</sup> [https://www.dir.ca.gov/dlse/worker\\_misclassification.html](https://www.dir.ca.gov/dlse/worker_misclassification.html) (last visited  
27 5/9/2017).

28 <sup>8</sup> <https://www.dol.gov/whd/workers/misclassification/> (last visited  
5/9/2017).

1 misclassification is “estimated at \$7 billion per year,” and it increases “reliance on  
2 the public safety net by workers who are denied access to work-based protections.”  
3 *Id.*

4 21. Due to Defendants’ willful misclassification of Plaintiff and The  
5 Class as independent contractors, Defendants have gained an unfair advantage  
6 over competition, generated substantial losses to state and federal governments,  
7 and caused Plaintiff and The Class damages and denial of work-based protections  
8 in amounts to be determined at the time of trial.

9 22. Defendants have avoided paying unemployment insurance taxes,  
10 workers’ compensation premiums, and the employer’s portion of Social Security  
11 and Medicare taxes. Defendants did not withhold federal or state taxes from  
12 Plaintiff’s and The Class’ wages, and they did not pay the employer’s share of The  
13 Federal Insurance Contributions Act (“FICA”) taxes.

14 23. Moreover, due to the misclassification, Defendants denied Plaintiff  
15 and The Class wages that were due and owing to them, including, without  
16 limitation, paid time off, vacation pay, payment of insurance premiums, and other  
17 benefits they were entitled to as employees. Accordingly, Defendants failed to  
18 timely pay Plaintiff and The Class all due and owing wages pursuant to, *inter alia*,  
19 Labor Code §§200, 201, 202, 204, and 218.

20 24. Moreover, Defendants instituted a uniform unlawful policy as  
21 follows:

22 Arrival time is 10 minutes prior to start time. Billable time is start  
23 time to end time (no longer than 8 hours per day). Do not be late.

24 In other words, Defendants mandated Plaintiff and The Class to be subject to their  
25 control and working for ten minutes per shift without compensation. As a result,  
26 Defendants failed to pay Plaintiff and The Class due and owing wages in violation  
27 of, *inter alia*, Labor Code §§204, 218, 1194, and Industrial Welfare Commission  
28 Order No. 5-2001 (“Wage Order No. 5”), ¶7, 8 Cal. Code Regs. §11050(4).

1           25. Also, because of Defendants’ unlawful misclassification of Plaintiff  
 2 and The Class, Defendants failed to maintain accurate personnel and wage records  
 3 in violation of Wage Order No. 5, ¶7, 8 Cal. Code Regs. §11050(7)(A) (holding  
 4 “every employer shall keep accurate information with respect to each employee  
 5 ....”). Labor Code §§226, 1174, and 1198.5(c). Because of the inaccurate wage  
 6 statements, Plaintiff and The Class have been harmed because their wages owed  
 7 were not properly calculated and Plaintiff and The Class were never made aware  
 8 of what their true wages were and how they were calculated.

9           26. Likewise, Plaintiff and Sub-Class Two (as defined in ¶36(b)), which  
 10 includes only *former* Phlebotomists, were not timely paid all wages due upon  
 11 discharge and/or within 72 hours of resignation required by California Labor Code  
 12 §§201-203.

### PRIVATE ATTORNEY GENERAL ACT

14           27. California’s Private Attorney General Act (“PAGA”) (Labor Code  
 15 §§2698, *et seq.*) was in effect during the Class Period and applicable to The Class.  
 16 PAGA provides that any civil penalty which may be assessed and collected by the  
 17 Labor and Workforce Development Agency (“LWDA”) for violations of the  
 18 California Labor Code may, as an alternative, be recovered through a civil action  
 19 brought by an aggrieved employee on behalf of herself or himself and other current  
 20 or former employees pursuant to procedures outlined in California Labor Code  
 21 §2699.3.

