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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

7/20/2026 2:32:57 PM

Clerk of the Superior Court
By G. Lopez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LESLIE GUTIERREZ, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

APRIA HEALTHCARE LLC; OWENS AND
MINOR, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 26CU023619C

Hon. Terrie E. Roberts
Dept. C-68

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: April 28, 2026

1 Plaintiff LESLIE GUTIERREZ, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 REPRESENTATIVE ACTION COMPLAINT against Defendants APRIA HEALTHCARE LLC;
4 OWENS AND MINOR, INC.; and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. This is a representative action complaint brought under the California Private Attorneys
8 General Act (Labor Code sections 2968 *et seq.*).

9 2. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the
10 lawful rate of pay for hours worked, resulting in unpaid overtime wages.

11 3. Defendants failed to comply with California’s paid sick leave laws and failed to pay all
12 owed paid sick leave at the lawful statutory rate.

13 4. Defendants failed to pay all wages and premiums in each pay period in which such
14 wages were earned at the lawful rate.

15 5. Defendant failed to reimburse Plaintiff and the aggrieved employees for costs incurred
16 for work-related purposes.

17 6. Defendants’ employment policies, practices, and payroll administration systems
18 enabled and facilitated these violations on a company-wide basis with respect to the class members.

19 7. Plaintiff seeks to recover the damages, wages, interest, and penalties, in addition to
20 attorneys’ fees and costs, according to proof.

21 **JURISDICTION & VENUE**

22 8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution as the causes of action are premised upon violations of California law.

24 9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
25 the Superior Court.

26 10. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
28

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

3 11. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
4 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
5 some of the alleged violations in this County.

6 **PARTIES**

7 **A. Plaintiff Leslie Gutierrez**

8 12. Plaintiff Gutierrez is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about August 2021 to February 2026. Plaintiff worked as
10 a Branch Coordinator.

11 13. The State of California, via the Labor and Workforce Development Agency
12 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
13 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
14 in interest.”]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
15 *Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd., LLC* (2025) 109
16 Cal.App.5th 69, the PAGA claim is brought exclusively as a representative action and does not include
17 arbitrable claims.

18 **B. Defendants**

19 14. Defendant Apria Healthcare LLC is a Indiana limited liability company that maintains
20 operations and conducts business throughout the State of California, including in this county.

21 15. Defendant Owens and Minor, Inc. is a Virginia corporation that maintains operations
22 and conducts business throughout the State of California, including in this county.

23 16. The true names and capacities, whether individual, corporate, or otherwise, of the
24 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
25 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
26 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
27 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
28 true names and capacities once ascertained.

1 17. Upon information and belief, Defendants in this action are employers, co-employers,
2 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
3 control over the wages, hours, and working conditions of the employees, suffered and permitted them
4 to work, and otherwise engaged them as employees under California law.

5 18. Upon information and belief, at least some of the Defendants have common ownership,
6 common management, interrelationship of operations, and centralized control over labor relations and
7 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
8 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

9 19. Upon information and belief, Defendants acted in all respects pertinent to this action as
10 an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated
11 enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and
12 omissions of each defendant may be legally attributable to all others.

13 **GENERAL ALLEGATIONS**

14 20. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the
15 lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent that
16 these unaccounted-for hours resulted in Plaintiff working more than eight hours a day or forty hours
17 in a week, Plaintiff is owed unpaid overtime as a result.

18 21. Specifically, Defendant paid Plaintiff and the aggrieved employees additional
19 payments, including non-discretionary shift differentials that Defendant failed to include in the
20 overtime for the pay periods in which they were earned, resulting in the underpayment of any overtime
21 hours worked. Defendant failed to factor in these night shift differential in the Plaintiff's overtime
22 compensation.

23 22. For example, Plaintiff worked 8.8 Hours of overtime and earned \$191.65 of a night
24 shift differential; however, Defendants failed to factor in this additional remuneration into the regular
25 rate of pay. Instead, Defendants unlawfully paid Plaintiff overtime pay at 1.5x Plaintiff's base rate
26 rather than the increased regular rate of pay, which should have factored in the shift differentials and
27 other forms of additional remuneration.

1 23. To the extent that other aggrieved employees earned overtime pay or other forms of
2 remuneration, each must be factored into the regular rate of pay during the statutory period. Plaintiff
3 alleges, based on information and belief that this was a matter of common policy and practice.
4 Defendants violated the Labor Code accordingly.

