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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

EFRAIN NOCELOTL, and on behalf of the
general public as private attorneys general,

Plaintiffs,

v.

HCR MANORCARE, INC., an Ohio
Corporation; HEARTLAND EMPLOYMENT
SERVICES, LLC, an Ohio Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiff EFRAIN NOCELOTL (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserting claims against Defendants HCR MANORCARE, INC.; HEARTLAND EMPLOYMENT SERVICES, LLC; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices resulting from Defendants (a) failure to pay all wages owed; (b) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (c) failure to pay Plaintiff and aggrieved employees within seven days following the close of the payroll period; (d) failure to pay all wages earned and owed upon separation from Defendants’ employ; and (e) failure to provide accurate itemized wage statements. As a result of these unpaid wages enumerated under Labor Code §2699.5, Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

1 4. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
3 avails itself of the California market so as to render the exercise of jurisdiction over it by the
4 California Courts consistent with traditional notions of fair play and substantial justice.

5 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
6 Civil Procedure section 395. Defendants are doing business throughout California, including but
7 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court
8 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
9 and all other aggrieved employees within the state of California. Defendants employ numerous
10 aggrieved employees in in the state of California.

11 6. On information and belief, Defendants have conducted business within the state
12 of California during the purported liability period and continue to conduct business throughout
13 the state of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and
14 the similarly situated non-exempt aggrieved employees within California.

15 7. The California Superior Court also has jurisdiction in this matter because on
16 information and belief there are no federal questions at issue, as the issues herein are based
17 solely on California statutes and law, including the California Labor Code, the IWC Wage
18 Orders, the California Code of Civil Procedure, and the California Civil Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendants consistently maintained and enforced against Plaintiff
21 and aggrieved employees the following unlawful practices and policies, in violation of California
22 state wage and hour laws: (a) failure to pay all wages owed, (b) failure to provide rest breaks for
23 every four hours or major fraction thereof worked and failure to pay an additional hour's of pay
24 or accurately pay an additional hour's of pay in lieu of providing a rest period; (c) failure to pay
25 Plaintiff and aggrieved employees within seven days following the close of the payroll period;
26 (d) failure to pay all wages earned and owed upon separation from Defendants' employ; and (e)
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1 failure to provide accurate itemized wage statements.

2 9. On information and belief, during the statutory liability period and continuing to
3 the present, Defendants have had a consistent policy of failing to pay Plaintiff and aggrieved
4 employees all wages owed.

5 10. On information and belief, during the statutory liability period and continuing to
6 the present, Defendants have had a consistent policy of failing to provide its non-exempt
7 employees within the state of California, including Plaintiff, unfettered, uninterrupted, duty free
8 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and
9 failing to pay such employees one (1) hour of pay at the employees regular rate of compensation
10 for each workday that the rest period is not provided, as required by California state wage and
11 hour laws.

12 11. On information and belief, during the statutory liability period and continuing to
13 the present, Defendants have had a consistent policy of failing to pay Plaintiff and aggrieved
14 employees within seven days following the close of the payroll period.

15 12. On information and belief, during the statutory liability period and continuing to
16 the present, Defendants have had a consistent policy of failing to timely pay wages upon
17 separation.

18 13. On information and belief, during the statutory liability period and continuing to
19 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate
20 itemized wage statements.

21 14. Plaintiff on behalf of the general public as private attorney general and all other
22 aggrieved employees bring this action pursuant to Labor Code 2698 *et seq.* for violations
23 enumerated under 2699.5 as follows: sections 201-204, 210, 558, 226, 226.3, 226.7, 1174,
24 1174.5, seeking penalties, interest, attorneys' fees and costs.

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26 **III. PARTIES**

27 17. Plaintiff was at all times relevant to this action a resident of California. Plaintiff
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1 was employed by Defendants from approximately late 2018 to April, 2020, as a non-exempt
2 employee in the state of California.

