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7 Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC  
8

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11  
12 NANCY PIERCE, individually, and on  
13 behalf of other members of the general  
public and all persons similarly situated,

14 Plaintiff,

15 vs.

16 ENCORE HEALTH RESOURCES, LLC.  
17 and DOES 1 through 100, inclusive,

18 Defendants.  
19  
20

CASE NO.

**NOTICE OF REMOVAL OF ACTION  
TO THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA  
PURSUANT TO 28 U.S.C. §§ 1332,  
1367(a), 1441(a) AND (b)**

[Filed concurrently with Declarations of  
Leila Nourani, Christine Hutchinson, and  
Christy Green; Civil Case Cover Sheet;  
Certification and Notice of Interested  
Parties; and Corporate Disclosure  
Statement]

21  
22 **TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT**  
23 **COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF,**  
24 **AND HER COUNSEL OF RECORD:**

25 **PLEASE TAKE NOTICE** that Defendant Encore Health Resources, LLC  
26 (“Defendant”) hereby invokes this Court’s jurisdiction under the provisions of 28 U.S.C.  
27 §§ 1332, 1367(a), 1441(a), and 1441(b) to remove this action from the Superior Court of  
28

1 California for the County of Alameda based on diversity jurisdiction. In support thereof,  
2 Defendant avers the following:

3 **STATEMENT OF JURISDICTION**

4 1. The District Court has diversity jurisdiction under 28 U.S.C. § 1332(a)  
5 where the matter is between citizens of different states and the amount in controversy  
6 exceeds the sum or value of \$75,000, exclusive of interest and costs. Where the claims of  
7 at least one named Plaintiff satisfies the amount-in-controversy requirement and the other  
8 elements of jurisdiction are present, a district court may exercise supplemental  
9 jurisdiction under 28 U.S.C. § 1367 over the claims of the putative class members in the  
10 same case, even if those claims are for less than the jurisdictional minimum for diversity  
11 jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 549, 552–566  
12 (2005); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 940–941 (9th Cir. 2001).

13 2. As set forth below, jurisdiction within the District Court is proper on the  
14 grounds herein described and the Action is timely and properly removed upon the filing  
15 of this Notice.

16 **PLEADINGS AND PROCESS**

17 3. On May 25, 2018, Plaintiff Nancy Pierce filed a putative class and  
18 representative action Complaint in the Superior Court of California for the County of  
19 Alameda, bearing Case Number RG18906387, and alleging the following claims: (1)  
20 Failure to Pay Overtime Wages in Violation of the California Labor Code; (2) Failure to  
21 Provide Accurate Wage Statements in Violation of the Labor Code; (3) Failure to Timely  
22 Pay All Wages Due and Owing in Violation of the California Labor Code; (4) Violation  
23 of the Private Attorneys General Act; and (5) Unfair Business Practices. (See Complaint  
24 attached as Exhibit A to the Declaration of Leila Nourani (“Nourani Decl.”), ¶ 2.)

25 4. Defendant was personally served with a copy of Plaintiffs’ Summons,  
26 Complaint and other related court documents on June 7, 2018. (See Service of Process  
27 Transmittal Sheet attached as Exhibit A to Nourani Decl., ¶¶ 2-3).

28 5. On July 6, 2018, Defendant filed its Answer in Alameda Superior Court.

1 (See Answer attached as Exhibit B to Nourani Decl., ¶ 3).

2 6. As of the date of this Notice of Removal, the pleadings and papers in Exhibit  
3 A constitute all court filings with which Defendant has been served. (Nourani Decl. ¶ 5.)

4 **TIMELINESS OF REMOVAL**

5 7. This Notice of Removal has been filed within thirty (30) days after  
6 Defendant was served with a copy of Plaintiffs' Summons and Complaint upon which  
7 this action is based. *See Murphy Bros., Inc. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,  
8 353 (1999) (actual service of process is the official trigger for responsive action by a  
9 named defendant as opposed to receipt of complaint through other means). This Notice  
10 of Removal is therefore filed within the time period provided by 28 U.S.C. § 1446(b).

11 **NOTICE TO ALL PARTIES AND STATE COURT**

12 8. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies  
13 that a copy of this Notice of Removal and all supporting papers promptly will be served  
14 on Plaintiff's counsel and filed with the Clerk and the Alameda County Superior Court.  
15 Therefore, all procedural requirements under 28 U.S.C. § 1446 have been satisfied.

16 **VENUE**

17 9. Venue of this action lies in the United States District Court for the Northern  
18 District of California, pursuant to 28 U.S.C. § 1441 *et seq.* and 28 U.S.C. § 1391(b)(3), as  
19 this is the judicial district where Plaintiff filed her Complaint in State Court, and Plaintiff  
20 alleges that Defendant conducts business in the State of California. (Complaint, ¶ 2.)

21 **DIVERSITY OF CITIZENSHIP**

22 10. Diversity jurisdiction exists where there is diversity of citizenship between  
23 the parties at the time the lawsuit is filed. *Grupo Dataflux v. Atlas Global Group, LP*,  
24 541 U.S. 567, 571 (2004). In class actions, only the citizenship of the named Plaintiff is  
25 relevant to the analysis of whether there is complete diversity under 28 U.S.C. §1332.  
26 *Hart v. FedEx Ground Package Sys.*, 457 F.3d 675, 676 (7th Cir. 2006). As shown  
27 below, there is complete diversity of citizenship because this is an action between  
28

1 Plaintiff, a citizen of Oklahoma, on the one hand, and Defendant, a citizen of Delaware  
2 and Tennessee, on the other hand.

3 11. To establish citizenship for diversity purposes, a natural person must be a  
4 citizen of the United States and domiciled in a particular state. *Kantor v. Wellesley*  
5 *Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Persons are domiciled in the places  
6 where they reside with the intent to remain or to which they intend to return. *Kanter v.*  
7 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

8 12. Plaintiff was, at the time this action was commenced, and still is, a resident  
9 and citizen of the State of Oklahoma. (See Complaint ¶ 3, attached as Exhibit A to  
10 Nourani Decl. at ¶ 2; see also Declaration of Christine Hutchinson (“Hutchinson Decl.”),  
11 ¶ 2.)

12 13. The citizenship of a limited liability company for purposes of diversity  
13 jurisdiction is the citizenship of its members. *Johnson v. Columbia Properties*  
14 *Anchorage, LP* (9th Cir. 2006) 437 F.3d 894, 899.

15 14. The citizenship of a corporation is the state where it is incorporated and the  
16 state where it has its principal place of business. 28 U.S.C. § 1332(c). With respect to  
17 ascertaining a corporation’s principal place of business for purposes of diversity  
18 jurisdiction, the United States Supreme Court has adopted the “nerve center test.” *Hertz*  
19 *v. Friend*, 130 S. Ct. 1181, 1186 (2010). Under the nerve center test, a corporation’s  
20 principal place of business is where a corporation’s high level officers direct, control and  
21 coordinate the corporation's activities. *Id.* A corporation can only have one “nerve  
22 center.” *Id.* at 93-94. In evaluating where a corporation’s “nerve center” is located,  
23 courts will look to the center of overall direction, control, and coordination of the  
24 company and will no longer weight corporate functions, assets, or revenues in each state.  
25 *Id.*

26 15. Defendant Encore Health Resources, LLC was, at the time of filing of the  
27 Complaint, and still is, a limited liability company formed under the laws of the State of  
28 Texas. (Declaration of Christy Green (“Green Decl.”), ¶ 2.) Its sole member is Specialist

1 Resources Global, Inc. dba EMIDS. (*Id.*) Specialist Resources Global, Inc. was, at the  
2 time the Complaint was filed in state court, and still is, at the time of removal, a Delaware  
3 company with its principal place of business in Franklin, Tennessee. (Green Decl., ¶ 3.)  
4 The Company's headquarters are located in Franklin, Tennessee, where its high level  
5 officers direct, control and coordinate Defendant's activities. (*Id.*) The vast majority of  
6 administrative, executive and decision-making functions occur at, and are controlled  
7 from, the Company's headquarters in Franklin, Tennessee. (*Id.*) Therefore, Defendant  
8 was, at the time the Complaint was filed in state court, and still is, a citizen of the State of  
9 Delaware and Tennessee within the meaning of section 1332(c)(1).

10 16. The presence of Doe defendants in this case has no bearing on the diversity  
11 with respect to removal. *See* 28 U.S.C. § 1441(b)(1) (for purposes of removal, "the  
12 citizenship of defendants sued under fictitious names shall be disregarded"). DOES 1  
13 through 100 here are fictitious defendants, are not parties to this action and have not been  
14 named or served. They should accordingly be disregarded in determining the court's  
15 original jurisdiction over this matter.

#### 16 AMOUNT IN CONTROVERSY

17 17. Although the Complaint does not specify the dollar amount of damages  
18 being sought, Defendant has a reasonable good faith belief that the named Plaintiff seeks  
19 damages in excess of \$75,000 and the jurisdictional requirements of this Court.