22           28. Under PAGA, an “aggrieved employee,” is any person employed by  
 23 the alleged violator and against whom one or more of the alleged violations was  
 24 committed. Plaintiffs and The Class were employed by Defendants and the alleged  
 25 violations were committed against them during their employment and they are,  
 26 therefore, aggrieved employees. Plaintiff and The Class are “aggrieved  
 27 employees” as defined by California Labor Code §2699(c) because they are all  
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1 current or former employees of Defendants, and one or more of the alleged  
2 violations were committed against them.

3 29. Pursuant to Labor Code §§2699.3 and 2699.5, an aggrieved  
4 employee, including Plaintiff, may pursue a civil action to recover PAGA civil  
5 penalties in addition to any other available penalties after: (1) giving written notice  
6 by certified mail (“Employee’s Notice”) to the LWDA and the employer of the  
7 specific provisions of the California Labor Code alleged to have been violated,  
8 including the facts and theories to support the alleged violations, and (2) the  
9 LWDA advises the employee and employer it declines to investigate the alleged  
10 violations within 60 calendar days of the postmark date of the Employee’s Notice.  
11 Labor Code §2699.3(a)(1)-(2).

12 30. On May 24, 2017, Plaintiff provided written notice by online  
13 submission and by certified mail to the LWDA and by certified mail to Defendants  
14 of the specific provisions of the California Labor Code alleged to have been  
15 violated, including the facts and theories to support the alleged violations, pursuant  
16 to California Labor Code §2699.3.

17 31. The employer may cure the alleged violation within 33 calendar days  
18 of the Employee’s Notice. Labor Code §2699.3(c)(2)(A). If the alleged violations  
19 are not cured within the 33-day period, Plaintiff may commence a civil action  
20 pursuant to Labor Code §2699. *Id.*

21 32. If the alleged violations are not cured within the 33-day period by  
22 Defendants, Plaintiff intends on amending her Complaint to add a cause of action  
23 arising under Labor Code §2699. *See* Labor Code §2699.3(a)(2)(C)  
24 (“Notwithstanding any other provision at law, a plaintiff may as a matter of right  
25 amend an existing complaint to add a cause of action arising under this part at any  
26 time within 60 days of the time periods specified in this part.”).

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**CLASS ACTION ALLEGATIONS**

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33. Plaintiff realleges and incorporates herein by reference each allegation in the preceding and subsequent paragraphs.

34. Plaintiff brings this action on behalf of herself individually and other similarly situated persons as a class action pursuant to Federal Rule of Civil Procedure 23.

35. As used herein, the following terms have the meanings set forth below:

(a) "Class Period" means the period within the four years of the filing of this Complaint through the date of final disposition of this action.

(b) "Independent Contractor" means persons classified by Defendants as IRS Form 1099 independent contractors instead of IRS Form W-2 employees.

(c) "Phlebotomists" mean all persons who worked for EMSI and/or LabCorp in California as a phlebotomist, examiner, and/or PST Specialist.<sup>9</sup>

36. Plaintiff seeks to represent the following classes of persons:

(a) Sub-Class One:

All Phlebotomists who were classified as an Independent Contractor during the Class Period.

(b) Sub-Class Two:

All former Phlebotomists who were classified as an Independent Contractor during the Class Period.<sup>10</sup>

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<sup>9</sup> These terms are meant to encompass all persons working for Defendants who performed the same or substantially the same phlebotomy job duties as Plaintiff, regardless of the title given by Defendants for the position, and it may include more job titles than those expressly listed.

<sup>10</sup> "Sub-Class Two" only applies to class members who are former California Phlebotomists for violations of Labor Code §§201 and 202. In other words, the Fifth Cause of Action for Defendants' failure to timely pay all wages due at time

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1 37. Collectively, the two sub-classes are herein referred to as “The  
2 Class.”

3 38. Excluded from The Class are Defendants, their officers and directors,  
4 families, and legal representatives, heirs, successors, or assigns, and any entity in  
5 which Defendants have a controlling interest, and any Judge assigned to this case  
6 and their immediate families.

