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11 named as BARTON ASSOCIATES, INC.)
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 SARAH BAXLEY in her individual and
representative capacities,

17 Plaintiff,

18 v.

19 BARTON ASSOCIATES, INC., a
20 Delaware Corporation and DOES 1
through 10, inclusive,

21 Defendants.
22

CASE NO. 2:22-cv-1011

**DEFENDANT BARTON &
ASSOCIATES, INC.’S NOTICE OF
REMOVAL OF CLASS ACTION**

*[Filed Concurrently with Declaration
of Michael Holecek]*

(Los Angeles Superior Court Case No.
22STCV01126)

Action Filed: January 11, 2022

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF SARAH BAXLEY, AND
3 HER COUNSEL OF RECORD:

4 **PLEASE TAKE NOTICE THAT**, pursuant to the Class Action Fairness Act of
5 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711, Defendant Barton & Associates, Inc.
6 (erroneously sued as Barton Associates, Inc.) hereby removes to the United States
7 District Court for the Central District of California the above-captioned state court
8 action, originally filed as Case No. 22STCV01126 in the Superior Court of California,
9 Los Angeles County. Removal is proper on the following grounds:

10 **I. TIMELINESS OF REMOVAL**

11 1. Plaintiff Sarah Baxley (“Plaintiff”) filed a putative Class Action Complaint
12 against Barton & Associates, Inc. (erroneously sued as Barton Associates, Inc.)
13 (“Barton”) in Los Angeles County Superior Court, State of California, Case No.
14 22STCV01126, on January 11, 2022. Pursuant to 28 U.S.C. § 1446(a), true and correct
15 copies of the (a) Class Action Complaint filed on January 11, 2022; (b) Summons issued
16 on January 11, 2022 to Barton; (c) Civil Case Cover Sheet and Addendum filed on
17 January 11, 2022; (d) First Amended General Order; (e) Voluntary Efficient Litigation
18 Stipulations; (f) Court Order Regarding Newly Filed Class Action; (g) Initial Status
19 Conference Order; and (h) Proofs of Service reflecting service on Barton are attached as
20 Exhibits A–I to the Declaration of Michael Holecek (“Holecek Decl.”) filed concurrently
21 here. These filings constitute the complete record of all records and proceedings in the
22 state court.

23 2. Plaintiff served Barton with the Summons and Complaint on January 14,
24 2022. *See* Holecek Decl., Ex. P. Consequently, service was completed on January 14,
25 2022. This notice of removal is timely because it is filed within 30 days after service
26 was completed. 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6.

1 **II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

2 3. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this
3 Court has subject-matter jurisdiction over this action and all claims asserted against
4 Barton pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.
5 § 1332(d).

6 4. CAFA applies “to any class action before or after the entry of a class
7 certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). This
8 case is a putative “class action” under CAFA because it was brought under California
9 Code of Civil Procedure section 382, California’s state statute or rule authorizing an
10 action to be brought by one or more representative persons as a class action. *See* 28
11 U.S.C. § 1332(d)(1)(B); *see also* Holecek Decl. Ex. A, Compl. ¶ 19.

12 5. Plaintiff requests damages and injunctive relief “on behalf of herself all
13 CLASS members and all aggrieved employees of DEFENDANTS[.]” Holecek Decl.
14 Ex. A, Prayer for Relief. She seeks to represent “a California class, defined as all
15 individuals who are or previously were employed by BARTON/DEFENDANTS in
16 California at any time during the period beginning on four (4) years prior to the filing of
17 this Complaint and ending on the date as determined by the Court (the ‘CLASS
18 PERIOD’).” Holecek Decl. Ex. A, Compl. ¶ 4.

19 6. In her Complaint, Plaintiff alleges six causes of action against Barton:
20 (1) Failure to Pay Overtime Compensation in Violation of Labor Code §§ 510, 1194,
21 and 1197.1; (2) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7,
22 226.7(b), and 512; (3) Failure to Provide Rest Periods in Violation of Labor Code §
23 226.7; (4) Failure to Furnish Wage Statements in Violation of Labor Code § 226(a); (5)
24 Wages Not Timely Paid Upon Termination in Violation of Labor Code §§ 201 and 202;
25 and (6) Unlawful, Unfair and Fraudulent Business Practices in Violation of California
26 Business & Professions Code § 17200, *et seq.*

1 7. Among other things, Plaintiff alleges that putative class members are
2 entitled to damages, statutory penalties, interest, and attorneys’ fees and costs. *See*
3 *Holecek Decl. Ex. A, Compl., Prayer for Relief.*

4 8. Removal of a class action under CAFA is proper if: (1) there are at least
5 100 members in the putative class; (2) there is minimal diversity between the parties,
6 such that at least one class member is a citizen of a state different from any defendant;
7 and (3) the aggregate amount in controversy exceeds \$5 million, exclusive of interest
8 and costs. *See* 28 U.S.C. §§ 1332(d), 1441.

9 9. Barton denies any liability in this case, both as to Plaintiff’s individual
10 claims and as to the claims she seeks to pursue on behalf of the putative class. Barton
11 also intends to oppose class certification and believes that class treatment is
12 inappropriate under these circumstances in part because there are many material
13 differences between the experiences of Plaintiff and the putative class members she
14 seeks to represent. Barton expressly reserves all rights to oppose class certification, to
15 object to the scope of the class, and to contest the merits of all claims asserted in the
16 Complaint. However, for purposes of the jurisdictional requirements for removal *only*,
17 the allegations in Plaintiff’s Complaint identify a putative class of more than 100
18 members and put in controversy, in the aggregate, an amount that exceeds \$5 million.
19 *See* 28 U.S.C. § 1332(d)(6).

20 **A. The Proposed Class Consists of More Than 100 Members**

21 10. Based on Plaintiff’s allegations, this action satisfies CAFA’s requirement
22 that the putative class contain at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

23 11. Plaintiff’s proposed class consists of “all individuals who are or previously
24 were employed by BARTON/DEFENDANTS in California at any time during the
25 period beginning on four (4) years prior to the filing of this Complaint and ending on
26 the date as determined by the Court[.]” *Holecek Decl. Ex. A, Compl. ¶ 4.* Based *solely*
27 on Plaintiff’s alleged definition of the putative class, Barton assumes for the purposes of
28 removal *only* that the putative class would consist of any individual who contracted with

1 Barton to provide services in California during the class period. Barton does not concede
2 that California law would apply to such a class. According to Barton’s records, at least
3 approximately 1,200 persons contracted with Barton for work in California during the
4 four-year period spanning from January 11, 2018 to January 11, 2022.