20 18. Without conceding Plaintiff is entitled to damages or could recover damages  
21 in any amount whatsoever, the amount in controversy in this action exceeds \$75,000.  
22 28 U.S.C. § 1332(a). Where a plaintiff's state court complaint is silent as to the amount  
23 of damages claimed, the removing defendant need only establish it is more probable than  
24 not that plaintiff's claim exceeds the jurisdictional minimum. *Sanchez v. Monumental*  
25 *Life Ins. Co.*, 102 F.3d 398, 403-404 (9th Cir. 1996).

26 19. Additionally, where the defendant seeks to remove a class action under  
27 traditional diversity jurisdiction, as long as one named Plaintiff satisfies the amount-in-  
28 controversy requirement (and there is complete diversity), a district court may exercise

1 supplemental jurisdiction over the claims of the other plaintiffs in the same case, even if  
2 those claims are for less than the jurisdictional minimum for diversity jurisdiction. *Exxon*  
3 *Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 549, 552–566 (2005); *Gibson v. Chrysler*  
4 *Corp.*, 261 F.3d 927, 940–941 (9th Cir. 2001); *see also* 28 U.S.C. § 1367 (“[I]n any civil  
5 action in which the district courts have original jurisdiction, the district courts shall have  
6 supplemental jurisdiction over all other claims that are so related to claims in the action  
7 within such original jurisdiction that they form part of the same case or controversy under  
8 Article III of the United States Constitution.”).

9         20. The Court must also presume that Plaintiff will prevail on each and every  
10 one of her claims in determining whether the amount in controversy is satisfied. *Kenneth*  
11 *Rothschild Trust v. Morgan Stanley Dean Witter* (C.D. Cal. 2002) 199 F. Supp. 2d 993,  
12 1001, citing *Burns v. Windsor Ins. Co.* (11th Cir. 1994) 31 F.3d 1092, 1096 (the amount  
13 in controversy analysis presumes that “plaintiff prevails on liability”), citing *Angus v.*  
14 *Shiley Inc.*, (3rd Cir. 1993) 989 F.2d 142, 146 (“the amount in controversy is not  
15 measured by the low end of an open-ended claim, but rather by reasonable reading of the  
16 value of the rights being litigated”). Therefore, the argument and facts set forth below  
17 may appropriately be considered in determining whether the jurisdictional amount in  
18 controversy is satisfied. *Cohn v. Petsmart, Inc.* (9th Cir. 2002) 281 F.3d 837, 843, n. 1.

19         21. The Complaint asserts the following causes of action: (1) Failure to Pay  
20 Overtime Wages in Violation of the California Labor Code; (2) Failure to Provide  
21 Accurate Wage Statements in Violation of the Labor Code; (3) Failure to Timely Pay All  
22 Wages Due and Owing in Violation of the California Labor Code; (4) Violation of the  
23 Private Attorneys General Act; and (5) Unfair Business Practices. (See Complaint.)  
24 Plaintiff seeks, *inter alia*, the following forms of relief: (1) unpaid overtime; (2) waiting  
25 time penalties; (3) statutory and civil penalties; (4) PAGA penalties; and (5) attorney’s  
26 fees and costs. (Complaint, Prayer for Relief.)

27         22. **Overtime** – Plaintiff alleges that she and other putative class members  
28 worked for Defendant in California as “At the Elbow” consultants (“ATE”) but were not

1 paid any overtime despite often working twelve (12) hours a day, seven (7) days a week.  
2 (Complaint, ¶¶ 6, 10, 13, 32.) Plaintiff alleges that she is entitled to recover the alleged  
3 unpaid overtime during the period beginning four years before the filing of the Complaint  
4 to the date of judgment. (Complaint, ¶ 52.) Here, during the relevant time period of May  
5 25, 2014 to the date of removal, Plaintiff was paid an hourly rate of \$50. (Hutchinson  
6 Decl., ¶ 3.) During this relevant time period, Plaintiff worked a total of 78 hours in  
7 excess of 8 hours in a day. (Hutchinson Decl., ¶ 3.) This amounts to a total of \$1,950 of  
8 alleged unpaid overtime.

9       23. **Penalties** – Plaintiff also seeks civil penalties under Labor Code section 558,  
10 which provides, for an initial violation, \$50 for each underpaid employee for each pay  
11 period for which the employee was underpaid, and for each subsequent violation, \$100  
12 for each underpaid employee for each pay period for which the employee was underpaid.  
13 (See Complaint, ¶ 53; Lab. Code, § 558.) During the relevant time period of March 21,  
14 2017 to the date of removal, Plaintiff received payments from Defendant during a total of  
15 two pay periods. (Hutchinson Decl., ¶ 5.) Thus, penalties under Labor Code section 558  
16 amount to \$150.

17       24. **Inaccurate Wage Statements** – Plaintiff alleges that Defendant knowingly  
18 and intentionally failed to provide timely, accurate, and itemized wage statements in  
19 violation of Labor Code section 226. (Complaint, ¶ 55.) She seeks the greater of all  
20 actual damages or \$50 for the initial pay period in which a violation occurred and \$100  
21 for each violation in a subsequent pay period. (Complaint, ¶ 57.) Plaintiff further alleges  
22 that Defendant is also subject to civil penalties for Labor Code sections 226(a) violations  
23 in the amount of \$250 per employee per violation in an initial citation and \$1,000 per  
24 employee for each violation in a subsequent citation. (Complaint, ¶ 57.) Plaintiff seeks  
25 damages for the period beginning one year prior to the date of filing the Complaint (see  
26 Complaint, ¶ 33), making the relevant time period May 25, 2017 to the date of removal.  
27 During this time period, Plaintiff received payments from Defendant during a total of one  
28 pay period. (Hutchinson Decl., ¶ 5.) Thus, penalties under Labor Code section 226 and

1 226.3 amount to \$300.00.

2       25. **Waiting Time Penalties** – Plaintiff alleges that Defendant has willfully  
3 failed to pay all wages due to Plaintiff in violation of Labor Code sections 201 and 202  
4 and therefore is subject to a maximum waiting time penalty of 30 days of wages.  
5 (Complaint, ¶¶ 60-62.) Plaintiff’s hourly rate was \$50. (Hutchinson Decl., ¶ 4.)  
6 Plaintiff’s last day worked for Defendant was May 19, 2017. (Hutchinson Decl., ¶ 4.)  
7 Plaintiff alleges that she was required to work twelve (12) hours a day. (Complaint, ¶  
8 13.) Thus, Plaintiff’s alleged waiting time penalties would amount to 12 hours X \$50 X  
9 30 days, or \$18,000.

10       26. **PAGA Penalties** - Plaintiff also seeks penalties under PAGA and demands  
11 the maximum penalty of \$100 for each initial violation and \$200 for each subsequent  
12 violation per pay period. (Complaint, ¶ 69.) PAGA penalties are subject to a one (1)  
13 year statute of limitations. See Cal. Code Civ. Proc., § 340(a). However, this limitations  
14 period is tolled during the 65 day period during which the LWDA is assessing, or the  
15 employer may be curing, the alleged violations. See Cal. Lab. Code, § 2699.3, subs.  
16 (a)(2)(B) and (d). Plaintiff alleges that she and the “aggrieved employees” have sent a  
17 letter to the LWDA detailing the alleged violations upon which their PAGA claim is  
18 premised. (See Complaint, ¶¶ 46, 47.) This makes the relevant time period one (1) year  
19 and 65 days preceding the filing of the Complaint on May 25, 2018 to the date of  
20 removal, *i.e.*, March 21, 2017 to the date of removal. During this time period, Plaintiff  
21 received payments from Defendant during a total of two pay periods. (Hutchinson Decl.,  
22 ¶ 5.) Thus, PAGA penalties would amount to \$200.00.

23       27. **Attorney’s Fees** – Plaintiff also request an award of attorney’s fees.  
24 (Complaint, Prayer for Relief.) Although Plaintiff seeks an unspecified amount of  
25 attorneys’ fees, such fees may be taken into account to determine jurisdictional amounts  
26 if a statute authorizes fees to a successful litigant. *Goldberg v. C.P.C. International, Inc.*  
27 (9th Cir. 1982) 678 F.2d 1365, 1367; *Galt G/S v. JSS Scandinavia* (9th Cir. 1998) 142  
28 F.3d 1150, 1155-1156; *Guglielmino v. McKee Foods Corp.* (9th Cir. 2007) 506 F.3d 696,



1 700 (“[w]here an underlying statute authorizes an award of attorneys’ fees, either with  
 2 mandatory or discretionary language, such fees may be included in the amount in  
 3 controversy”); *Simmons v. PCR Tech.* (N.D. Cal. 2002) 209 F. Supp. 2d 1029, 1035.  
 4 “Where the law entitles the prevailing plaintiff to recover reasonable attorney fees, a  
 5 reasonable estimate of fees likely to be incurred to resolution is part of the benefit  
 6 permissibly sought by the plaintiff and thus contributes to the amount in controversy.”  
 7 *Brady v. Mercedes-Benz USA, Inc.* (N.D. Cal. 2002) 243 F. Supp 2d 1004, 1011;  
 8 *Celestino v. Renal Advantage, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 33827, \*11  
 9 (“the amount in controversy includes not only damages accrued up to the time of  
 10 removal, but also a reasonable assessment of damages likely to be accrued after the time  
 11 of removal”). Here, counsel for Defendant reasonably estimates that attorney’s fees  
 12 alone will exceed the sum of \$75,000 through trial. (Nourani Decl., ¶ 6.) Defendant’s  
 13 attorney, Leila Nourani, has represented employers in employment litigation for over 20  
 14 years in California and is familiar with fees awarded to plaintiff’s counsel in similar  
 15 actions filed in California and federal court. (*Id.*) Based on Ms. Nourani’s experience  
 16 and Plaintiff’s allegations, it would be reasonable to expect that attorneys’ fees alone in  
 17 this case will exceed the sum of \$75,000 through trial. (*Id.*)

18 WHEREFORE, Defendant respectfully removes the above action pending in the  
 19 Alameda County Superior Court.

20  
 21 DATED: July 9, 2018

JACKSON LEWIS P.C.