5 24. Defendant unlawfully paid overtime to Plaintiff and the aggrieved employees at their
6 straight hourly rate. For each overtime hour worked, Defendant should have paid overtime “at the rate
7 no less than one and one-half times the regular rate of pay for an employer” and required by the plain
8 language of Labor Code section 510(a) and the IWC Wage Orders. Defendant’s failure to pay
9 overtime at the regular rate of pay was common to the aggrieved employees.

10 25. Defendants failed to comply with California’s paid sick leave laws with respect to the
11 aggrieved employees. Defendants failed to pay all owed paid sick leave at the lawful statutory rate.

12 26. For example, Plaintiff earned a shift differential of \$110.69 in the same pay period that
13 Plaintiff used 15.98 hours of paid sick leave. Defendants should have paid the paid sick leave at
14 Plaintiff’s regular rate of pay, inclusive of the \$110.69 shift differential. However, Defendants
15 neglected the bonus and instead paid all sick leave at Plaintiff’s base rate resulting in unpaid paid sick
16 leave.

17 27. Because Defendants failed to pay all wages and premiums in each pay period in which
18 such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b
19 (for weekly employees, as applicable).

20 28. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and
21 premiums owed on the regular pay days scheduled each pay period within seven calendar days of the
22 close of the payroll period, as a result of the policies and practices set forth in this complaint.

23 29. Plaintiff was terminated on February 3, 2026. However, Plaintiff was not paid upon
24 termination. Instead, Defendants did not pay Plaintiff her final wages until February 6, 2026.

25 30. Additionally, Plaintiff’s accrued vacation and sick days were not paid until February
26 13, 2026.

27 31. Further records analysis shows a pattern and practice of Defendants’ failure to pay all
28 owed wages upon separation of employment under the Labor Code.

1 32. Defendants failed to provide accurate itemized wage statements to the aggrieved
2 employees each pay period as a result of the policies and practices set forth in this notice.

3 33. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct
4 “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were
5 not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage
6 statements.

7 34. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
8 employee wage statements each pay period the applicable hourly rates in effect and the number of
9 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
10 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
11 pay stub.

12 35. Additionally, Defendants violated Labor Code section 226(a)(2) by failing to
13 accurately list employees’ “total hours worked,” as the wage statements did not accurately include the
14 uncompensated time Plaintiff and other aggrieved employees worked due to Defendants’ policy and
15 practice of requiring off-the-clock work.

16 36. Plaintiff and other aggrieved employees cannot promptly and easily determine from the
17 wage statement alone the wages paid or earned without reference to other documents or information.
18 Indeed, these wage statement violations are significant because they sow confusion among Plaintiff
19 and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the
20 number of hours worked, and how those amounts were or should be calculated. The wage statements
21 reflect a false statement of earnings and concealed the underlying problems and underpayments of
22 employee wages.

23 37. Defendants required Plaintiff and the aggrieved employees to incur costs for work-
24 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and
25 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
26 as a matter of policy and practice.

27 38. Specifically, Plaintiff and the aggrieved employees were required to complete work
28 from home without reimbursement for home internet costs. As a matter of policy and practice,

1 Defendants failed to provide full reimbursement for these expenses incurred in connection with their
2 job duties.

3 39. Because of the policies and practices set forth in this notice, including the failure to
4 accurately account for wages earned or hours worked, Defendants failed to accurately maintain records
5 in accordance with Labor Code section 1174 and the IWC Wage Orders.

6 40. Defendants required that Plaintiff and the aggrieved employees sign non-solicitation
7 agreements restricting their ability to receive business from Defendants' customers. As such,
8 Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved
9 employees sign non-solicitation agreements prohibited by California law. Specifically, as part of
10 Plaintiff's onboarding paperwork, she was required to sign a non-solicitation agreement.

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

13 **Violation of Labor Code §§ 2698 *et seq.***

14 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

15 41. All outside paragraphs of this Complaint are incorporated into this section.

16 42. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
17 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
18 codified as Labor Code section 2698 *et seq.*:

- 19 a. All current and former non-exempt employees who worked for Defendants in
20 California at any time from one year prior to the postmark date of the initial
21 PAGA notice through date of trial.

22 43. Plaintiff reserves the right to amend, supplement, or add to this description of the
23 aggrieved employees, according to proof.

24 44. The State of California, via the Labor and Workforce Development Agency
25 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
26 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff
27 files suit is always the real party in interest."])

1 45. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
2 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
3 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
4 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
5 action brought by an aggrieved employee on behalf of the employee and other current or former
6 employees against whom a violation of the same provision was committed pursuant to the procedures
7 specified in Section 2699.3. “

8 46. Any allegations regarding violations of the IWC Wage Orders are enforceable as
9 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

11 47. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
12 penalties under the PAGA.