5 12. Accordingly, while Barton denies that class treatment is permissible or
6 appropriate, as alleged, the proposed class consists of well over 100 members.

7 **B. Barton and Plaintiff Are Not Citizens of the Same State**

8 13. Under CAFA’s minimum diversity of citizenship requirement, the plaintiff
9 or any member of the putative class must be a citizen of a different state from any
10 defendant. *See* 28 U.S.C. § 1332(d)(2)(A). For purposes of CAFA, the plaintiffs’
11 citizenship is determined “as of the date of filing of the complaint or amended complaint,
12 or if the case stated by the initial pleading is not subject to federal jurisdiction, as of the
13 date of service by plaintiffs of an amended pleading . . . indicating the existence of
14 [f]ederal jurisdiction.” 28 U.S.C. § 1332(d)(7); *see also Mann v. City of Tucson, Dep’t*
15 *of Police*, 782 F.2d 790, 794 (9th Cir. 1986) (concluding that, for traditional removal,
16 diversity of citizenship is established “at the time of the filing of the complaint, not at
17 the time the cause of action arose or after the action is commenced”).

18 14. A person is a citizen of the state in which he or she is domiciled. *Kantor v.*
19 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Based on information
20 and belief, Plaintiff is domiciled in Florida for purposes of removal under CAFA. *See*
21 *Ehrman v. Cox Commc’ns, Inc.*, 932 F.3d 1223, 1227 (9th Cir. 2019), *cert. denied*, 140
22 S. Ct. 2566 (2020) (holding that defendant’s “short and plain statement alleging that
23 [plaintiff] and the putative class members were citizens of California” was “sufficient”
24 to establish jurisdiction for removal under CAFA because “allegations of citizenship
25 may be based solely on information and belief”). In *Lopez v. Adesa, Inc.*, 2019 WL
26 4235201, at *1 n.2 (C.D. Cal. Sept. 6, 2019), the court rejected the plaintiff’s argument
27 that the defendant’s notice of removal “contain[ed] ‘only allegations of the [p]arties’
28 citizenships,’ such as a citation to [defendant’s] own records to establish [p]laintiff’s

1 citizenship.” Citing *Ehrman*, the Court reasoned that “a party’s ‘allegation of minimal
2 diversity may be based on information and belief’” and does not “‘need to contain
3 evidentiary submissions.’” *Id.* (quoting *Ehrman*, 932 F.3d at 1227).

4 15. A corporation is a citizen of its state of incorporation and the state of its
5 principal place of business. 28 U.S.C. § 1332(c)(1). “[A]n LLC is a citizen of every
6 state of which its owners/members are citizens.” *Johnson v. Columbia Props.*
7 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Barton & Associates, Inc. is a
8 corporation organized under the laws of Delaware and has its principal place of business
9 in Peabody, Massachusetts. *See also* Holecek Decl. Ex. A, Compl. ¶ 3. Barton is a
10 privately owned corporation, and no parent corporation or any publicly held corporation
11 owns ten percent or more of its stock.

12 16. The Supreme Court has interpreted the phrase “principal place of business”
13 in 28 U.S.C. § 1332(c)(1) and (d)(2)(A) to mean “the place where a corporation’s
14 officers direct, control, and coordinate the corporation’s activities,” i.e., its “nerve
15 center,” which “should normally be the place where the corporation maintains its
16 headquarters—provided that the headquarters is the actual center of direction, control,
17 and coordination[.]” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). Barton’s
18 headquarters, which are located in Massachusetts, constitute its “nerve center[s]” under
19 the test adopted in *Hertz* because their high-level officers oversee each corporation’s
20 activities from that state. As such, Barton is a citizen of Delaware and Massachusetts.
21 *See* 28 U.S.C. § 1332(c)(1).

22 17. Accordingly, Plaintiff and Barton are citizens of different states and
23 CAFA’s minimal diversity requirement is met. 28 U.S.C. § 1332(d)(2)(A).

24 **C. The Amount in Controversy Exceeds \$5 Million**

25 18. CAFA requires that the amount in controversy in a class action exceed
26 \$5 million, exclusive of interests and costs. 28 U.S.C. § 1332(d)(2). In calculating the
27 amount in controversy, a court must aggregate the claims of all individual class
28 members. 28 U.S.C. § 1332(d)(6).

1 19. “[A] defendant’s notice of removal need include only a plausible allegation
2 that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*
3 *Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). To satisfy this burden, a
4 defendant may rely on a “chain of reasoning” that is based on “reasonable”
5 “assumptions.” *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015).
6 “An assumption may be reasonable if it is founded on the allegations of the complaint.”
7 *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019); *see also Salter v.*
8 *Quality Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (“[I]n *Arias* we held that a
9 removing defendant’s notice of removal need not contain evidentiary submissions but
10 only plausible allegations of jurisdictional elements.” (internal quotation marks and
11 citations omitted)). That is because “[t]he amount in controversy is simply an estimate
12 of the total amount in dispute, not a prospective assessment of defendant’s liability.”
13 *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “[W]hen a
14 defendant seeks federal-court adjudication, the defendant’s amount-in-controversy
15 allegation should be accepted when not contested by the plaintiff or questioned by the
16 court.” *Dart Cherokee*, 574 U.S. at 87.

17 20. In assessing whether the amount in controversy requirement has been
18 satisfied, “a court must ‘assume that the allegations of the complaint are true and assume
19 that a jury will return a verdict for the plaintiff on all claims made in the complaint.’”
20 *Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (quoting
21 *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.
22 Cal. 2002)). In other words, the focus of the Court’s inquiry must be on “what amount
23 is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will *actually*
24 owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)
25 (citing *Rippee v. Bos. Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)).