22  
 23 By:           /s/ Leila Nourani          

24 Leila Nourani  
 25 Damien P. DeLaney  
 26 JeeHyun Yoon

27 Attorneys for Defendant  
 28 ENCORE HEALTH RESOURCES, LLC

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7 Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC  
8

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11  
12 NANCY PIERCE, individually, and on  
13 behalf of other members of the general  
public and all persons similarly situated,

14 Plaintiff,

15 vs.

16 ENCORE HEALTH RESOURCES, LLC.  
17 and DOES 1 through 100, inclusive,

18 Defendants.  
19  
20  
21

CASE NO.

**DECLARATION OF LEILA  
NOURANI IN SUPPORT OF  
DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION TO THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
CALIFORNIA PURSUANT TO 28  
U.S.C. §§ 1332, 1367(a), 1441(a) AND (b)**

[Filed concurrently with Notice of  
Removal; Declarations of Christy Green  
and Christine Hutchinson; Civil Case  
Cover Sheet; Certification and Notice of  
Interested Parties; and Corporate  
Disclosure Statement]

**DECLARATION OF LEILA NOURANI**

I, Leila Nourani, hereby declare as follows:

1. I am an attorney admitted to practice before all courts of the State of California and before this Court. I am a principal with the law firm Jackson Lewis P.C., counsel of record for Defendant Encore Health Resources, LLC (“Defendant”). I make the following declaration based on personal knowledge, unless otherwise stated, and on my review of and familiarity with Defendant’s files and documents in the above-captioned matter. If called as a witness, I could and would competently testify to the facts contained herein. I submit this declaration in support of Defendant’s Notice of Removal to the United States District Court for the Northern District of California.

2. On May 25, 2018, Plaintiff Nancy Pierce filed a putative class and representative action Complaint in the Superior Court of California for the County of Alameda, bearing Case Number RG18906387, and alleging the following claims: (1) Failure to Pay Overtime Wages in Violation of the California Labor Code; (2) Failure to Provide Accurate Wage Statements in Violation of the Labor Code; (3) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code; (4) Violation of the Private Attorneys General Act; and (5) Unfair Business Practices. A true and correct copy of this Complaint is attached hereto as Exhibit A.

3. According to the Service of Process Transmittal Sheet, Defendant was personally served with a copy of Plaintiffs’ Summons, Complaint and other related court documents on June 7, 2018. A true and correct copy of the Service of Transmittal Sheet is also attached hereto as Exhibit A.

4. On July 6, 2018, Defendant filed its Answer in Alameda Superior Court. A true and correct copy of this Answer is attached hereto as Exhibit B.

5. As of the date of this Notice of Removal, the pleadings and papers in Exhibit A constitute all court filings with which Defendant has been served.

6. I have represented employers in employment litigation for over 20 years in California and is familiar with fees awarded to plaintiff’s counsel in similar actions filed

1 in California and federal court. Based on my experience and Plaintiff's allegations, it  
2 would be reasonable to expect that attorneys' fees alone in this case will exceed the sum  
3 of \$75,000 through trial.

4 I declare under penalty of perjury and under the laws of the United States and  
5 California that the foregoing is true and correct to the best of my knowledge and belief.

6 Executed July 9, 2018 at Los Angeles, California.

7  
8           /s/ Leila Nourani            
9 LEILA NOURANI

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# **EXHIBIT A**

6/7/18 @BPR

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):  
ENCORE HEALTH RESOURCES, LLC**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
NANCY PIERCE**

**FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**  
  
**ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 25 2018**  
  
**CLERK OF THE SUPERIOR COURT,  
By Vanessa Buffin, Deputy**

**NOTICE:** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.aucorta.ca.gov](http://www.aucorta.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.aucorta.ca.gov](http://www.aucorta.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos eventuales por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Rene C. Davidson Courthouse  
1225 Fallon Street, Oakland, California 94612**

CASE NUMBER:  
**18906387**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Thierman Buck, LLP, 7287 Lakeside Drive, Reno, NV 89511**

DATE: **MAY 25 2018**  
(Fecha) **Chad Finke** Clerk, by **Lauff R...** Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[REDACTED]

**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Encore Health Resources LLC**  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify): **CCP § 17061 (Limited Liability Company)**
- by personal delivery on (date):

1 Mark R. Thierman, Cal SB# 72913  
2 Joshua D. Buck, Cal SB# 258325  
3 THIERMAN BUCK LLP  
4 7287 Lakeside Drive  
5 Reno, Nevada 89511  
6 Tel: (775) 284-1500  
7 Email: mark@thiermanbuck.com  
8 Email: josh@thiermanbuck.com

ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 25 2018  
CLERK OF THE SUPERIOR COURT  
By Lanette Buffin, Deputy

6 Ryan F. Stephan (Pro Hoc Vice Pending)  
7 Andrew C. Ficzko (Pro Hoc Vice Pending)  
8 STEPHAN ZOURAS, LLP  
9 205 North Michigan Avenue, Suite 2560  
10 Chicago, Illinois 60601  
11 312 233 1550  
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14 Email: AFiczko@stephanzouras.com

12 *Attorneys for Plaintiff, the general public, and all  
13 others similarly situated*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

16 NANCY PIERCE, individually, and on  
17 behalf of other members of the general  
18 public and all persons similarly situated;

18 Plaintiff;

19 v.

20 ENCORE HEALTH RESOURCES, LLC.  
21 and DOES 1 through 100, inclusive,

22 Defendants.

CASE NO. *KA* 8906387

CLASS ACTION, CCP 8382, AND  
REPRESENTATIVE ACTION  
COMPLAINT:

- 1) Failure to Pay Overtime Wages in Violation of the California Labor Code;
- 2) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 3) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code;
- 4) Violating Private Attorney Generals Act;
- 5) Unfair Business Practices.

JURY TRIAL DEMAND

BY FAX

1 Come now Plaintiff NANCY PIERCE, on behalf of herself and all others similarly situated,  
2 the general public, and all aggrieved employees (hereinafter "Plaintiffs") and hereby complain and  
3 allege against the Defendant ENCORE HEALTH RESOURCES, LLC (hereinafter "ENCORE"  
4 and/or "Defendant") as follows:

5 I.

6 JURISDICTION AND VENUE

7 1. The Superior Court of the State of California, for the County of Alameda, has  
8 original jurisdiction over the state law claims alleged herein pursuant to the California Constitution.

9 2. Venue is proper in this Court because Defendant has failed to designate a principal  
10 office in California and has conducted business in the state of California. *Easton v. Sup.Ct.*  
11 (*Schneider Bros., Inc.*) (1970) 12 CA3d 243, 246-247, 90 CR 642, 644.

12 II.

13 PARTIES

14 3. Representative Plaintiff, NANCY PIERCE, is a resident of El Reno, Oklahoma and  
15 worked for Defendant as an ATE Go-Live Support Consultant (hereinafter referred to as "ATE")  
16 at Cedars-Sinai in California during the applicable statute of limitations period.

17 4. Defendants Encore Health Resources, LLC, is a Texas corporation providing  
18 information technology educational services for the healthcare industry across the country.  
19 Encore's principal place of business is located in Houston, Texas. Encore provides its services to  
20 customers throughout California, including this District, and nationwide.

21 5. At all times relevant, Defendant was Representative Plaintiff's "employer" as  
22 defined by the Cal.Code Regs., tit. 8, § 11140, subd. 2(C) and interpreted in *Martinez v. Combs*, 49  
23 Cal. 4th 35, 231 P.3d 259 (2010), *as modified* (June 9, 2010), and was actively engaged in the  
24 conduct described herein. Throughout the relevant period, Defendant employed Representative  
25 Plaintiff and similarly-situated employees within the meaning of the California Labor Code.

26 III.

27 FACTS

28 6. Plaintiffs are individuals who worked for Defendant as "At the Elbow" consultants  
or other similarly-titled, hourly-paid positions during the statutory period. Amongst other things,



1 Plaintiffs all shared similar job titles, training, job descriptions, and job tasks. Importantly,  
2 Representative Plaintiff and the Class members were all paid an hourly rate of pay.