7 39. Plaintiff reserves the right to amend or modify the class definition in  
8 connection with her motion for class certification, as a result of discovery, at trial,  
9 or as otherwise allowed by law.

10 40. Plaintiff brings this action on behalf of herself and all others  
11 similarly-situated because there is a well-defined community of interest in the  
12 litigation and the proposed sub-classes are easily ascertainable.

13 **Numerosity**

14 41. The potential members of The Class, and each of the two sub-classes  
15 independently, are so numerous joinder of all the members is impracticable. While  
16 the precise number of members of The Class, or each of the two sub-classes, has  
17 not been determined, Plaintiff is informed and believes Defendants have employed  
18 more than one hundred California employees for each sub-class.

19 42. Based on information and belief, Defendants’ records evidence the  
20 number and location of The Class, and each of the two sub-classes, respectively.

21 **Commonality and Predominance**

22 43. There are questions of law and fact common to The Class that  
23 predominate over any questions affecting only individual class members. These  
24 common questions of law and fact include, without limitation:  
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26  
27 \_\_\_\_\_  
28 of discharge or within 72 hours of resignation is only brought on behalf of Sub-  
Class Two class members.

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1 (a) Whether Defendants misclassified Plaintiff and The Class as  
2 independent contractors;

3 (b) Whether Defendants failed to pay Plaintiff and The Class all  
4 wages due and owing, including benefits and minimum wage;

5 (c) Whether Defendants failed to provide accurate itemized wage  
6 statements to Plaintiff and The Class;

7 (d) Whether Defendants failed to keep accurate employment  
8 records;

9 (e) Whether Defendants timely paid Plaintiff and The Class all due  
10 and owing wages upon discharge and/or within 72 hours of resignation;

11 (f) Whether Defendants violated the UCL; and

12 (g) Whether Plaintiff and The Class have been harmed and the  
13 proper measure of relief.

14 **Typicality**

15 44. The claims of Plaintiff are typical of the claims of The Class. Plaintiff  
16 and all members of The Class, including the two sub-classes, sustained injuries  
17 and damages arising out of and caused by Defendants' common course of conduct  
18 in violation of laws, regulations that have the force and effect of law, and statutes  
19 as alleged herein.

20 **Adequacy of Representation**

21 45. Plaintiff will fairly and adequately represent and protect the interest  
22 of The Class. Counsel who represents Plaintiff are competent and experienced in  
23 litigating large employment class actions.

24 **Superiority of Class Action**

25 46. A class action is superior to other available means for the fair and  
26 efficient adjudication of this controversy. Individual joinder of The Class is not  
27 practicable, and questions of law and fact common to The Class predominate over  
28



1 any questions affecting only individual members of The Class. Each member of  
 2 The Class has been damaged and is entitled to recovery because of Defendants’  
 3 uniform unlawful policy and/or practices described herein. There are no  
 4 individualized factual or legal issues for the court to resolve that would prevent  
 5 this case from proceeding as a class action. Class action treatment will allow those  
 6 similarly situated persons to litigate their claims in the manner that is most efficient  
 7 and economical for the parties and the judicial system. Plaintiff is unaware of any  
 8 difficulties that are likely to be encountered in the management of this action that  
 9 would preclude its maintenance as a class action.

10 **COUNT I**  
 11 **Willful Misclassification**  
 12 **In Violation of Labor Code §226.8**  
 13 **(On Behalf of Plaintiff and The Class)**

14 47. Plaintiff hereby realleges and incorporates by reference the  
 15 allegations contained in the paragraphs above, as if fully set forth herein.

16 48. Labor Code §226.8(a)(1) makes it unlawful for any person or  
 17 employer to engage in the willful “misclassification of an individual as an  
 18 independent contractor.”