13 48. On or about **April 20, 2026**, Plaintiff paid the requisite PAGA filing fee and provided
14 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
15 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
16 violations.

17 49. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
18 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
19 forth herein (the “PAGA notice”).

20 50. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
21 written PAGA notice from the LWDA.

22 51. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
23 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
24 providing a description of any actions taken to cure the alleged violations.

25 52. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
26 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
27 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
28 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

53. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- d. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- e. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- f. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- g. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- h. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

54. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

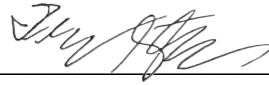
Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
3 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
4 g. For such other relief the Court deems just and proper.

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6 Dated: July 20, 2026

Ferraro Vega Employment Lawyers, Inc.

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Troy Q. Strange
Attorney for Plaintiff Leslie Gutierrez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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April 20, 2026

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL

- *Electronic Return Receipt* -

Apria Healthcare LLC
7353 Company Drive
Indianapolis, IN 46237

- *PAGA Notice & Filing Fee* -
Submitted electronically to the Labor and
Workforce Development Agency

Owens and Minor, Inc.
10900 Nuckols Road, Suite 400
Glen Allen, VA 23060

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **Leslie Gutierrez** (“Plaintiff(s)”) and all other “covered employees” of the following “Defendant(s)”:

APRIA HEALTHCARE LLC

Defendants shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23

Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Branch Coordinator from about August 2021 to February 2026. During their employment Plaintiff and the other covered (i.e., aggrieved) employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

All current and former non-exempt employees, including those misclassified as non-exempt, and exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "covered employees" and the "PAGA Period"). As defined, these covered current and former employees are "aggrieved employees" under PAGA.

Plaintiff reserves the right to expand or narrow the definition of the "covered employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the covered employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the covered employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent that these unaccounted-for hours resulted in Plaintiff working more than eight hours a day or forty hours in a week, Plaintiff is owed unpaid overtime as a result.

Specifically, Defendant paid Plaintiff and the covered employees additional payments, including non-discretionary shift differentials that Defendant failed to include in the overtime for the pay periods in which they were earned, resulting in the underpayment of any overtime hours worked. Defendant failed to factor in these night shift differential in the Plaintiff's overtime compensation.

An illustrative example of Plaintiff's last wage statement for 2025 is shown below:

Apria Healthcare LLC 10900 Nuckols Road Suite 400 Glen Allen, VA 23060 +1 (800) 3050263							
Leslie Gutierrez							
Name	Company	Teammate ID	Pay Period Begin	Pay Period End	Check Date	Check Number	
Leslie Gutierrez	Apria Healthcare LLC	07068205	06/16/2025	06/29/2025	07/03/2025		
	Hours Worked	Gross Pay	Deductions	Teammate Taxes	Employee Paid Post Tax Deductions	Net Pay	
Current	80.73	2,240.19	361.20	382.12	101.96	1,394.91	
YTD	1,213.54	30,854.29	5,031.44	5,215.69	1,426.67	19,180.49	
Earnings							Teammate Taxes
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount	
DT Regular		0			1.25	55.11	OASDI 123.44 1,696.67
Holiday		0			24	514.48	Medicare 28.87 396.80
OT Regular	06/16/2025 - 06/22/2025	5.54	33.06	183.15			Federal Withholding 147.07 2,001.07
OT Regular	06/23/2025 - 06/29/2025	3.26	33.06	107.79	168.58	5,451.62	State Tax - CA 57.45 773.22
OT Shift Diff 10%		0			26.9	919.63	CA SDI - CASDI 25.29 347.93
Personal	06/16/2025 - 06/29/2025	8	21.97	175.76	26	569.62	
Regular Hourly	06/16/2025 - 06/22/2025	32	21.97	703.04			
Regular Hourly	06/23/2025 - 06/29/2025	32	21.97	703.04	996.41	21,456.60	
Shift Diff 10%	06/16/2025 - 06/22/2025	4.05	24.167	97.88			
Shift Diff 10%	06/23/2025 - 06/29/2025	3.88	24.167	93.77	19.58	462.97	
Shift Diff 7%		0			0.82	18.58	
Sick Pay Prior Year		0			18.17	384.66	
Sick Pay	06/16/2025 - 06/29/2025	8	21.97	175.76	15.02	324.38	
Vacation Prior Year		0			24	527.28	
Vacation		0			8	169.36	
Earnings				2,240.19	30,854.29		Teammate Taxes 382.12 5,215.69