3 7. Encore, as a leading healthcare information technology firm, provides training and  
4 support to medical facilities in connection with the implementation and administration of  
5 integrated health computer systems, specifically, new electronic recordkeeping systems. Encore  
6 employs ATEs, such as Plaintiffs, to perform such training and support services to medical  
7 facilities throughout the country.

8 8. Encore's financial results are significantly driven by the total number of ATEs  
9 providing training and support services to Encore's customers and the respective fees that Encore  
10 charges its customers for these services.

11 9. Representative Plaintiff worked as an ATE for Encore at Cedars-Sinai during the  
12 applicable statute of limitations period.

13 10. Plaintiffs were all compensated on an hourly basis and were paid only straight time  
14 for all hours they worked, including all overtime hours worked each week.

15 11. Despite the fact that the Representative Plaintiff and the other similarly-situated  
16 ATEs did not meet any test for exemption, Encore failed to pay them the requisite overtime rate  
17 of 1 ½ times or 2 times their regular rate for all hour worked more than 8 hours in a day, more than  
18 12 hours in a day, more than 40 hours per week, 8 hours worked on the seventh consecutive day  
19 in a workweek, and more than 8 hours on the seventh consecutive day of work in a workweek.  
20 ("Overtime Hours").

21 Plaintiffs Routinely Worked Overtime Hours Without Being Paid Overtime  
22 Premium Compensation

23 12. The Representative Plaintiff and other similarly-situated ATEs routinely worked  
24 Overtime Hours but were not paid overtime premium compensation as required by California  
25 Labor Code.

26 13. The Representative Plaintiff and other similarly-situated ATEs were often required  
27 to work twelve (12) hours a day, seven (7) days a week. Projects, on average, lasted a few weeks  
28 at a time.

1           14.     Despite the fact that the Representative Plaintiff and other similarly-situated ATEs  
2 were required, permitted, and/or encouraged to work Overtime Hours, Encore failed to pay them  
3 one and one-half (1½) times their regular rate of pay for all Overtime Hours worked, as required  
4 by California Labor Code.

5           15.     Rather, Representative Plaintiff and other similarly-situated ATEs were paid a  
6 straight hourly rate for all hours that they worked, regardless of whether they worked Overtime  
7 Hours. The Representative Plaintiff and other similarly-situated ATEs were not paid on a salary  
8 basis.

9           16.     Defendant knew, and was aware at all times, of the above-mentioned violations.

10          17.     The conduct alleged above reduced Defendant's labor and payroll costs.

11          18.     Plaintiff and other similarly-situated ATEs were subject to Defendant's uniform  
12 policies and practices and were victims of Defendant's schemes to deprive them of overtime  
13 compensation. As a result of Defendant's improper and willful failure to pay Plaintiff and other  
14 similarly-situated ATEs in accordance with the requirements of the California Labor Code,  
15 Plaintiff and Class members suffered lost wages and other related damages.

16   Plaintiffs Are Not Exempt

17          19.     The Representative Plaintiff and other similarly-situated ATEs provide support and  
18 training to various healthcare staff across the country in connection with the implementation and  
19 administration of integrated health computer systems. Plaintiff has no specialized training or  
20 certification in computer programming, software documentation and analysis, or testing of  
21 computer systems or programs. Plaintiffs were not working as, nor were they similarly skilled as,  
22 computer systems analysts, computer programmers or software engineers.

23          20.     Plaintiffs' primary duty was to provide first-line troubleshooting which consisted  
24 of training and supporting various healthcare staff across the country with the implementation and  
25 administration of integrated health computer systems, specifically, new electronic recordkeeping  
26 software. This support is known as "at the elbow" because the Representative Plaintiff and other  
27 similarly-situated ATEs are "at the elbow" of the healthcare staff, providing them guidance on the  
28 new software system. Plaintiffs had little discretion in the performance of their job and worked  
within closely-prescribed limits provided by Encore.

1           21. Plaintiff and all other ATEs were not primarily engaged in work that was  
2 intellectual or creative and that requires the exercise of discretion and independent judgment; they  
3 are not gighly skilled and proficient in the theoretical and practical application of highly  
4 specialized information to computer systems analysis, programming, or software engineering.

5           22. Plaintiff and all other ATEs' duties did not include (i) application of systems  
6 analysis techniques and procedures, including consulting with users, to determine hardware,  
7 software, or system functional specifications; (ii) the design, development, documentation,  
8 analysis, creation, testing, or modification of computer systems or programs, including prototypes,  
9 based on and related to user or system design specifications; or (iii) the documentation, testing,  
10 creation, or modification of computer programs related to the design of software or hardware for  
11 computer operating systems.

12           23. Plaintiffs did not analyze, consult or determine hardware, software programs or any  
13 system functional specifications for Encore's clients.

14           24. Plaintiffs did not consult with Encore's clients to determine or recommend  
15 hardware specifications. Plaintiffs did not design, develop, document, analyze, create, test or  
16 modify a computer system or program.

17           25. Throughout the statutory period, Plaintiffs' primary duty was not related to the  
18 management of the business operations of Encore or its customers.

19           26. Throughout the statutory period, Plaintiffs' primary duty did not require the use of  
20 discretion and independent judgment with respect to matters of significance.

21           27. Throughout the statutory period, Plaintiffs' primary duty was not the performance  
22 of work requiring advanced knowledge in a field of science or learning.

23           28. Throughout the statutory period, Plaintiffs did not perform work requiring  
24 invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

25           29. Despite the fact that Representative Plaintiff and other similarly-situated ATEs did  
26 not meet any test for exemption, Encore failed to pay the Representative Plaintiff and other  
27 similarly-situated ATEs the requisite overtime rate of 1½ times their regular rate for Overtime  
28 Hours worked. Rather, Encore paid Plaintiffs their regular straight, hourly rate for Overtime Hours  
worked that they were encouraged, suffered and permitted to perform.

Defendant Willfully Violated the California Labor Code

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2           30.   Encore had no legitimate basis to believe the Plaintiffs were exempt from the  
3 overtime requirements of the California Labor Code. Instead, Encore either knew or acted with  
4 reckless disregard of clearly applicable Labor Code provisions in failing to pay Plaintiffs overtime  
5 compensation for all Overtime Hours worked. Encore's willful actions and/or willful failures to  
6 act, included, but were not necessarily limited to:

- 7           a.   Encore maintained payroll records which reflected that Plaintiffs did, in fact,  
8           regularly work Overtime Hours and therefore, Encore had actual knowledge that  
9           the Plaintiffs worked overtime;
- 10          b.   Encore knew that it did not pay Plaintiffs one and one half (1½) times their regular  
11          rate of pay for all Overtime Hours worked;
- 12          c.   Encore's own documents, including but not necessarily limited to, job offer letters,  
13          employment agreements, and training materials for ATEs, reflect that Encore was  
14          aware of the nature of the work performed by ATEs, and, in particular, that these  
15          individuals worked exclusively at-the-elbow of healthcare workers employed by  
16          Encore's clients, providing basic training and support with the implementation and  
17          administration of integrated health computer systems;
- 18          d.   Encore's own documents, including but not necessarily limited to, job offer letters,  
19          employment agreements, and training materials for ATEs, reflect that Defendant  
20          knew that it was subjected to the wage requirements of the Labor Code;
- 21          e.   Encore was aware that its ATEs were not involved with: (i) computer systems  
22          analysis, computer programming, or software engineering; (ii) the application of  
23          systems analysis techniques and procedures; or (iii) the design, development,  
24          analysis, creation, testing or modification of a computer system or program;
- 25          f.   Encore lacked any good-faith basis to believe that its ATEs fell within any  
26          exemption from the overtime requirements of the Labor Code; and
- 27          g.   Encore was aware that it would (and did) benefit financially by failing to pay  
28          Plaintiffs overtime premium pay for all Overtime Hours worked, reducing its labor  
and payroll costs.

## IV.

CLASS ACTION ALLEGATIONS

31. Pursuant to California Code of Civil Procedure ("CCP") §382 and the common law related thereto, a case should be treated as a class action when a court finds: (a) that the predominant issues raised in the case are of a common interest; (b) that the parties are so numerous that it is impracticable to bring them all before this Court; (c) that the proposed Class and Subclass are clearly and easily ascertainable; (d) that the named representatives' claims are typical of the claims of the proposed classes; (e) that the Class representatives will adequately represent the interests of the classes; and (e) that a class action is superior to other methods of adjudicating the claims alleged herein. Plaintiff herein allege that each and every one of the foregoing can and will be demonstrated at the time for hearing on Plaintiff' motion for class certification.

32. Plaintiff brings this suit as a class action pursuant to CCP §382, on behalf of the Class of individuals:

All individuals who currently work, or have worked, for the Defendant as an ATE or any other similarly-titled, hourly-paid position, in the state of California at any time within the preceding 4-years from the date of filing the complaint.