26 21. Although Barton denies that Plaintiff’s claims have any merit, for the
27 purposes of meeting the jurisdictional requirements for removal *only*, if Plaintiff were
28

1 to prevail on every claim and allegation in her Complaint on behalf of the putative class,
2 the requested monetary recovery would exceed \$5 million.

3 **1. Plaintiff’s Claim for Failure To Pay Overtime Wages Independently**
4 **Places More Than \$2.6 Million in Controversy**

5 24. Barton reserves the right to present evidence establishing the amount placed
6 in controversy by each of Plaintiff’s claims should Plaintiff challenge whether the
7 jurisdictional amount-in-controversy threshold is satisfied. *See Dart Cherokee*, 574 U.S.
8 at 87–89; *see also Salter*, 974 F.3d at 964 (holding that only a “factual attack” that
9 “contests the truth of the plaintiff’s factual allegations, usually by introducing evidence
10 outside the pleadings” requires the removing defendant to “support her jurisdictional
11 allegations with competent proof,” internal quotation marks and citations omitted).
12 “[W]hen a notice of removal plausibly alleges a basis for federal court jurisdiction, a
13 district court may not remand the case back to state court without first giving the
14 defendant an opportunity to show by a preponderance of the evidence that the
15 jurisdictional requirements are satisfied.” *Arias*, 936 F.3d at 924.

16 22. Plaintiff alleges that “[a]t all relevant times, DEFENDANTS failed to
17 compensate PLAINTIFF proper overtime wages for overtime hours worked because of
18 DEFENDANTS’ unlawful policy that failed to pay overtime rates for time worked in
19 excess of 40 hours per work week, when such time did not exceed 8 hours in a single
20 work day. Accordingly, during her employment with DEFENDANTS, PLAINTIFF and
21 the other CLASS members regularly worked overtime hours, without being paid the
22 proper amount of overtime pay.” Holecek Decl., Ex. A, Compl. ¶ 29. Barton denies
23 that any such wages are owed to Plaintiff or putative class members. However, for
24 purposes of this jurisdictional analysis *only*, Barton relies on Plaintiff’s allegations that
25 the wages are owed.

26 23. Based on Barton’s records, at least approximately 1,200 workers contracted
27 with Barton to perform services in California during the four-year period spanning from
28 January 11, 2018 to January 11, 2022. These workers worked a total of approximately

20,000 individual weeks during this timeframe, as evidenced by approximately 20,000 individual timesheets. The average rate of compensation over this four-year period was approximately \$82 per hour. Plaintiff alleges that “PLAINTIFF and the other CLASS members regularly worked overtime hours, without being paid the proper amount of overtime pay.” Holecek Decl., Ex. A, Compl. ¶ 29. According to Barton’s records, during the class period, putative class members worked at least approximately 16,000 12-hour shifts, resulting in at least approximately 64,000 overtime hours (assuming that the putative class members were entitled to overtime compensation, which Barton disputes). Based on this estimate, the amount in controversy with respect to Plaintiff’s First and Second Causes of Action for unpaid overtime wages is approximately **\$2.6 million**, calculated as follows:

Conservative estimate of total 12-hour shifts worked by putative class members:	16,000
Conservative estimate of total overtime hours worked by putative class members (16,000 shifts x 4 overtime hours):	64,000
Alleged unpaid overtime hourly rate (\$82 x .5)	\$41
Amount in controversy for unpaid overtime claim, based on Plaintiff’s allegations (64,000 x \$41):	\$2,624,000

24. The amount in controversy alleged by Plaintiff on this claim alone exceeds \$2.6 million.

2. Plaintiff’s Claims for Unpaid Meal Periods and Rest Periods Place More Than \$3.2 Million in Controversy

25. As restitution under Plaintiff’s Unlawful Business Practices claim, she demands “one additional hour of pay at the employee’s regular hourly rate of compensation for each work day that the meal period was not provided.” Holecek Decl., Ex. A, Compl. ¶ 38. Plaintiff also demands “one additional hour of pay at the employee’s regular hourly rate of compensation for each work day that the rest period was not provided.” *Id.* at ¶ 45.

26. Plaintiff alleges that “DEFENDANTS required PLAINTIFF and the other CLASS members to work five (5) or more hours without authorizing or

1 permitting an uninterrupted, duty-free thirty (30) minute meal period.” *Id.* at ¶ 35.
2 Plaintiff also alleges that “DEFENDANTS failed to pay PLAINTIFF and the other
3 CLASS members the full missed-meal period premium due pursuant to California
4 Labor Code Section 226.7.” *Id.* at ¶ 36.

5 27. Plaintiff alleges that “DEFENDANTS required PLAINTIFF and the
6 other CLASS members to work four (4) or more hours without authorizing or
7 permitting an uninterrupted ten (10) minute rest period per each four (4) hour period
8 worked.” *Id.* at ¶ 42. Plaintiff also alleges that “DEFENDANTS failed to pay
9 PLAINTIFF and the other CLASS members the full missed-rest period premium due
10 pursuant to California Labor Code Section 226.7.” *Id.* at ¶ 43. The breadth of
11 Plaintiff’s allegations, combined with a lack of explanation or clarification as to how
12 often the alleged meal and rest period violations occurred, justifies a hypothetical
13 violation rate of 100%: at least one meal period violation and one rest period violation
14 per day. *See Soto v. Tech Packaging, Inc.*, 2019 WL 6492245, at *4 (C.D. Cal. Dec. 3,
15 2019) (“Based upon the Complaint’s broadly worded allegations, the Court agrees with
16 Defendant that one meal break and one rest break violation per workday is a
17 reasonable assumption. This Court and numerous other courts have found similar
18 allegations supportive of a 100% violation rate assumption, *i.e.*, assuming a single
19 violation per work day.”).

20 28. Barton denies that any such wages are owed to Plaintiff or putative class
21 members. However, for purposes of this jurisdictional analysis *only*, Barton relies on
22 Plaintiff’s allegations that the wages are owed.