3 18. Defendants HCR MANORCARE, INC. and HEARTLAND EMPLOYMENT
4 SERVICES, LLC are health care companies providing short and long term medical and
5 rehabilitation care. Plaintiff estimates there are in excess of 100 aggrieved employees who work
6 or have worked for Defendants over the last year.

7 19. Other than identified herein, Plaintiff is unaware of the true names, capacities,
8 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
9 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
10 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants
11 by such fictitious names. Plaintiff will amend this complaint when their true names and
12 capabilities are ascertained.

13 20. Plaintiff is informed and believes and thereon alleges that each Defendant,
14 directly or indirectly, or through agents or other persons, employed Plaintiff and aggrieved
15 employees, and exercised control over their wages, hours, and working conditions. Plaintiff is
16 informed and believes and thereon alleges that each defendant acted in all respects pertinent to
17 this action as the agent of the other defendants, carried out a joint scheme, business plan or
18 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to
19 the other defendants.
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21 **IV. GENERAL ALLEGATIONS**

22 21. At all times set forth herein, Defendants employed Plaintiff and aggrieved
23 employees, however titled, throughout the state of California.

24 22. Plaintiff is informed and believes that all aggrieved employees are citizens of the
25 state of California.

26 23. Upon information and belief, Defendants continue to employ aggrieved
27 employees, however titled, in California and implement a uniform set of policies and practices,
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1 as they were all engaged in the generic job duties of providing short and long term medical and
2 rehabilitation care at Defendants' health care facilities.

3 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
4 were advised by skilled lawyers and other professionals, employees, and advisors with
5 knowledge of the requirements of California's wage and employment laws.

6 25. Upon information and belief, during the relevant time frame, Defendants
7 compensated Plaintiff and aggrieved employees based upon an hourly rate.

8 26. During the relevant time frame, Plaintiff and aggrieved employees were
9 systematically neither authorized nor permitted to take one net ten-minute paid, rest period for
10 every four hours worked or major fraction thereof, which is a violation of the Labor Code and
11 IWC wage order.

12 27. Defendants maintained and enforced scheduling practices, policies, and imposed
13 work demands that frequently required Plaintiff and aggrieved employees to forego their lawful,
14 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
15 requisite rest periods were not timely authorized and permitted. Plaintiff and aggrieved
16 employees would often work through their rest periods due to a lack of relief to take a rest
17 period.

18 28. In addition, Plaintiff and the aggrieved employees were not allowed to leave the
19 premises during rest breaks.

20 29. Despite the above-mentioned rest period violations, Defendants did not
21 compensate Plaintiff, and on information and belief, did not compensate aggrieved employees
22 one additional hour of pay at their regular rate as required by California law, including Labor
23 Code section 226.7 and the applicable IWC wage order, for each day on which lawful rest
24 periods were not authorized and permitted.

25 30. Plaintiff is informed and believes, and thereon alleges, during the relevant time
26 frame, Defendants failed to pay Plaintiff and aggrieved employees within seven calendar days
27 following the close of the payroll period in accordance with Labor Code section 204(d).
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1 31. Defendants also failed to provide accurate, lawful itemized wage statements to
2 Plaintiff and the aggrieved employees in part because of the above specified violations. In
3 addition, upon information and belief, Defendants failed to provide the name and address of the
4 legal entity that is the employer on Plaintiff's and the aggrieved employees' wage statements.

5 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
7 thereof for resignations without prior notice as the case may be) they had a duty to accurately
8 compensate Plaintiff and aggrieved employees for all wages owed including rest period
9 premiums, and Defendants had the financial ability to pay such compensation, but willfully,
10 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
11 violations.

12 33. Upon information and belief, Defendants failed to keep accurate records pursuant
13 to Labor Code § 1174.5.

14 34. Upon information and belief, Defendants knew and or should have known that it
15 is improper to implement policies and commit these unlawful acts.

16 35. In addition to the violations above, and on information and belief, Defendants
17 knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations
18 asserted herein, and that Defendants had the financial ability to pay such compensation, but
19 willfully, knowingly, recklessly, and/or intentionally failed to do so.
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21 V. REPRESENTATIVE CLAIMS

22 THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

23 36. Plaintiff incorporates by reference and re-alleges each and every allegation
24 contained above, as though fully set forth herein.