33. Plaintiff further seeks Certification of the following Subclasses: (a) Wage Statement Subclass: All members of the Class who were employed at any time within the preceding 1-year from the date of filing the complaint; and (b) Waiting Time Penalty Subclass: All members of the Class who are former employees and who were employed at any time within the preceding 3-years from the date of filing the complaint.<sup>1</sup>

34. Members of the Class and Subclasses will hereinafter be referred to as "class members."

35. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

<sup>1</sup> The Itemized Wage Statement and Waiting Time Penalty Subclasses are comprised of the same persons as the Class but are limited in time (a 3-year statute of limitations for Waiting Time Penalty claims and a 1-year statute of limitations for an Itemized Wage Statement claim) and employee classification (Waiting Time Penalty claims are only available to former employees).

1           36.    Numerosity: Plaintiff is informed and believes and based on such information and  
2 belief, allege that, in conformity with CCP § 382, the potential membership in the Class and the  
3 subclass is so numerous that joinder of all members is impractical. While the exact number of  
4 members in each of the classes is presently unknown to Plaintiff, they estimate membership in the  
5 Class to exceed 100. The exact number and specific identities of the members of the Class and the  
6 subclass, may be readily ascertained through inspection of Defendants' business records.  
7 Moreover, the disposition of class members' claims by way of a class action will provide substantial  
8 benefits to the parties and the Court.

9           37.    Commonality: Plaintiff is informed and believes and based on such information  
10 and belief alleges that numerous questions of law and/or fact are common to all members of the  
11 class, including, without limitation:

- 12           a. Whether Plaintiff and the Class members were all paid by the hour;
- 13           b. Whether Plaintiff and the Class members, by definition, were exempt from  
14 overtime;
- 15           c. Whether Plaintiff and the Class members, by definition, all worked Overtime  
16 Hours;
- 17           d. Whether Defendant maintained common timekeeping and payroll systems and  
18 policies with respect to Plaintiff and the Class members, regardless of their job  
19 title or location;
- 20           e. Whether Defendant failed to pay Representative Plaintiff and the Class members  
21 an overtime premium for overtime hours worked;
- 22           f. Whether Defendant complied with the wage reporting requirements of Labor  
23 Code § 226 (a)(9);
- 24           g. Whether Defendant failed to timely pay Plaintiff and putative Class members  
25 the wages due them during their employment;
- 26           h. Whether Defendant failed to timely pay wages due to Plaintiff and Class  
27 members upon their discharge;
- 28           i. Whether Defendant's failure to pay all wages due in accordance with the  
California Labor Code was willful or reckless;

- 1 j. Whether Defendant engaged in unfair business practices in violation of
- 2 California Business & Professions Code §§ 17200, et seq.;
- 3 k. Whether Defendant failed to pay Representative Plaintiff and Class members all
- 4 compensation rightfully owed; and
- 5 l. The appropriate amount of damages, restitution, or monetary penalties resulting
- 6 from Defendant's violations of law.

7 38. Typicality: Representative Plaintiff's claims are typical of those of the class

8 members, because Representative Plaintiff suffered the violations set forth in this Complaint.

9 39. Adequacy: Representative Plaintiff will adequately protect the interests of class

10 members. Representative Plaintiff has no interests that are adverse to or in conflict with class

11 members and she is committed to the vigorous prosecution of this lawsuit. To that end,

12 Representative Plaintiff has retained counsel who are competent and experienced in handling class

13 actions on behalf of employees.

14 40. Predominance/Superiority: The numerous common questions of law and fact set

15 forth in the commonality discussion above predominate over individual questions because

16 Defendant's alleged underlying activities and impact of its policies and practices affected Class

17 members in the same manner: they were subjected to a policy of suffering overtime work without

18 overtime pay. A class action is superior to all other available methods for the fair and efficient

19 adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the

20 amount suffered by individual class members may be relatively small, the expense and burden of

21 individual litigation make it impossible for members of the Class to individually redress the wrongs

22 done to them. There will be no inordinate difficulty in the management of this case as a class action.

23 The class is geographically disbursed throughout California but Defendant's policies and decisions

24 affecting the class all emanated from its central offices. Representative Plaintiff is informed and

25 believes and based on such information and belief alleges that this action is properly brought as a

26 class action, not only because the prerequisites of CCP §382 and common law related thereto are

satisfied (as outlined above), but also because of the following:

- 27 a. The prosecution of separate actions by or against individual members of the Class
- 28 would create risk of inconsistent or varying adjudications with respect to individual

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members of the Class which would establish incompatible standards of conduct for the party opposing the Class;

- b. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
- c. Defendant has acted or refused to act on grounds generally applicable to all members of the Class, making declaratory relief appropriate with respect to all of the Class;
- d. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and, Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

V.

PAGA ENFORCEMENT ACTION ALLEGATIONS

41. At all times set forth herein, PAGA was applicable to Plaintiff's employment by Defendant as the employer.

42. At all times set forth herein, PAGA states that any provision of law under the California labor code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California labor code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of him or herself and other current or former employees pursuant to procedures outlined in Labor Code § 2699.3.

43. Pursuant to PAGA, a civil action under PAGA may be brought by any "aggrieved employee," who is a person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

44. Defendant employed Plaintiff and other employees and committed the alleged violations against Plaintiff and said employees in connection with their employment. Thus, Intervenor and these other employees are "aggrieved employees" as that term is defined in Labor Code section 2699(e).



1 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following  
3 requirements have been met:

4 a. The aggrieved employee shall give written notice electronically to the LWDA with  
5 copy to the employer of the specific provisions of the California Labor Code alleged  
6 to have been violated, including the facts and theories to support the alleged  
7 violations.

8 b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and  
9 the aggrieved employee by certified mail that it does not intend to investigate the  
10 alleged violation within thirty (30) calendar days of the postmark date of the  
11 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is  
12 not provided within thirty-three (33) calendar days of the postmark date of the  
13 Employee's Notice, the aggrieved employee may commence a civil action pursuant  
14 to California Labor Code section 2699 to recover civil penalties in addition to any  
15 other penalties to which the employee may be entitled.

16 46. Plaintiff has provided written notice as required by law to the LWDA and to  
17 Defendant of the specific provisions of the California Labor Code alleged to have been violated,  
18 including the facts and theories to support the alleged violations, pursuant to California Labor Code  
19 section 2699.3. A true and correct copy of Plaintiff's PAGA letter is attached hereto as Exhibit A.

20 47. Plaintiff therefore brings this action as a PAGA Representative action on behalf of  
21 the following aggrieved employees: All members of the Class who were employed at any time from  
22 May 22, 2018, through the date of entry of judgment.

23 VI.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay Overtime Wages for All Overtime Hours Worked**

26 (On Behalf of Plaintiff and the Class Against Defendants)

27 48. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
28 this Complaint as though fully set forth herein.

1           49. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No. 9,  
2 mandate that California employers pay overtime compensation at one and one-half times the  
3 regular rate of pay to all non-exempt employees for all hours worked over eight (8) per day or  
4 over forty (40) per week and “any work in excess of 12 hours in one day shall be compensated at  
5 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in  
6 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no  
7 less than twice the regular rate of pay of an employee.” Section 3(A)(1) of the applicable Wage  
8 Order states in relevant part: “Employment beyond eight (8) hours in any workday or more than  
9 six (6) days in any workweek is permissible provided the employee is compensated for such  
10 overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for  
11 all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and  
12 for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;  
13 and (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in  
14 any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive  
15 day of work in a workweek.”

16           50. Labor Code § 1198 states that “The maximum hours of work and the standard  
17 conditions of labor fixed by the commission shall be the maximum hours of work and the standard  
18 conditions of labor for employees. The employment of any employee for longer hours than those  
19 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

20           51. Because Defendant failed to compensate Plaintiff and Class members at the correct  
21 overtime rate for all overtime hours worked, as set forth above, Defendant failed to pay Plaintiff  
22 and Class members overtime compensation when due.

23           52. Wherefore, Plaintiff demands for herself and for Class members that Defendant  
24 pay Plaintiff and Class members overtime pay at the applicable legal rate for all overtime hours  
25 worked together with attorneys’ fees, costs, and interest as provided by law. Because Defendant’s  
26 conduct described immediately above is an act of unfair competition and a business practice in  
27 violation of California Business & Professions Code § 17200, Plaintiff and Class members are  
28 entitled to recover the amounts previously specified for four years prior to the filing of this  
complaint to the date of judgment after trial.

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53. Defendant is also subject to civil penalties and restitution of wages payable to Plaintiff and all Class members pursuant to Labor Code § 558 as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

**VII.**  
**SECOND CAUSE OF ACTION**

**Failure to Provide Accurate Wage Statements**

(On Behalf of Plaintiff and the Wage Statement Subclass Against Defendant)

54. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

55. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements showing, *inter alia*, hours worked, to Plaintiff and Class members in accordance with Labor Code § 226(a) and applicable Wage Order No. 9. Such failure caused injury to Plaintiff and Class members by, among other things, impeding them from knowing the amount of wages to which they are and were legally entitled.