19 49. For a violation of Labor Code §226.8(a), the employer shall be  
 20 subject to a civil penalty of not less than \$5,000 and not more than \$15,000 for  
 21 each violation, in addition to any other penalties or fines permitted by law. Labor  
 22 Code §226.8(b). If the employer is found to have engaged in a pattern or practice  
 23 of these violations, the employer shall be subject to a civil penalty of not less than  
 24 \$10,000 and not more than \$25,000 for each violation, in addition to any other  
 25 penalties or fines permitted by law. Labor Code §226.8(c).

26 50. In addition to any other remedy that has been ordered for a violation  
 27 of Labor Code §226.8(a), the court shall order the employer to publicly display  
 28 notice of its violation in compliance with Labor Code §§226.8(e), (f) and (h).



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1 51. Defendants willfully engaged in a pattern and practice of violating  
2 Labor Code §226.8(a). Defendants misclassification of Plaintiff and The Class as  
3 independent contractors was willful because it was done knowingly and  
4 voluntarily.

5 52. Plaintiff and The Class are entitled to civil penalties pursuant to Labor  
6 Code §226.8(b) and (c) because of Defendants pattern or practice of violating  
7 Labor Code §226.8(a). As a direct and proximate result of Defendants’ unlawful  
8 misclassification, Plaintiff and The Class have been damaged in an amount to be  
9 proven at the time of trial.

10 53. Plaintiff is also entitled to costs and reasonable attorneys’ fees  
11 pursuant to Labor Code §§218.5, 2699(g), Code of Civil Procedure §1021.5, and  
12 any other applicable provision for attorneys’ fees and costs.

13 **COUNT II**  
14 **Failure to Pay Minimum Wages**  
15 **In Violation of Labor Code §1197**  
16 **(On Behalf of Plaintiff and The Class)**

17 54. Plaintiff hereby realleges and incorporates by reference the  
18 allegations contained in the paragraphs above, as if fully set forth herein.

19 55. Labor Code §1197 provides, “[t]he minimum wage for employees ...  
20 fixed by the commission ... is the minimum wage to be paid to employees, and  
21 payment of a less wage than the minimum so fixed is unlawful.” The statutory  
22 minimum wages are set forth in Labor Code §1182.12.

23 56. According to the applicable Regulation, 8 Cal. Code Regs.  
24 §11050(4)(B) and Wage Order No. 5, Subdivision (4)(B):

25 Every employer shall pay to each employee, on the established  
26 payday for the period involved, not less than the applicable minimum  
27 wage for all hours worked in the payroll period, whether the  
28 remuneration is measured by time, piece, commission, or otherwise.

1           57. “Hours worked” is broadly defined as “the time during which an  
2 employee is subject to the control of an employer, and includes all the time the  
3 employee is suffered or permitted to work, whether or not required to do so ....” 8  
4 Cal. Code Regs. §11050(2)(K); Wage Order No. 5, ¶2(K). California workers must  
5 receive the minimum wage for each hour worked during the payroll period, even  
6 if the agreed-upon compensation exceeds the minimum wage for the total hours  
7 worked. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 323 (2005); *Gonzalez v.*  
8 *Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). All wages are due and  
9 payable twice during each calendar month. Labor Code §204(a).

10           58. Defendants required Plaintiff and The Class to be subject to  
11 Defendants’ control during hours for which Plaintiff and The Class were not  
12 compensated. Specifically, Defendants instituted a uniform unlawful policy as  
13 follows:

14           Arrival time is 10 minutes prior to start time. Billable time is start  
15           time to end time (no longer than 8 hours per day). Do not be late.

16           59. In other words, Defendants mandated Plaintiff and The Class to be  
17 subject to their control and working for ten minutes per shift without any pay.  
18 Defendants knew Plaintiff and The Class were subject to their control for these ten  
19 minutes “prior to start time” without compensation as mandated by Defendants’  
20 unlawful policy. As a direct result, Defendants failed to pay Plaintiff and The Class  
21 the minimum wage for each hour worked during the payroll period.