23 29. Assuming the bare minimum of workdays—that each of the
24 approximately 20,000 weekly timesheets contains only one workday—this results in an
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1 amount in controversy attributable solely to unpaid meal and rest periods of more than
2 **\$3.2 million**,¹ calculated as follows:

3 Total weeks worked by putative class members during 4 class period:	20,000
5 Alleged meal break violations (one per workweek):	20,000
6 Alleged rest period violations (one per workweek):	20,000
7 Average hourly rate of compensation:	\$82
8 Amount in controversy for unpaid meal and rest period violation claims (20,000 x 2 x \$82):	\$3,280,000

9 **3. Plaintiff’s Claim for Alleged Violation of Labor Code Section 226**
10 **Places \$485,000 in Controversy**

11 30. Plaintiff alleges in her Fourth Cause of Action that Barton “intentionally
12 failed to furnish PLAINTIFF and the other CLASS members with complete and accurate
13 wage statements upon each payment of wages, in violation of California Labor Code
14 section 226.” Holecek Decl., Ex. A, Compl. ¶ 48.

15 31. Under section 226(e)(1), an employee suffering injury as a result of an
16 intentional failure to comply with section 226(a) is entitled to “recover the greater of all
17 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
18 and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
20 entitled to an award of costs and reasonable attorney’s fees.” Cal. Lab. Code § 226(e)(1).

21 32. Barton denies that any such penalties are owed to Plaintiff or putative class
22 members. However, for purposes of this jurisdictional analysis *only*, Barton relies on
23 Plaintiff’s allegations that the penalties are owed. Plaintiff alleges that “PLAINTIFF
24 and the other CLASS members were injured and damaged by these failures because,
25 among other things, these failures led them to believe they were not entitled to be paid
26 wages for overtime and regular wages although they were so entitled.” Holecek Decl.,

27 _____
28 ¹ The result would be the same if one assumed a 5-day workweek and 20% violation
rate.

1 Ex. A, Compl. ¶ 48. Plaintiff’s wage statement claim is therefore entirely derivative of
 2 her other claims for unpaid wages, including minimum wage and other premium wages.
 3 Based on Plaintiff’s allegations, it is reasonable to assume for the purposes of this
 4 jurisdictional analysis only, that all class members received inaccurate wage statements
 5 each pay period. *See Mejia v. DHL Express (USA), Inc.*, 2015 WL 2452755, at *5 (C.D.
 6 Cal. May 21, 2015) (concluding it is appropriate to use 100% violation rate for wage
 7 statement claim where the claim is derivative); *Soto v. Tech Packaging, Inc.*, 2019 WL
 8 6492245, at *7 (C.D. Cal. Dec. 3, 2019).²

9 33. Based on Barton’s records, at least approximately 1,200 workers contracted
 10 with Barton to perform services in California during the four-year period spanning from
 11 January 11, 2018 to January 11, 2022. These workers worked a total of approximately
 12 20,000 individual weeks during this timeframe, as evidenced by approximately 20,000
 13 individual timesheets. Therefore, it can be estimated that between November 27, 2020
 14 and November 26, 2021, 300 workers worked a total of 5,000 individual weeks. During
 15 this time, it was Barton’s practice to pay putative class members weekly (i.e., there were
 16 52 billing cycles during this one-year period). If there were 5,000 inaccurate wage
 17 statements (and Barton disputes that any wage statements were inaccurate), Plaintiff’s
 18 wage statement claim would place **\$485,000** in controversy, calculated as follows:

19 Penalty for initial pay period for 300 putative class 20 members (300 initial pay periods x \$50):	\$15,000
21 Penalty for 4,700 subsequent pay periods 22 (4,700 subsequent pay periods x \$100):	\$470,000
23 Amount in controversy for section 226 claim, based on 24 Plaintiff’s allegations:	\$485,000

25 **4. Plaintiff’s Request for Attorneys’ Fees Places More Than \$1.5 Million**
 26 **in Controversy**

27
 28 ² Barton does not concede that penalties under § 226 are recoverable for a derivative
 theory of liability like the one Plaintiff advances here. *See Mays v. Wal-Mart Stores,*
Inc., 804 F. App’x 641, 643 (9th Cir. Mar. 17, 2020).

1 34. Plaintiff also explicitly seeks attorneys' fees should she recover for any of
 2 the claims in this action. *See* Holecek Decl., Ex. A, Prayer for Relief. Prospective
 3 attorneys' fees are properly included in the amount in controversy for purposes of
 4 evaluating CAFA jurisdiction. *See Arias*, 936 F.3d at 922 (“[W]hen a statute or contract
 5 provides for the recovery of attorneys' fees, prospective attorneys' fees must be included
 6 in the assessment of the amount in controversy.”). Under the Ninth Circuit's well-
 7 established precedent, 25% of the common fund is generally used as a benchmark for an
 8 award of attorneys' fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.
 9 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 WL 587844, at *5 (S.D. Cal. Mar. 6, 2009)
 10 (“In wage and hour cases, ‘[t]wenty-five percent is considered a benchmark for
 11 attorneys' fees in common fund cases.’”).

12 35. Here, Barton has established that the total amount in controversy is at least
 13 **\$6.3 million**, and Plaintiff has not indicated that she will seek less than 25% of a
 14 common fund in attorneys' fees. *See* Holecek Decl., Ex. A, Prayer for Relief (seeking
 15 attorneys' fees). Although Barton has shown that the amount in controversy absent
 16 attorneys' fees surpasses the jurisdictional threshold, this Court should nevertheless
 17 include the potential attorneys' fees in evaluating jurisdiction. *Arias*, 936 F.3d at 922.
 18 Barton denies that any such attorneys' fees are owed to Plaintiff or putative class
 19 members. However, for purposes of this jurisdictional analysis *only*, Barton relies on
 20 Plaintiff's allegations that the attorneys' fees are owed.