56. Plaintiff's good faith estimate of the number of pay periods in which Defendant failed to provide accurate itemized wage statements to Plaintiff and Class members is each and every pay period during the Class Period.

1           57. Plaintiff and the Class members are entitled to and seek injunctive relief requiring  
 2 Defendant to comply with Labor Code §§ 226(a) and further seek the amount provided under  
 3 Labor Code § 226(e), including the greater of all actual damages or fifty dollars (\$50) for the  
 4 initial pay period in which a violation occurred and one hundred dollars (\$100) per employee for  
 5 each violation in a subsequent pay period.

6           58. Defendant is also subject to civil penalties for Labor Code §§ 226(a) violations "in  
 7 the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial citation  
 8 and one thousand (\$1,000) per employee for each violation in a subsequent citation . . . ." as  
 9 provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty provided  
 10 by law and are recoverable by private individuals on behalf of the state of California under the  
 11 Private Attorney General Act, Labor Code § 2699, et. seq.

12           59. Because Defendant's conduct described immediately above is an act of unfair  
 13 competition and a business practice in violation of California Business & Professions Code  
 14 Section 17200, Plaintiff further demands the Defendant be enjoined from continuing to provide  
 15 inaccurate pay statements that fail to include the amount of hours worked by each employee, the  
 16 hourly rate of pay, and the amount of all overtime hours worked at the corresponding hourly rate.

## 17 VIII.

### 18 THIRD CAUSE OF ACTION

#### 19 Failure to Timely Pay All Wages Due and Owing

20 (On Behalf of Plaintiff and the Waiting Time Penalties Subclass Against Defendant)

21           60. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
 22 this Complaint as though fully set forth herein.

23           61. Labor Code §§ 201 and 202 require an employer to pay its employees all wages  
 24 due within the time specified by law. Labor Code § 203 provides that if an employer willfully  
 25 fails to timely pay such wages, the employer must continue to pay the subject employees' wages  
 26 until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30)  
 27 days of wages.

28           62. Class members who ceased employment with Defendant are entitled to unpaid  
 compensation for unpaid overtime wages, as alleged above, but to date have not received such

1 compensation. Defendant's failure to pay such wages and compensation, as alleged above, was  
2 knowing and "willful" within the meaning of Labor Code § 203.

3 63. As a consequence of Defendant's willful conduct in not paying compensation for  
4 all hours worked, Class members whose employment ended within the last three years from the  
5 filing of this complaint are entitled to up to thirty days' wages under Labor Code § 203, together  
6 with interest thereon and attorneys' fees and costs.

7 IX.

8 FOURTH CAUSE OF ACTION

9 Violating California Private Attorney General Act

10 (On Behalf of Plaintiff and all Aggrieved Employees Against Defendant)

11 64. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
12 this Complaint as though fully set forth herein.

13 65. Labor Code § 2699(a) states:

14 Notwithstanding any other provision of law, any provision  
15 of this code that provides for a civil penalty to be assessed and  
16 collected by the Labor and Workforce Development Agency or any  
17 of its departments, divisions, commissions, boards, agencies, or  
18 employees, for a violation of this code, may, as an alternative, be  
19 recovered through a civil action brought by an aggrieved employee  
20 on behalf of himself or herself and other current or former  
21 employees pursuant to the procedures specified in Section 2699.3.

22 66. Plaintiff and Class members are "aggrieved employees" as that term is defined in  
23 the California Labor Code Private Attorney General Act of 2004, because they are current or  
24 former employees of the alleged violator and against whom one or more of the alleged violations  
25 was committed.

26 67. As outlined above, Plaintiff has met all the notice requirements set forth in Labor  
27 Code § 2699.3 necessary to commence a civil action.

28 68. Plaintiff brings this action on behalf of herself and all aggrieved employees who  
were subject to Defendant's failure to pay Plaintiff and aggrieved employees for all hours they  
worked at the applicable overtime wage rate; its failure to provide accurate wage statements; and

1 its failure to pay Plaintiff and aggrieved employees who are former employees all their wages due  
2 and owing upon termination.

3 69. Plaintiff, on behalf of herself and in a representative capacity on behalf of all  
4 members of the PAGA aggrieved employee Class, demand the maximum civil penalty specified  
5 in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiff and each aggrieved  
6 member of the Class per period for the initial violation and two hundred dollars (\$200) per pay  
7 period for each subsequent violation for violations of Labor Code §§ 201-204, 226, 226.7, 510,  
8 1194, 1197, and 1198.

9 70. These penalties are recoverable in addition to any other civil penalty separately  
10 recoverable by law.

11 X.

12 FIFTH CAUSE OF ACTION

13 Unfair Business Practices

14 (On Behalf of Plaintiff and the Class Against Defendant)

15 71. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
16 this Complaint as though fully set forth herein.

17 72. By the conduct described throughout this Complaint, Defendant has violated the  
18 provisions of the California Labor Code as specified and has engaged in unlawful, deceptive, and  
19 unfair business practices prohibited by California Business & Professions Code § 17200, *et seq.*  
20 Defendant's use of such practices resulted in greatly decreased labor costs and constitutes an  
21 unfair business practice, unfair competition, and provides an unfair advantage over Defendant's  
22 competitors.

23 73. The unlawful and unfair business practices complained of herein are ongoing and  
24 present a threat and likelihood of continuing against Defendant's current employees as well as  
25 other members of the general public. Plaintiff and Class members are therefore entitled to  
26 injunctive and other equitable relief against such unlawful practices in order to prevent future  
27 damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and the Class members  
28 request a preliminary and permanent injunction prohibiting Defendant from the unfair practices  
complained of herein.

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74. Defendant generated income as a direct result of the above-mentioned unlawful and unfair business practices. Plaintiff and the Class members are therefore entitled to restitution of any and all monies withheld, acquired, and/or converted by Defendant by means of the unfair and unlawful practices complained of herein.

75. As a result, Plaintiff and Class members seek restitution of their unpaid wages, unpaid overtime, itemized wage statement penalties, and waiting time penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to proof. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendant.

**JURY DEMAND**

Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

**PRAAYER FOR RELIEF**

Wherefore Plaintiff, individually and on behalf of all Class members and all others similarly situated, prays for relief as follows relating to her class and representative action allegations:

1. For an order certifying this action as a class action on behalf of the proposed Classes;
2. For an order appointing Plaintiff as the Representative of the Class and her counsel as Class Counsel;
3. For damages according to proof for overtime compensation for all overtime hours worked under California law;
4. For liquidated damages;
5. For waiting time penalties;
6. For civil penalties;
7. For PAGA penalties;
8. For interest as provided by law at the maximum legal rate;
9. For restitution for all unlawfully retained monies by Defendant;
10. For an injunction against future violations of the California Labor Code;
11. For reasonable attorneys' fees authorized by statute;

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- 12. For costs of suit incurred herein;
- 13. For pre-judgment and post-judgment interest as provided by law; and
- 14. For such other and further relief as the Court may deem just and proper.

DATED: May 24, 2018

THIERMAN BUCK LLP




---

Mark R. Thierman  
 Joshua D. Buck  
 Leah L. Jones

*Attorneys for Plaintiff*



**EXHIBIT A**

**EXHIBIT A**



7287 Lakeside Drive  
Reno, NV 89511  
T: (775) 284-1500  
F: (775) 703-5027  
Info@thiermanbuck.com  
www.ThiermanBuck.com

May 23, 2018

VIA E-FILING

California Labor and Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, California 95814

Subject: PAGA Claim Notice: *Nancy Pierce v. Encore Health Resources, LLC*

Dear Representative:

This office represents NANCY PIERCE, on behalf of herself and all other similarly situated and aggrieved employees ("Plaintiff"), in connection with her claims under the California Labor Code against her employer ENCORE HEALTH RESOURCES, LLC ("Defendant"). Plaintiff intends to seek penalties for certain violations of the California Labor Code (hereinafter referred to as "Labor Code"), detailed below, which are recoverable under Labor Code §§ 2699, *et seq.* ("the Private Attorneys General Act"). Plaintiff is seeking penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of Labor Code § 2699.3.

A draft complaint is attached to this letter as Exhibit A which sets forth all of the factual and legal theories that support Plaintiff's claim for unpaid wages and penalties. Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties related to these violations of the California Labor Code pursuant to the Private Attorneys General Act.

The employer may be contacted directly at the following address:

Encore Health Resources, LLC  
4820 Emperor Boulevard  
Durham, NC 27703

This communication has also been sent to National Registered Agents, Inc., 818 West Seventh Street, Suite 930, Los Angeles, 90017, the employer's registered agent.

Page 2 of 2

Thank you for your attention to this matter. If you have any questions, or if we may be of any further assistance, please contact me at (775) 284-1500.

Very truly yours,

*Mark R. Thierman*

Mark R. Thierman

cc: Nancy Pierce  
Encore Health Resources, LLC (Via Certified Mail)  
Encore Health Resources, LLC c/o National Registered Agents, Inc.  
file

**Jasmin Williams**

---

**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>  
**Sent:** Wednesday, May 23, 2018 9:32 PM  
**To:** info  
**Subject:** Thank you for submission of your PAGA Case.