22           60. Pursuant to Labor Code §1194(a), “... any employee receiving less  
23 than the legal minimum wage ... applicable to the employee is entitled to recover  
24 in a civil action the unpaid balance of the full amount of this minimum wage ...  
25 including interest thereon, reasonable attorney’s fees, and costs of suit.”

26           61. Because Plaintiff and The Class suffered damage as a direct result of  
27 Defendants’ failure to pay them for all hours worked, Plaintiff and The Class are  
28 entitled to recover the full amount of the difference between what they were paid

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1 and what they were required to be paid, including interest thereon, reasonable  
2 attorneys’ fees, and costs of suit. Labor Code §§1194(a), 1194.3.

3 62. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and The  
4 Class are entitled to “recover liquidated damages in an amount equal to the wages  
5 unlawfully unpaid and interest thereon.”

6 **COUNT III**  
7 **Failure to Timely Pay All Wages Due and Owing**  
8 **Labor Code §218**  
9 **(On Behalf of Plaintiff and The Class)**

10 63. Plaintiff hereby realleges and incorporates by reference the  
11 allegations contained in the paragraphs above, as if fully set forth herein.

12 64. California Labor Code §218 provides for a private right of action for  
13 “any wage claimant to sue directly or through an assignee for any wages or penalty  
14 due him” under the provisions of Article 1 (§§200-244 of the Labor Code).

15 65. “Wages” are defined as “all amounts for labor performed by  
16 employees of every description, whether the amount is fixed or ascertained by the  
17 standard of time, task, piece, commission basis, or other method of calculation.”  
18 Labor Code §200(a). The California Supreme Court construes the term “wages”  
19 broadly to ‘include not only the periodic monetary earnings of the employee but  
20 also the other benefits to which he is entitled as part of his compensation.”  
21 *Schachter v. Citigroup, Inc.*, 47 Cal. 4th 610, 618, 218 P.3d 262 (2009) (citing  
22 examples of “wages” to include money, room, board, clothing, vacation pay, sick  
23 pay, and insurance and incentive compensation, such as bonuses and profit  
24 sharing plans).

25 66. Due to the misclassification of Plaintiff and The Class as independent  
26 contractors, Defendants denied Plaintiff and The Class wages that were due and  
27 owing to them, including, without limitation, paid time off, vacation pay, payment  
28 of insurance premiums, and other benefits they were entitled to as employees.



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1 records showing the hours worked daily by, time records, and the accurate wages  
2 paid to its employees. 8 Cal. Code Regs. §11050(7); Labor Code §1174(c) and (d).

3 73. Defendants knowingly and willfully failed to maintain proper records  
4 in violation of Labor Code §§226, 1174 and 8 Cal. Code Regs. §11050(7).

5 74. By failing to provide accurate wage statements and failing to maintain  
6 accurate records, Defendants have injured Plaintiff and The Class and made it  
7 difficult to calculate unpaid wages earned and due to Plaintiffs and The Class.

8 75. Labor Code §§226(e) and (h) provide for the remedy for the  
9 violations described above:

10 (e) An employee suffering injury as a result of a knowing  
11 and intentional failure by an employer to comply with subdivision (a)  
12 is entitled to recover the greater of all actual damages or fifty dollars  
13 (\$50) for the initial pay period in which a violation occurs and one  
14 hundred dollars (\$100) per employee for each violation in a  
15 subsequent pay period, not to exceed an aggregate penalty of four  
thousand dollars (\$4,000), and is entitled to an award of costs and  
reasonable attorney's fees.

16 (h) An employee may also bring an action for injunctive  
17 relief to ensure compliance with this section, and is entitled to an  
award of costs and reasonable attorney's fees

18 76. The failure of Defendants to comply with Labor Code §1174 is also  
19 unlawful pursuant to Labor Code §1175, which provides for a civil penalty of five  
20 hundred dollars (\$500).