21 36. Using a 25% benchmark figure for attorneys' fees for Plaintiff's allegations
 22 regarding alleged unpaid overtime wages results in estimated attorneys' fees of
 23 approximately **\$1.6 million**, calculated as follows:

24 Estimate of Amount in Controversy from Unpaid 25 Overtime Claims:	\$2.6 million
26 Estimate of Amount in Controversy from Unpaid 27 Meal/Rest Period Claims:	\$3.2 million
28 Estimate of Amount in Controversy from Inaccurate Wage Statement Claims:	\$485,000

Attorneys' Fees Benchmark:	25%
Attorneys' Fees:	\$1,571,250

5. Just Four of Plaintiff's Six Causes of Action, Including Attorneys' Fees, Place More Than \$7.8 Million in Controversy

37. In summary, Plaintiff's allegations regarding unpaid overtime claims places more than \$2.6 million in controversy. Plaintiff's allegations regarding unpaid meal and rest periods also places more than \$3.2 million in controversy. And Plaintiff's allegations regarding inaccurate wage statements places roughly \$485,000 in controversy. Attorneys' fees on these three claims alone would place an additional \$1.5 million in controversy, resulting in a total estimated amount in controversy of greater than **\$7.8 million**. This amount in controversy calculation underestimates the total amount placed in controversy by Plaintiff's complaint because it is based on conservative assumptions about Plaintiff's putative class allegations and does not account for, among other things, any recovery sought in Plaintiff's Causes of Action Five (Wages Not Timely Paid Upon Termination) and Six (Unlawful, Unfair and Fraudulent Business Practices in Violation of California Business & Professions Code § 17200, *et seq.*).

38. Plaintiff's allegations therefore place more than the requisite \$5 million in controversy. The jurisdictional amount-in-controversy requirement is met, and removal to this Court is proper under CAFA.

D. This Court May Exercise Supplemental Jurisdiction Over Plaintiff's Potential Forthcoming PAGA Claims

39. Plaintiff states that on January 5, 2022, she "gave written notice through her counsel pursuant to the Private Attorneys General Act, Labor Code Sections 2698, *et seq.* ("PAGA") of BARTON'S violations of various provisions of the Labor Code, including as alleged herein, to the Labor Code and Workforce Development Agency ("LWDA")." Holecek Decl., Ex. A, Compl. ¶ 17. Plaintiff further states that "[i]f, within 60 days of the date of the written notice to the LWDA, the LWDA responds

1 indicating that it does not intend to investigate of BARTON’S violations of the Labor
2 Code, or if the LWDA fails to respond within 65 days of that date, PLAINTIFF intends
3 to amend this Class Action Complaint to state a cause of action for civil penalties
4 under the PAGA as provided by Labor Code Section 2699.3(a)(2)(C).” *Id.* at ¶ 18.

5 40. Because this Court has original jurisdiction over Plaintiff’s class claims
6 under CAFA, the Court may exercise supplemental jurisdiction over Plaintiff’s PAGA
7 claims (should she bring them). Under 28 U.S.C. § 1367(a), “the district courts shall
8 have supplemental jurisdiction over all other claims that are so related to claims in the
9 action within such original jurisdiction that they form part of the same case or
10 controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).
11 Plaintiff’s PAGA and class claims will concern the same alleged misconduct by
12 Defendant; therefore, the PAGA claims would be properly within the Court’s
13 supplemental jurisdiction.
14

15 **III. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

16 41. Based on the foregoing facts and allegations, this Court has original
17 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because:

- 18 a) This is a civil action which is a class action within the meaning of
19 § 1332(d)(1)(B);
- 20 b) The action involves a putative class of at least 100 persons as required
21 by § 1332(d)(5)(B);
- 22 c) The amount in controversy exceeds \$5 million, exclusive of interest
23 and costs, as required by § 1332(d)(2); and
- 24 d) At least one member of the putative class is a citizen of a state different
25 from that of any defendant as required by § 1332(d)(2)(A).

26 Accordingly, this action is properly removable under 28 U.S.C. §§ 1441, 1446, and
27 1453.
28

1 42. The United States District Court for the Central District of California is the
2 federal judicial district in which the Los Angeles County Superior Court sits. This action
3 was originally filed in the Los Angeles Superior Court, rendering venue in this federal
4 judicial district proper. 28 U.S.C. § 84(c); *see also* 28 U.S.C. § 1441(a).

5 43. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the (a) Class
6 Action Complaint filed on January 11, 2022; (b) Summons issued on January 11, 2022
7 to Barton; (c) Civil Case Cover Sheet and Addendum filed on January 11, 2022; (d) First
8 Amended General Order; (e) Voluntary Efficient Litigation Stipulations; (f) Court Order
9 Regarding Newly Filed Class Action; (g) Initial Status Conference Order; and (h) Proofs
10 of Service reflecting service on Barton are attached as Exhibits A–I to the Declaration
11 of Michael Holecek (“Holecek Decl.”) filed concurrently here. These filings constitute
12 the complete record of all records and proceedings in the state court.

13 44. Upon filing the Notice of Removal, Barton will furnish written notice to
14 Plaintiff’s counsel, and will file and serve a copy of this Notice with the Clerk of the Los
15 Angeles County Superior Court, pursuant to 28 U.S.C. § 1446(d).

16
17 Dated: February 14, 2022

18
19 MICHAEL J. HOLECEK
GIBSON, DUNN & CRUTCHER LLP

20
21 By: /s/ Michael J. Holecek
Michael J. Holecek

22
23 Attorneys for Defendants
24 BARTON & ASSOCIATES, INC. (erroneously
named as Barton Associates, Inc.)
25
26
27
28

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10 Attorneys for Defendant
BARTON & ASSOCIATES, INC. (erroneously
11 named as BARTON ASSOCIATES, INC.)

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 SARAH BAXLEY in her individual and
representative capacities,

17 Plaintiff,

18 v.

19 BARTON ASSOCIATES, INC., a
20 Delaware Corporation and DOES 1
through 10, inclusive,

21 Defendants.

CASE NO. 2:22-cv-1011

**DECLARATION OF MICHAEL J.
HOLECEK IN SUPPORT OF
DEFENDANT BARTON &
ASSOCIATES, INC.'S NOTICE
OF REMOVAL**

(Removal from Los Angeles Superior
Court, Case No. 22STCV01126)

Action Filed: January 11, 2022

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DECLARATION OF MICHAEL J. HOLECEK

I, Michael J. Holecek, hereby declare and state:

1. I am an attorney duly licensed to practice law before all the courts of the State of California as well as the United States District Court for the Central District of California. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, and am one of the attorneys representing Defendant Barton & Associates, Inc. (“Defendant”) in the above-titled action. I have personal knowledge of the matters stated herein, and if asked to testify thereto, I could and would do so competently.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint in *Sarah Baxley v. Barton Associates, Inc.*, Case No. 22STCV01126, Superior Court of California, County of Los Angeles, which was filed on January 11, 2022, and served on Defendant on January 14, 2022.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Summons in *Sarah Baxley v. Barton Associates, Inc.*, Case No. 22STCV01126, Superior Court of California, County of Los Angeles, which was filed on January 11, 2022, and served on Defendant on January 14, 2022.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Civil Case Cover Sheet, Addendum, and Statement of Location in *Sarah Baxley v. Barton Associates, Inc.*, Case No. 22STCV01126, Superior Court of California, County of Los Angeles, which was filed on January 11, 2022, and served on Defendant on January 14, 2022.