5/23/2018

LWDA Case No. LWDA-CM-540215-18

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

# **EXHIBIT B**

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 06 2018

SUE PESKO

1 Leila Nourani (SBN 163336)  
leila.nourani@jacksonlewis.com  
2 Damien P. DeLaney (SBN 246476)  
damien.delaney@jacksonlewis.com  
3 JeeHyun Yoon (SBN 279194)  
jeehyun.yoon@jacksonlewis.com  
4 JACKSON LEWIS P.C.  
725 South Figueroa Street, Suite 2500  
5 Los Angeles, California 90017-5408  
Telephone: (213) 689-0404  
6 Facsimile: (213) 689-0430

7 Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ALAMEDA  
11

12 NANCY PIERCE, individually, and on behalf of  
13 other members of the general public and all  
persons similarly situated,

14 Plaintiff,

15 vs.

16 ENCORE HEALTH RESOURCES, LLC. and  
DOES 1 through 100, inclusive,

17 Defendants.  
18

Case No. RG18906387

[Assigned for all purposes to the  
Honorable Brad S. Seligman, Department 23]

CLASS AND REPRESENTATIVE ACTION

DEFENDANT'S ANSWER TO PLAINTIFF'S  
UNVERIFIED COMPLAINT

Complaint Filed: May 25, 2018

19  
20 Defendant Encore Health Resources, LLC ("Defendant"), on behalf of itself and for no other  
21 defendant, hereby responds to Plaintiff Nancy Pierce's ("Plaintiff") class and representative action  
22 complaint ("Complaint") and admits, denies, and otherwise pleads as follows:

23 GENERAL DENIAL

24 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies, generally  
25 and specifically, each and every allegation in the Complaint and denies that Plaintiff has suffered any  
26 injury or been damaged in any sum whatsoever, as alleged, or at all.

27 ///

28 ///

1 **AFFIRMATIVE DEFENSES**

2 As separate and distinct affirmative defenses to Plaintiff's Complaint and the causes of action  
3 alleged therein, and to each of them, Defendant alleges as follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 1. The Complaint as a whole, and each purported cause of action alleged therein, fails to  
6 state facts sufficient to constitute a cause of action against Defendant upon which relief may be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 2. The Complaint as a whole, and each purported cause of action alleged therein, is barred  
9 in whole or in part, because Defendant was not the employer.

10 **THIRD AFFIRMATIVE DEFENSE**

11 3. The Complaint as a whole, and each purported cause of action alleged therein, is barred  
12 in whole or in part by the applicable statute of limitations, including without limitation Code of Civil  
13 Procedure sections 338, 340(a), and Business and Professions Code section 17208.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 4. The Complaint as a whole, and each purported cause of action alleged therein, is barred  
16 in whole or in part by the applicable statute of limitations, including without limitation Code of Civil  
17 Procedure sections 338, 340(a), and Business and Professions Code section 17208.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 5. Plaintiff's claims, including without limitation her claims for waiting time penalties  
20 pursuant to California Labor Code section 203, are barred, in whole or in part, and/or recovery is  
21 precluded, because Defendant's conduct was not willful.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 6. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in  
24 whole or in part, because Plaintiff has received all income, compensation, and pay to which Plaintiff  
25 ever has been entitled from Defendant.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 7. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in  
28 whole or in part, because any duty or obligation by Defendant to pay wages, whether contractual or

1 otherwise, which Plaintiff claims is owed to her has been fully performed, satisfied, and/or discharged.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 8. Defendant alleges that a reasonable opportunity for investigation and discovery will  
4 reveal that some or all of certain hours claimed by Plaintiff are not “hours worked” within the meaning  
5 of any wage order and/or under applicable law so that compensation need not be paid for such hours.

6 **NINTH AFFIRMATIVE DEFENSE**

7 9. The Complaint as a whole, and each purported cause of action alleged therein, is barred,  
8 in whole or in part, because based on her hours worked, Plaintiff is not entitled to wages or other  
9 compensation or penalties under any Labor Code, any applicable wage orders of the, federal law, and/or  
10 any other applicable law.

11 **TENTH AFFIRMATIVE DEFENSE**

12 10. The acts or omissions of Defendant were not willful.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 11. Without admitting the allegations of the Complaint, Defendant alleges Plaintiff’s claim  
15 pursuant to California Business and Professions Code sections 17200 *et seq.* is barred because  
16 Defendant’s alleged practices were not unfair, the public was not likely to be deceived by any alleged  
17 practices, Defendant gained no competitive advantage by such practices, and the benefits of the alleged  
18 practices outweighed any harm or other impact they may have caused.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 12. Plaintiff is not entitled to equitable or injunctive relief as prayed for in the Complaint  
21 because Plaintiff has suffered no irreparable injury based on any alleged conduct of Defendant and  
22 Plaintiff has an adequate remedy at law for any such alleged conduct.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 13. Plaintiff’s claim pursuant to California Business and Professions Code sections 17200 *et*  
25 *seq.* is barred, in whole or in part, because Defendant’s business practices are and were not unlawful in  
26 that Defendant complied with all applicable statutes and regulations in the payment of compensation to  
27 Plaintiff.

28 ///



**FOURTEENTH AFFIRMATIVE DEFENSE**

1  
2 14. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein,  
3 is barred because the damages alleged by Plaintiff were either wholly or in part, negligently or  
4 otherwise, caused by persons, firms, or entities other than Defendant, and such fact eliminates or  
5 comparatively reduces the liability, if any, of Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

6  
7 15. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein,  
8 is barred under the equitable doctrines of consent, waiver, and estoppel.

**SIXTEENTH AFFIRMATIVE DEFENSE**

9  
10 16. Plaintiff’s Complaint, and each purported cause of action alleged therein, is barred in  
11 whole or in part to the extent that Plaintiff and/or the putative class members previously have pursued  
12 any claim(s) before the California Department of Industrial Relations, Division of Labor Standards  
13 Enforcement or the United States Labor Department.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

14  
15 17. Defendant alleges that, even assuming, *arguendo*, that Plaintiff and/or the putative class  
16 members were not provided with proper itemized statements of wages and deductions, Plaintiff and/or  
17 the putative class members are not entitled to recover damages because Defendant’s alleged failure to  
18 comply with California Labor Code 226(a) was not a “knowing and intentional failure” under California  
19 Labor Code section 226(e).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

20  
21 18. Defendant alleges that, even assuming, *arguendo*, that Plaintiff and/or the putative class  
22 members were not provided with proper itemized statements of wages and deductions, Plaintiff and/or  
23 the putative class members are not entitled to recover damages because they did not suffer any injury.

**NINETEENTH AFFIRMATIVE DEFENSE**

24  
25 19. Plaintiff’s claims are barred, in whole or in part, because Plaintiff failed to record all time  
26 worked as reasonably permitted, expected, or required by Defendant.

27 ///

28 ///

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. Any recovery on Plaintiff's cause of action for penalties under Labor Code sections 2699  
3 *et seq.* ("PAGA") is barred in that Plaintiff is not an "aggrieved party."

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 21. Plaintiff's PAGA claims are barred pursuant to the Eighth Amendment to the United  
6 States Constitution and Article I, section 17 of the California Constitution to the extent California Labor  
7 Code sections 2698, *et seq.* because the penalties impose excessive fines, double penalties, and violate  
8 the due process rights of Defendant.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 22. Plaintiff has not and cannot satisfy the requirements of California Code of Civil  
11 Procedure section 382.

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 23. This case is not appropriate for class certification because Defendant alleges that certain  
14 of the interests of the Plaintiff and the putative class members are in conflict with the interests of all or  
15 certain of the members of the alleged class of persons which Plaintiff purports to represent.

16 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

17 24. Although Defendant denies that it has committed or has responsibility for any act that  
18 could support the recovery against Defendant in this lawsuit, including but not limited to, Plaintiff's  
19 causes of action for penalties under Labor Code sections 203, 226.7, and 2699 *et seq.*, to the extent any  
20 such act is found, such recovery against Defendant is unconstitutional under numerous provisions of the  
21 United States Constitution and the California Constitution, including the Excessive Fines Clause of the  
22 Eighth Amendment, the Due Process clauses of the Fifth Amendment and Section 1 of the Fourteenth  
23 Amendment and other provisions of the United States Constitution, and the Excessive Fines Clause of  
24 Section 17 of Article I, the Due Process Clause of Section 7 of Article I and other provisions of the  
25 California Constitution.

26 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

27 25. Defendant acted reasonably and in good faith at all times, and therefore Plaintiff's claims,  
28 including without limitation any claims for liquidated damages, are barred in whole or in part.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. Plaintiff signed a valid agreement pursuant to which Plaintiff agreed to litigate any claims arising out of said agreement in Harris County, State of Texas. Plaintiff further agreed that this agreement shall be construed pursuant to the laws of the State of Texas.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. Defendant has engaged attorneys to represent it in defense of Plaintiff's frivolous, unfounded and unreasonable action and, Defendant is thereby entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code Section 218.5 upon judgment thereon in its favor.