21 77. Plaintiff and The Class are entitled to recover penalties and damages  
22 and cost of suit, attorneys' fees, and injunctive relief pursuant to the identified laws  
23 and Labor Code §226(h).  
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**COUNT V**  
**Failure to Timely Pay Wages Due at Discharge or Resignation**  
**In Violation of Labor Code §§201-203**  
**(On Behalf of Plaintiff and Sub-Class Two)**

78. Plaintiff hereby realleges and incorporates by reference the allegations contained in the paragraphs above, as if fully set forth herein

79. Labor Code §201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

80. Labor Code §202(a) provides in pertinent part that an employee quits his or her employment, his or her wages are due and payable within 72 hours.

81. Labor Code §203 provides in pertinent part: “If an employer willfully fails to pay ... in accordance with Section[] 201 ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid ... but the wages shall not continue for more than 30 days.”

82. Defendants failed to pay Plaintiff and Sub-Class Two all wages due and owing at the time of discharge and/or within 72 hours of resignation. To date, Plaintiff and The Class have not received all due and owing wages.

83. Because of Defendants’ willful conduct in not paying all wages due on or within 72 hours of the last day of Plaintiff’s and Sub-Class Two’s employment with Defendants, Plaintiff and Sub-Class Two are entitled to 30 days’ wages as a penalty under Labor Code §203 for failure to pay wages, together with interest thereon, and attorneys’ fees and costs.

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**COUNT VI**  
**Unlawful and Unfair Business Practices**  
**In Violation of Bus. & Prof. Code §§17200, *et seq.***  
**(On Behalf of Plaintiff and The Class)**

84. Plaintiff hereby realleges and incorporates by reference the allegations contained in the paragraphs above, as if fully set forth herein.

85. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair business practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

86. Defendants have conducted the following unlawful activities:

(a) violations of Labor Code §226.8 by willfully misclassifying Plaintiff and The Class as independent contractors;

(b) failing to timely pay all wages due and owing, including benefits and minimum wage, in violation of Labor Code §§204, 218, 1194, and 1197;

(c) violations of Labor Code §§226, 1174, 1174.5, and Wage Order No. 5, ¶7, 8 Cal. Code Regs. §11050(7), by failing to provide Plaintiff and The Class with accurate itemized wage statements and failing to properly maintain records;

(d) violations of Labor Code §§201-203, by failing to pay Plaintiff and Sub-Class Two all wages earned and unpaid at the time of discharge and/or within 72 hours of resignation;

(e) violations of Labor Code §§2808, 2810.5, by failing to provide Plaintiff and The Class proper written notices; and

(f) violations of Labor Code §§245, *et seq.* for failing to provide Plaintiff and The Class sick days, failing to provide proper postings, and failure to keep adequate records.



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1           87. Defendants’ activities also constitute unfair practices in violation of  
2 Bus. & Prof. Code §§17200, *et seq.*, because Defendants’ practices violate the  
3 above noted laws, and/or violate an established public policy, and/or the practice  
4 is immoral, unethical, oppressive, unscrupulous, and substantially injurious to  
5 Plaintiff and The Class.

6           88. The identified violations of the noted laws constitute business  
7 practices because they were done repeatedly over a period, and in a systematic  
8 manner to the detriment of Plaintiff and The Class

9           89. Because of Defendants’ violations of the Labor Code and other  
10 identified laws, Plaintiff and The Class have suffered injury-in-fact and have lost  
11 money or property because of Defendants’ practices. This injury-in-fact and loss  
12 of money or property consists of the lost wages and other restitutionary remedies  
13 provided by the Labor Code as detailed in this Complaint and other resulting  
14 harms. Plaintiff and The Class are entitled to restitution, an injunction, declaratory,  
15 and other equitable relief against such unlawful practices to prevent future damage  
16 for which there is no adequate remedy at law.