5. Attached hereto as **Exhibit D** is a true and correct copy of the First Amended General Order which was filed in *Sarah Baxley v. Barton Associates, Inc.*, Case No. 22STCV01126, Superior Court of California, County of Los Angeles, on January 11, 2022, and served on Defendant on January 14, 2022.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Voluntary Efficient Litigation Stipulations, which were filed in *Sarah Baxley v. Barton*

1 *Associates, Inc.*, Case No. 22STCV01126, Superior Court of California, County of Los
2 Angeles, on January 11, 2022, and served on Defendant on January 14, 2022.

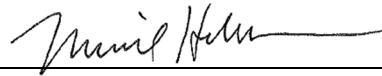
3 7. Attached hereto as **Exhibit F** is a true and correct copy of the Proof of
4 Service of Summons in *Sarah Baxley v. Barton Associates, Inc.*, Case No.
5 22STCV01126, Superior Court of California, County of Los Angeles, which was filed
6 on January 19, 2022

7 8. Attached hereto as **Exhibit G** is a true and correct copy of the Court
8 Order Regarding Newly Filed Class Action in *Sarah Baxley v. Barton Associates, Inc.*,
9 Case No. 22STCV01126, Superior Court of California, County of Los Angeles, which
10 was filed on January 28, 2022, and served on Defendant on January 31, 2022.

11 9. Attached hereto as **Exhibit H** is a true and correct copy of the Initial
12 Status Conference Order in *Sarah Baxley v. Barton Associates, Inc.*, Case No.
13 22STCV01126, Superior Court of California, County of Los Angeles, which was filed
14 on January 28, 2022, and served on Defendant on January 31, 2022.

15 10. Attached hereto as **Exhibit I** is a true and correct copy of Proof of Service
16 of Initial Orders in *Sarah Baxley v. Barton Associates, Inc.*, Case No. 22STCV01126,
17 Superior Court of California, County of Los Angeles, which was filed on January 31,
18 2022.

19 I declare under penalty of perjury under the laws of the State of California and
20 the United States of America that the foregoing is true and correct and that I executed
21 this Declaration on February 14, 2022, in Los Angeles, California.

22
23 

24 Michael J. Holecek

EXHIBIT A

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Yvette Palazuelos

Electronically FILED by Superior Court of California, County of Los Angeles on 01/11/2022 01:13 PM Sherri R. Carter, Executive Officer/Clerk of Court, by K. Martinez, Deputy Clerk

1 Corbett H. Williams (Bar No. 246458)
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5 Attorneys for Plaintiff
SARAH BAXLEY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 SARAH BAXLEY in her individual and
representative capacities,

11 Plaintiff,

12 v.

13 BARTON ASSOCIATES, INC., a
14 Delaware Corporation and DOES 1
through 10, inclusive,

15 Defendants.
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Case No.: 22STCV01126

Assigned to:

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, AND 1197.1 (Unpaid Overtime Wages);
- 2. VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7, 226.7(b), and 512 (Meal Periods);
- 3. VIOLATION OF CALIFORNIA LABOR CODE § 226.7 (Rest Breaks);
- 4. VIOLATION OF CALIFORNIA LABOR CODE § 226(a) (Wage Statements);
- 5. VIOLATION OF CALIFORNIA LABOR CODE §§ 201 and 202 (Wages Not Timely Paid Upon Termination)
- 6. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*

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1 Plaintiff SARAH BAXLEY individually and on behalf of all other members of the public
2 similarly situated, alleges as follows against defendants BARTON ASSOCIATES, INC. and DOES
3 1 through 10, inclusive:

4 **THE PARTIES**

5 1. Plaintiff SARAH BAXLEY (“PLAINTIFF”) is an individual who is a citizen of the
6 state of Florida and at all times relevant hereto, resided in the state of California, County of Los
7 Angeles. PLAINTIFF is a licensed nurse practitioner, and at all relevant times, was the legal
8 employee of DEFENDANTS.

9 2. Defendant BARTON ASSOCIATES, INC. (“BARTON”) is a corporation existing
10 under the laws of the state of Delaware and is headquartered in Peabody, Massachusetts.

11 3. BARTON operates a business that, among other things, provides staffing for
12 healthcare providers, including the procurement of nurses, nurse practitioners and physicians.

13 4. PLAINTIFF brings this class action on behalf of himself and a California class,
14 defined as all individuals who are or previously were employed by BARTON / DEFENDANTS in
15 California at any time during the period beginning on four (4) years prior to the filing of this
16 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

17 5. PLAINTIFF is unaware of the true names and capacities, whether corporate or
18 individual, or otherwise, of defendants named as DOES 1 though 10, inclusive. Pursuant to
19 California Code of Civil Procedure section 474, PLAINTIFF will seek leave of court to amend this
20 Class Action Complaint to state said defendants’ true names and capacities when the same have
21 been ascertained. PLAINTIFF is informed and believes, and based on such information and belief,
22 alleges that said fictitiously-named defendants are responsible in some manner for the injuries and
23 damages to PLAINTIFF as further alleged herein.

24 6. PLAINTIFF is informed and believes, and thereon alleges, that each and all of the
25 acts and omissions alleged herein was performed by, or is attributable to BARTON and/or DOES 1
26 through 10, inclusive, (hereafter referred to collectively as “DEFENDANTS”) each acting as the
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1 agent for the other, with legal authority to act on the other’s behalf. The acts of any and all
2 DEFENDANTS were in accordance with, and represent the official policy of DEFENDANTS.