25 37. On May 4, 2020, Plaintiff complied with notice requirements pursuant to Labor
26 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
27 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
28 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not

1 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
2 representative capacity. Plaintiff also sent a copy of this complaint to the LWDA.

3 38. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
4 Plaintiff brings this cause of action on behalf of all current and former California employees of
5 Defendants.

6 39. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
7 and unpaid wages for which Defendants are liable due to numerous Labor Code violations as set
8 forth in this Complaint, including without limitation Labor Code sections 201-204, 210, 558,
9 226, 226.3, 226.7, 1174, 1174.5, 2698 *et seq.*, applicable IWC Wage Orders and California Code
10 of Regulations, Title 8, section 11000 *et. seq.*

11 40. At all times relevant, Plaintiff and all other aggrieved employees regularly
12 performed non-exempt work in excess of 50% of the time, and thus, were subject to the rest
13 break requirements of the applicable IWC wage order and the Labor Code.

14 41. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
15 accurately pay at least minimum wages due as a result Defendants' failure to compensate
16 Plaintiff and aggrieved employees for rest period premiums.

17 42. Plaintiff, and on information and belief, all aggrieved employees, were
18 systematically not permitted or authorized to take ten minute rest periods for every four hours
19 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
20 Plaintiff, and on information and belief, aggrieved employees, were not compensated with one
21 hour of wages for every day in which a rest period was missed or untimely as a result of
22 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-
23 minute rest period for every four hours or major fraction thereof worked per day by its non-
24 exempt employees, and by failing to provide compensation for such non-provided or shortened
25 rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code
26 sections 226.7, 512 and the applicable IWC Wage Order.
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1 43. Defendants also willfully violated Labor Code sections 201-203 by failing to
2 provide all owed wages at separation from employment. Labor Code sections 201 and 202
3 require Defendants to pay their employees all wages due either at time of firing, or within
4 seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code
5 provides that if an employer willfully fails to timely pay such wages the employer must, as a
6 penalty, continue to pay the subject employee's wages until the back wages are paid in full or an
7 action is commenced. The penalty cannot exceed 30 days of wages.

8 44. Plaintiff and all other aggrieved employees who were separated from employment
9 are entitled to compensation for all forms of wages earned, including but not limited to
10 compensation for non-provided rest periods, but to date have not received such compensation,
11 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

12 45. On information and belief, Defendants willfully failed to pay all wages due and
13 owing upon separation from employment. These wages include rest period premiums.

14 46. On information and belief, Defendants failed to pay Plaintiff and aggrieved
15 employees within seven calendar days following the close of the payroll period in accordance
16 with Labor Code section 204(d).

17 47. On information and belief, Defendants failed to provide accurate itemized wage
18 statements, which failed to include an accurate accounting of the lawful rest period premiums
19 due and owing to Plaintiff and the aggrieved employees, and the address of the legal entity that is
20 the employer pursuant to Labor Code section 226(a).

21 48. Additionally, Defendants have no accurate records relating to aggrieved
22 employees' rest periods in violation of the Wage Order and Labor Code sections 1174(d),
23 1174.5.

24 49. As a result of Defendants' unlawful conduct, Plaintiff and aggrieved employees
25 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
26 worked.
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1 50. Plaintiff and aggrieved employees are entitled to recover penalties and attorneys'
2 fees and costs under Labor Code section 2698, *et seq.*

3 **PRAYER FOR RELIEF**

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

- 5 1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;
- 6 2. For reasonable attorneys' fees and costs; and
- 7 3. For such other and further relief as the Court deems proper.

8 Dated: May 4, 2020

JAMES R. HAWKINS, APLC

9 _____
10 James R. Hawkins, Esq.
11 Samantha A. Smith, Esq.

12 Attorneys for Plaintiff and the general public
13 as private attorneys general