Extract from Plaintiff's Wage Statement from the Pay Period 06/16/2025 - 06/29/2025

Here, Plaintiff worked 8.8 Hours of overtime and earned \$191.65 of a night shift differential; however, Defendants failed to factor in this additional remuneration into the regular rate of pay. Instead, Defendants unlawfully paid Plaintiff overtime pay at 1.5x Plaintiff's base rate rather than the increased regular rate of pay, which would have factored in the shift differentials and other forms of additional remuneration. To the extent that other covered employees earned overtime pay or other forms of remuneration, each must be factored into the regular rate of pay during the statutory period. Plaintiff alleges, based on information and belief that this was a matter of common policy and practice. Defendants violated the Labor Code accordingly.

Defendant unlawfully paid overtime to Plaintiff and the covered employees at their straight hourly rate. For each overtime hour worked, Defendant should have paid overtime ***"at the rate no less than one and one-half times the regular rate of pay for an employer"*** and required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. Defendant's failure to pay overtime at the regular rate of pay was common to the covered employees. Defendant violated the Labor Code accordingly.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the covered employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the covered employees. Defendants failed to pay all owed paid sick leave at the lawful statutory rate.

An illustrative example is shown below:

Apria Healthcare LLC 10900 Nuckolls Road Suite 400 Glen Allen, VA 23060 +1 (800) 3050263 Leslie Gutierrez						
Name	Company	Teammate ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Leslie Gutierrez	Apria Healthcare LLC	07068205	09/22/2025	10/05/2025	10/10/2025	
	Hours Worked	Gross Pay	Deductions	Teammate Taxes	Employee Paid Post Tax Deductions	Net Pay
Current	74.46	2,079.06	353.15	339.40	101.96	1,284.55
YTD	1,778.89	45,938.13	7,529.99	7,732.11	2,140.39	28,535.64
Earnings						
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
DT Regular			0		1.25	55.11
Holiday			0		40	866.00
OT Holiday			0		4.82	159.42
OT Regular	09/22/2025 - 09/28/2025	4.18	33.08	138.27		
OT Regular	09/29/2025 - 10/05/2025	3.2	32.955	105.45	242.47	7,887.53
OT Shift Diff 10%			0		28.58	978.89
Personal	09/22/2025 - 10/05/2025	0.02	21.97	0.44	34.02	745.82
Regular Hourly	09/22/2025 - 09/28/2025	31.97	21.97	702.38		
Regular Hourly	09/29/2025 - 10/05/2025	30.53	21.97	670.74	1473.61	31,940.68
Shift Diff 10%	09/22/2025 - 09/28/2025	4.58	24.167	110.69	27.34	650.52
Shift Diff 7%			0		0.82	18.58
Sick Pay Prior Year			0		18.17	384.66
Sick Pay	09/22/2025 - 10/05/2025	15.98	21.97	351.09	55	1,202.75
Vacation Prior Year			0		34.48	757.53
Vacation			0		13.52	290.64
Earnings				2,079.06	45,938.13	
Teammate Taxes						
Description				Amount	YTD	
OASDI				113.45	2,523.72	
Medicare				26.53	590.22	
Federal Withholding				128.71	2,962.49	
State Tax - CA				47.35	1,137.90	
CA SDI - CASDI				23.36	517.78	
Teammate Taxes				339.40	7,732.11	

Extract from Plaintiff's Wage Statement from the Pay Period 09/22/2025 - 10/05/2025

Here, Plaintiff earned a shift differential of \$110.69 in the same pay period that Plaintiff used 15.98 hours of paid sick leave. Defendants should have paid the paid sick leave at Plaintiff's regular rate of pay, inclusive of the \$110.69 shift differential. However, Defendants neglected the bonus and instead paid all sick leave at Plaintiff's base rate resulting in unpaid paid sick leave.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the covered employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or