3 7. PLAINTIFF is informed and believes, and on that basis alleges, that each defendant
4 is the alter ego and joint employer, and is working in joint enterprise with, each and every other
5 defendant. PLAINTIFF is further informed and believes, and on that basis alleges, that at all times
6 relevant to this Complaint, each defendant was the agent or employee of each other defendant, and
7 in the doing the acts alleged herein, was acting within the course and scope of such agency or
8 employment, with the consent, provision, and authorization of each of the remaining defendants.
9 All actions of each defendant were ratified and approved by every other defendant.

10 8. At all relevant times, DEFENDANTS, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, DEFENDANTS, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing the
13 damages herein alleged.

14 9. PLAINTIFF is informed and believes, and thereon alleges, that each of said
15 DEFENDANTS is in some manner intentionally, negligently, or otherwise responsible for the acts,
16 omissions, occurrences, and transactions alleged herein.

17 **JURISDICTION AND VENUE**

18 10. Venue is proper under California Code of Civil Procedure Section 395.5 because the
19 obligation or liability that is the subject of this Complaint arose, at least in part, in this County. The
20 amount in controversy exceeds this Court’s jurisdictional minimum.

21 **FACTUAL ALLEGATIONS**

22 11. BARTON operates its business through a pattern and practice by which it seeks to
23 deprive non-exempt healthcare workers from potentially millions of dollars in overtime wages and
24 other benefits by knowingly, willfully and flagrantly misclassifying these individuals, as
25 “independent contractors.” Through its systematic pattern and practice of willful misclassification,
26 BARTON also seeks to avoid and evade California wage and hour laws, taxes and insurance
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1 obligations. BARTON has enriched itself at the expense of healthcare workers and the citizens of
2 California.

3 12. On or about March 22, 2021, BARTON engaged PLAINTIFF as its employee, but
4 instead of recognizing her a such, required that she accept the terms of its “Client Services
5 Agreement,” in which it referred to PLAINTIFF as “contractor” and expressly disclaimed the
6 existence of an employment relationship.

7 13. On or about August 17, 2021, BARTON assigned PLAINTIFF to perform medical
8 services to unaccompanied minors in Pomona, California. At all times PLAINTIFF performed work
9 at DEFENDANTS’ direction and resided in Los Angeles County.

10 14. Although PLAINTIFF and scores of other similarly situated medical staff furnished
11 by DEFENDANTS worked substantial overtime, including hours exceeding 8 hours per day and 40
12 hours per week, DEFENDANTS failed to pay those employees overtime rates for such time worked.

13 15. In addition, PLAINTIFF and other CLASS Members were required to perform work
14 as required by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
15 duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CLASS Members with
16 a second off-duty meal period each workday in which these employees were required by
17 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CLASS Members
18 therefore forfeited meal breaks without additional compensation and in accordance with
19 DEFENDANTS’ corporate policy and practice.

20 16. During the CLASS PERIOD, PLAINTIFF and other CLASS Members were also
21 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
22 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
23 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
24 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third
25 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF
26 and other CLASS Members were also not provided with one hour of wages in lieu thereof.

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PLAINTIFF Has Provided Notice of DEFENDANTS’ Unlawful Conduct to the LWDA

17. On January 5, 2022, PLAINTIFF gave written notice through her counsel pursuant to the Private Attorneys General Act, Labor Code Sections 2698, *et seq.* (“PAGA”) of BARTON’S violations of various provisions of the Labor Code, including as alleged herein, to the Labor Code and Workforce Development Agency (“LWDA”). Such notice was also sent to of BARTON via registered U.S. Mail to the address of its principal executive office as well as its registered agent for service on file with the Massachusetts Secretary of State. On that same day, PLAINTIFF, through her counsel, tendered the filing fee as required under Labor Code Section 2699.3.

18. If, within 60 days of the date of the written notice to the LWDA, the LWDA responds indicating that it does not intend to investigate of BARTON’S violations of the Labor Code, or if the LWDA fails to respond within 65 days of that date, PLAINTIFF intends to amend this Class Action Complaint to state a cause of action for civil penalties under the PAGA as provided by Labor Code Section 2699.3(a)(2)(C).

CLASS ACTION ALLEGATIONS

19. PLAINTIFF brings this action on behalf of herself and all others similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure and seek to represent a CLASS of similarly situated individuals defined as follows:

“All individuals employed by BARTON in California and who are or were classified as ‘independent contractors.’”

20. The “CLASS PERIOD” is defined as four (4) years prior to the filing of the initial Complaint through the trial of this matter.

21. Members of the CLASS are so numerous that joinder of all members would be unfeasible and impractical.

22. The precise scope of the CLASS can be ascertained by DEFENDANTS’ records.

23. There are questions of law and fact common among CLASS members including, but not necessarily limited to: (i) whether CLASS members were entitled to overtime; (ii) whether CLASS members were furnished statutory meal and rest periods; (iii) whether, CLASS members

1 were paid premiums for missed meal and rest periods (iv) whether CLASS members were paid all
2 wages due, including overtime at the time of separation from employment; and (v) whether
3 DEFENDANTS engaged in unfair business practices in violation of California Business &
4 Professions Code 17200 *et seq.*

5 24. These common issues of fact and law predominate over any individualized issues.

6 25. PLAINTIFF's claims are typical of those of the CLASS, in that PLAINTIFF and
7 CLASS members were exposed to the same unlawful, systematic and companywide policies
8 discussed herein.

9 26. A class action is superior to other available methods for the fair and efficient
10 adjudication of the controversy.

11 27. PLAINTIFF and her counsel will fairly and adequately protect the interests of the
12 CLASS.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, and 1197.1 (FAILURE TO**
15 **PAY OVERTIME WAGES)**

16 **(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)**

17 28. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though
18 fully set forth herein.

19 29. At all relevant times, DEFENDANTS failed to compensate PLAINTIFF proper
20 overtime wages for overtime hours worked because of DEFENDANTS' unlawful policy that failed
21 to pay overtime rates for time worked in excess of 40 hours per work week, when such time did not
22 exceed 8 hours in a single work day. Accordingly, during her employment with DEFENDANTS,
23 PLAINTIFF and the other CLASS members regularly worked overtime hours, without being paid
24 the proper amount of overtime pay.