17           90. As a direct and proximate result of the unfair business practices of  
18 Defendants, Plaintiff and The Class are entitled to equitable and injunctive relief,  
19 including full restitution of all wages which have been unlawfully lost because of  
20 the business acts and practices described herein and enjoining Defendants to cease  
21 and desist from engaging in the practices described herein for the maximum time  
22 permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

23           91. The unlawful and unfair conduct alleged herein is continuing, and  
24 there is no indication that Defendants will refrain from such activity in the future.  
25 Plaintiff believes and alleges that if Defendants are not enjoined from the conduct  
26 set forth in this Complaint, it will continue to violate California labor laws.  
27 Plaintiff further requests that the court issue a preliminary and permanent  
28 injunction.



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1 92. Plaintiff is also entitled to and hereby claims attorneys’ fees and costs,  
2 pursuant to the private attorney general theory doctrine (Code of Civil Procedure  
3 §1021.5), and any other applicable provision for attorney fees and costs, based  
4 upon the violation of the underlying public policies.

5 **PRAYER FOR RELIEF**

6 93. Wherefore, Plaintiff prays for a judgment against Defendants as  
7 follows:

8 A. That the Court determine that this action may be maintained as  
9 a class action with the named Plaintiff appointed as The Class Representative;

10 B. For the attorneys appearing on the above-caption to be named  
11 Class counsel;

12 C. For nominal, actual, and compensatory damages, including lost  
13 wages, according to proof at trial;

14 D. For restitution of all monies, wages, expenses, and costs due to  
15 Plaintiff and The Class;

16 E. For disgorged profits from the unlawful and unfair business  
17 practices in violation of Bus. & Prof. Code §§17200, *et seq.*;

18 F. For reasonable attorneys’ fees, expenses, costs, and interest  
19 pursuant to Labor Code §218.5, 218.6, 226, 1194, 1194.3, 2699(g), Code of Civil  
20 Procedure §1021.5, and as otherwise allowed by law;

21 G. For liquidated damages and penalties pursuant to Labor Code  
22 §§203, 226, 226.8, 510, 1194.2, 1197.1, 2699.3, 2699.5, and as otherwise allowed  
23 by law;

24 H. For injunctive and equitable relief pursuant to Labor Code  
25 §1194.5, Bus. & Prof. Code §§17200, *et seq.*, and as otherwise allowed by law;

26 I. For declaratory relief as deemed proper;

27 J. For pre-judgment and post-judgment interest to the extent  
28 allowable by law; and

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K. For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff, individually, and on behalf of The Class, hereby demand trial by jury on all issues so triable.

Dated: May 24, 2017

ZELDES HAEGGQUIST & ECK, LLP  
ALREEN HAEGGQUIST (221858)  
AARON M. OLSEN (259923)



By: \_\_\_\_\_

AARON M. OLSEN

225 Broadway, Suite 2050  
San Diego, CA 92101  
Telephone: 619-342-8000  
Facsimile: 619-342-7878  
alreenh@zhlaw.com  
aarono@zhlaw.com

Attorneys for Plaintiff

JS 44 (Rev. 12/12)

**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**

MARIA T. GONZALEZ, on Behalf of Herself and All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Aaron M. Olsen, Zedles Haeggquist & Eck, LLP  
225 Broadway, Suite 2050, San Diego, CA 92101  
619-342-8000

**DEFENDANTS**

EXAMINATION MANAGEMENT SERVICES, INC., a Nevada Corporation; LABORATORY CORPORATION OF AMERICA HOLDINGS, a Delaware Corporation; and DOES 1-10, inclusive

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

**'17CV1077 JLS JLB**

**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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excludes Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:  
Labor Code Violations (sections 201-203, 218, 226, 226.3, 1174, 1194, 1197, et seq.)

**VII. REQUESTED IN COMPLAINT:**

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 04/24/2017 SIGNATURE OF ATTORNEY OF RECORD: 

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [EMSI and LapCorp Sued Over Purported CA Labor Law Violations](#)

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