204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

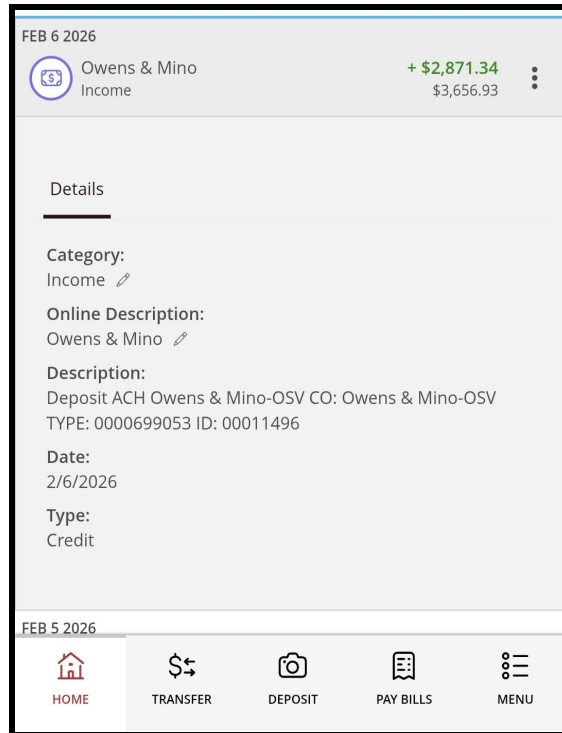
Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the covered employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

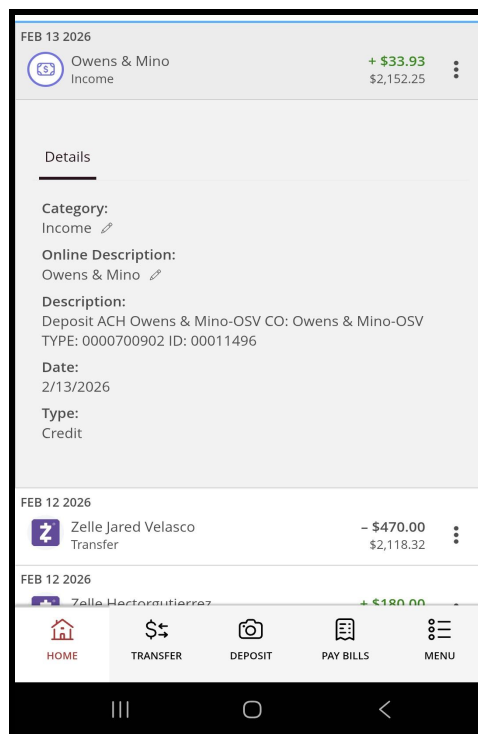
Here, Plaintiff was terminated on February 3, 2026. However, Plaintiff was not paid upon termination. Instead, Defendants did not pay Plaintiff her final wages until February 6, 2026.

This payment is evident from Plaintiff's bank statement below:



Extract from Plaintiff's bank statement dated 02/6/26

Additionally, Plaintiff's accrued vacation and sick days were not paid until February 13, 2026 as shown below:



Extract from Plaintiff's bank statement for accrued vacation and sick days dated 02/13/26

These records demonstrate a pattern and practice of Defendants failure to pay all owed wages upon separation of employment under the Labor Code.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the covered employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the covered employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other covered employees worked due to Defendants’ policy and practice of requiring off-the-clock work.

Plaintiff and other covered employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other covered employees with respect to what amounts were

owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the covered employees by failing to reimburse the covered employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the covered employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the covered employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Plaintiff and the covered employees were required to complete work from home without reimbursement for home internet costs. As a matter of policy and practice, Defendants failed to provide full reimbursement for these expenses incurred in connection with their job duties.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other covered employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other covered employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants required that Plaintiff and the covered employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the covered employees sign non-competition agreements prohibited by California law. Specifically, as part of Plaintiff’s onboarding paperwork, she was required to sign a non-solicitation agreement.

If applicable to your position, this offer of employment is also contingent upon your signing Apria Healthcare's Non-Competition and Non-Solicitation Agreement. Your acceptance of this offer confirms that you have disclosed to Apria Healthcare any and all confidentiality, non-competition and non-solicitation agreements with your current and any former employers which may restrict your activities at Apria Healthcare and which are enforceable and by their terms remain in effect.

Extract from Plaintiff's Offer Letter Dated 07/12/2021

Non-solicitation agreements are illegal under California law. Business and Professions Code 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Defendants required that Plaintiff and the covered employees sign non-solicitation agreements restricting their ability to receive business from Defendants' customers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the covered employees sign non-solicitation agreements prohibited by California law. Specifically, as part of Plaintiff's onboarding paperwork, she was required to sign a non-solicitation agreement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other covered employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the covered employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the covered employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronic data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the covered employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Elyssa Martinez, Esq.

BM

Cc Plaintiff Leslie Gutierrez
April Alcorn | HR Representative | April.Alcorn@owens-minor.com