25 30. DEFENDANTS' failure to pay PLAINTIFF and the other CLASS members the
26 unpaid balance of premium overtime compensation violates, among other provisions, sections 510,
27 1194, 1194.2 and 1197.1 of the Labor Code and applicable Wage Orders and is therefore unlawful.

28

1 31. PLAINTIFF and the other CLASS members are entitled remedies, including, but not
2 limited to, their unpaid overtime compensation, penalties, interest, injunctive relief, costs, and
3 attorneys' fees.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7, 226.7(b), and 512 (FAILURE TO**
6 **PROVIDE MEAL PERIODS)**

7 **(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)**

8 32. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though
9 fully set forth herein.

10 33. At all relevant times, the applicable IWC Wage Order and California Labor Code
11 Section 226.7 governed PLAINTIFF and the other CLASS members' employment by
12 DEFENDANT.

13 34. At all relevant times, California Labor Code Section 226.7 provided that no employer
14 shall require an employee to work during any meal period mandated by an applicable order of the
15 California IWC.

16 35. DEFENDANTS required PLAINTIFF and the other CLASS members to work five
17 (5) or more hours without authorizing or permitting an uninterrupted, duty-free thirty (30) minute
18 meal period.

19 36. DEFENDANTS failed to pay PLAINTIFF and the other CLASS members the full
20 missed-meal period premium due pursuant to California Labor Code Section 226.7.

21 37. DEFENDANTS conduct violates the applicable IWC Wage Orders and California
22 Labor Code Sections 226.7, 226.7(b), and 512.

23 38. Pursuant to the applicable IWC Wage Order and California Labor Code Section
24 226.7(b), PLAINTIFF and the other CLASS members are entitled to recover one additional hour of
25 pay at the employee's regular hourly rate of compensation for each work day that the meal period
26 was not provided.

27 ///

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 226.7 (FAILURE TO PROVIDE REST PERIODS)

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

39. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

40. At all relevant times, the applicable IWC Wage Order and California Labor Code Section 226.7 governed PLAINTIFF and the other CLASS members employment by DEFENDANTS.

41. At all relevant times, California Labor Code Section 226.7 provided that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

42. DEFENDANTS required PLAINTIFF and the other CLASS members to work four (4) or more hours without authorizing or permitting an uninterrupted ten (10) minute rest period per each four (4) hour period worked.

43. DEFENDANTS failed to pay PLAINTIFF and the other CLASS members the full missed-rest period premium due pursuant to California Labor Code Section 226.7.

44. DEFENDANTS' conduct violates the applicable IWC Wage Orders and California Labor Code Section 226.7.

45. Pursuant to the applicable IWC Wage Order and California Labor Code Section 226.7(b), PLAINTIFF and the other CLASS members are entitled to recover one additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

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FOURTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 226(a) (FAILURE TO FURNISH WAGE STATEMENTS)

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

46. PLAINTIFF incorporates by this reference the relevant allegations in this pleading as if fully set forth herein.

47. California Labor Code section 226(a) sets forth reporting requirements for employers when they pay wages: “Every employer shall . . . at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (5) net wages earned . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Cal. Lab. Code § 226(a). “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a 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.” Cal. Lab. Code § 226(e)(1). “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by . . . subdivision (a)”

48. DEFENDANTS intentionally failed to furnish PLAINTIFF and the other CLASS members with complete and accurate wage statements upon each payment of wages, in violation of California Labor Code section 226(a) PLAINTIFF and the other CLASS members were injured and damaged by these failures because, among other things, these failures led them to believe they were not entitled to be paid wages for overtime and regular wages although they were so entitled.

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FIFTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 201 AND 202 (WAGES NOT TIMELY PAID UPON TERMINATION)

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

49. PLAINTIFF incorporates by this reference the relevant allegations in this pleading as if fully set forth herein.

50. At all relevant times, California Labor Code Sections 201 and 202 provided that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

51. Defendants willfully failed to pay PLAINTIFF and members of the CLASS wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

52. DEFENDANTS' failure to pay PLAINTIFF and class members all wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code Sections 201 and 202.

53. California Labor Code Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

54. PLAINTIFF and members of the CLASS are entitled to recover from DEFENDANTS the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code Section 203.

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SIXTH CAUSE OF ACTION

**UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES IN VIOLATION
OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.**

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

55. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

56. The unlawful conduct alleged herein, including, but not limited to, DEFENDANTS’ failures to pay overtime wages, premiums for missed meal and rest breaks and waiting time penalties constitute unlawful activity prohibited by California Business and Professions Code section 17200, *et seq.*, including, but not limited to, Sections 17200, 17202, and 17203.

57. DEFENDANTS’ actions herein alleged likewise constitute unfair, fraudulent and/or deceptive business practices within the meaning of California Business and Professions Code Sections 17200, *et seq.*

58. DEFENDANTS have deprived PLAINTIFF and members of the CLASS of money and/or property and PLAINTIFF and members of the CLASS have suffered injury in fact as the direct and proximate consequence of the unlawful, unfair and fraudulent conduct alleged herein.

59. Pursuant to Section 17203 of the California Business and Professions Code, PLAINTIFF seeks an order of this Court enjoining DEFENDANTS from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in this Complaint. PLAINTIFF also seeks an order requiring DEFENDANTS to make full restitution of all moneys wrongfully withheld from PLAINTIFF and the CLASS members.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of herself all CLASS members and all aggrieved employees of DEFENDANTS, pray for relief and judgment as follows:

1. Actual damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages;


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- 4. Restitution;
- 5. An award of reasonable attorneys' fees pursuant to Labor Code Section 218.5, and any other applicable law(s) that may provide for recovery of attorneys' fees;
- 6. An order enjoining DEFENDANTS from continuing the unlawful conduct described herein;
- 7. Costs of suit; and
- 8. All such other remedies, legal or equitable as the Court may deem proper or necessary.

Dated: January 11, 2022

Law Offices of Corbett H. Williams

By:



Attorneys for Plaintiff
SARAH BAXLEY

Law Offices of Corbett H. Williams

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Barton Associates Misclassified Healthcare Workers as Contractors, Owes Unpaid Overtime](#)