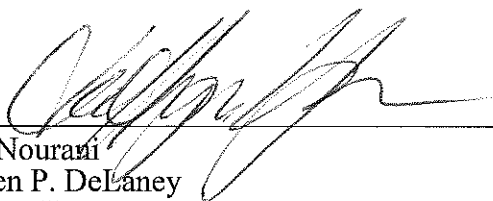
WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by the Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That Plaintiff be denied each and every demand and prayer for relief contained in the Complaint;
4. For cost of suits incurred herein, including reasonable attorneys' fees; and
5. For such other and further relief as the Court deems just and equitable.

DATED: July 6, 2018

JACKSON LEWIS P.C.

By:




---

Leila Nourani  
 Damien P. DeLaney  
 JeeHyun Yoon

Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

**CASE NAME: PIERCE, ETC., ET AL. V. ENCOREHEALTH RESOURCES, LLC**

**CASE NUMBER: RG18906387**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 725 South Figueroa Street, Suite 2500, Los Angeles, California 90017.

On July 6, 2018 I served the foregoing document described as:

**DEFENDANT'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT**

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

Mark R. Thierman, Esq.  
Joshua D. Buck, Esq.  
THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, Nevada 89511  
P: 775.284.1500

Email: mark@thiermanbuck.com  
Email: josh@thiermanbuck.com

*Counsel for Plaintiff  
Nancy Pierce*

Ryan F. Stephan, Esq.  
Andrew C. Fiezko, Esq.  
STEPHAN ZOURAS LLP  
205 N. Michigan Avenue, Suite 2560  
Chicago, IL 60601  
P: 312.233.1550  
F: 312.233.1560

Email: rstephan@stephanzouas.com  
Email: afiezko@stephanzouras.com

*Counsel for Plaintiff  
Nancy Pierce*

**BY MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 6, 2018 at Los Angeles, California.

  
ARTHUR ESCALANTE



Superior Court of California, County of Alameda  
 Rene C. Davidson Alameda County Courthouse  
 1225 Fallon Street  
 Oakland, CA 94612

Receipt Nbr: 796821  
 Clerk: spesko  
 Date: 07/06/2018

Type	Case Number	Description	Amount
Filing	RG18906387	Initial Appearance	\$435.00
Filing	RG18906387	Complex Fee - Adverse Party	\$1000.00

Total Amount Due: \$1,435.00  
 Prior Payment:  
 Current Payment: \$1,435.00  
 Balance Due: \$ .00  
 Overage:  
 Excess Fee:  
 Change:

Payment Method:  
 Cash:  
 Check: \$1,435.00

1 Leila Nourani (SBN 163336)  
leila.nourani@jacksonlewis.com  
2 Damien P. DeLaney (SBN 246476)  
damien.delaney@jacksonlewis.com  
3 JeeHyun Yoon (SBN 279194)  
jeehyun.yoon@jacksonlewis.com  
4 **JACKSON LEWIS P.C.**  
725 South Figueroa Street, Suite 2500  
5 Los Angeles, California 90017-5408  
Telephone: (213) 689-0404  
6 Facsimile: (213) 689-0430

7 Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC  
8

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11  
12 NANCY PIERCE, individually, and on  
13 behalf of other members of the general  
public and all persons similarly situated,

14 Plaintiff,

15 vs.

16 ENCORE HEALTH RESOURCES, LLC.  
17 and DOES 1 through 100, inclusive,

18 Defendants.  
19  
20  
21

CASE NO.

**DECLARATION OF CHRISTINE  
HUTCHISON IN SUPPORT OF  
DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION TO THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
CALIFORNIA PURSUANT TO 28  
U.S.C. §§ 1332, 1367(a), 1441(a) AND (b)**

[Filed concurrently with Notice of  
Removal; Declarations of Leila Nourani  
and Chris Green; Civil Case Cover Sheet;  
Certification and Notice of Interested  
Parties; and Corporate Disclosure  
Statement]

**DECLARATION OF CHRISTINE HUTCHISON**

I, Christine Hutchison, hereby declare as follows:

1. I am employed by Specialist Resources Global, Inc. dba EMIDS (the “Company”) as Senior Director of Consulting. I have been in this position since July 14, 2017. I have personal knowledge of the facts stated in this declaration and if called upon to do so, I could and would competently testify to them. I submit this declaration in support of Defendant’s Notice of Removal of Civil Action.

2. In my capacity as Senior Director of Consulting, I have access to various records pertaining to projects involving “At the Elbow” consultants (ATEs), including ATEs who provided services to clients in California during the relevant time period beginning May 25, 2014. These records were maintained during the ordinary course of business. I have reviewed the Company’s records pertaining to services provided by Plaintiff as an ATE.

3. The Company’s records reflect that, at all relevant times, Plaintiff has provided a residence address in Oklahoma.

4. The Company’s records also reflect that Plaintiff worked as an ATE on two projects for clients in California during the relevant time period beginning May 25, 2014 to the present. On those particular projects, Company records reflect that Plaintiff’s hourly rate was \$50 and worked a total of 78 hours in excess of 8 hours in a day, 0 hours in excess of 12 hours in a day, and 0 hours in excess of 12 hours in a day and/or in excess of 8 hours on the seventh consecutive day of work in a workweek.

5. Plaintiff’s last day worked for Defendant was May 19, 2017.

6. Generally, the Company has issued paychecks to its employees on a semi-monthly basis from May 25, 2014 to the present. According to the pay records maintained by the Company during the ordinary course of business, Plaintiff was paid by the Company for services rendered as an ATE during the following pay periods:

///

- a. March 21, 2017 to the present: 2 pay periods
- b. May 25, 2017 to the present: 1 pay period.

I declare under penalty of perjury and under the laws of the United States and California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this July 9, 2018 at Franklin, Tennessee.

  
CHRISTINE HUTCHISON

4811-9682-2892, v. 1



1 Leila Nourani (SBN 163336)  
leila.nourani@jacksonlewis.com  
2 Damien P. DeLaney (SBN 246476)  
damien.delaney@jacksonlewis.com  
3 JeeHyun Yoon (SBN 279194)  
jeehyun.yoon@jacksonlewis.com  
4 **JACKSON LEWIS P.C.**  
725 South Figueroa Street, Suite 2500  
5 Los Angeles, California 90017-5408  
Telephone: (213) 689-0404  
6 Facsimile: (213) 689-0430

7 Attorneys for Defendant  
ENCORE HEALTH RESOURCES, LLC

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 NANCY PIERCE, individually, and on  
13 behalf of other members of the general  
public and all persons similarly situated,

14 Plaintiff,

15 vs.

16 ENCORE HEALTH RESOURCES, LLC.  
17 and DOES 1 through 100, inclusive,

18 Defendants.

CASE NO.

**DECLARATION OF CHRISTY  
GREEN IN SUPPORT OF  
DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION TO THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
CALIFORNIA PURSUANT TO 28  
U.S.C. §§ 1332, 1367(a), 1441(a) AND (b)**

[Filed concurrently with Notice of  
Removal; Declarations of Leila Nourani  
and Christine Hutchinson; Civil Case  
Cover Sheet; Certification and Notice of  
Interested Parties; and Corporate  
Disclosure Statement]

**DECLARATION OF CHRISTY GREEN**

I, Christy Green, hereby declare as follows:

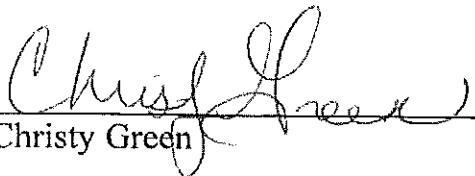
1. I am General Counsel to Specialist Resources Global, Inc. dba EMIDS (the "Company"). I have personal knowledge of the facts stated in this declaration and if called upon to do so, I could and would competently testify to them. I submit this declaration in support of Defendant's Notice of Removal of Civil Action.

2. In my capacity as General Counsel, I am familiar with the business structure, operations, and state of organization of the Company and its related entity, Defendant Encore Health Resources, LLC. Defendant Encore Health Resources, LLC was, at the time of filing of the Complaint, and still is, a limited liability company formed under the laws of the State of Texas. Its sole member is Specialist Resources Global, Inc. dba EMIDS.

3. Specialist Resources Global, Inc. was, at the time the Complaint was filed in state court, and still is, at the time of removal, a Delaware company with its principal place of business in Franklin, Tennessee. The Company's headquarters are located in Franklin, Tennessee, where its high level officers direct, control and coordinate Defendant's activities. The vast majority of administrative, executive and decision-making functions occur at, and are controlled from, the Company's headquarters in Franklin, Tennessee.

I declare under penalty of perjury and under the laws of the United States and California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this July 9, 2018 at Franklin, Tennessee.

  
Christy Green

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Encore Health Resources Fails to Pay Consultants Overtime](#)

---