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Attorneys for Plaintiff Carmen Prado Andrade

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 01 2021

BY NICOLE CARTWRIGHT, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Carmen Prado Andrade, an individual, on behalf of herself and on behalf of all persons similarly situated,

Plaintiff,

v.

Employment Solutions Management, Inc., a Georgia Corporation (d/b/a EmployBridge, LLC); and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVDS 2023816

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Failure to Pay Overtime Wages
2. Failure to Pay All Wages Owed Upon Separation
3. Failure to Provide Accurate Itemized Wage Statements
4. Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.)*
5. Violation of the Private Attorneys General Act (Cal. Labor Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Carmen Prado Andrade (hereinafter "Plaintiff" or "Andrade"), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and experiences, which are based on personal knowledge, the following:

INTRODUCTION

1. This is a putative class action brought against Defendant Employment Solutions Management, Inc. *d/b/a* EmployBridge (hereinafter "Defendant" or "ESM" or "EmployBridge") for (i) failing to pay overtime wages at the lawful regular rate of pay; (ii) failing to pay all owed overtime wages each and every pay period; (iii) failing to pay all wages owed upon separation of employment; (iv) failing to provide accurate, compliant, itemized wage statement, as mandated under the California Labor Code (hereinafter the "Labor Code"); (v) violation of California's Unfair Competition Law (hereinafter the "UCL"); and, (vi) violating the California Private Attorneys General Act (hereinafter the "PAGA").

2. Plaintiff is a Member of and the named representative for the Class, the Separated Employee Subclass, and the Wage Statement Subclass, as each is defined in Paragraphs 12-14, respectively, below. The term "Class" includes Plaintiff and all other persons who are members of the "Class," and/or the "Wage Statement Subclass," and/or the "Separated Employee Subclass," as herein defined.

3. On behalf of herself and other Members of the Class and Subclasses, Plaintiff seeks 1) all overtime wages owed, under Labor Code §§ 510 and 1194; 2) unpaid wages, due every pay period, under Labor Code § 204; 3) unpaid wages, due at the time of resignation or termination under Labor Code §§ 201 and/or 202; 4) continuation wages under Labor Code § 203; 5) penalties for inaccurate/non-compliant itemized wage statements, under Labor Code § 226(e); 6) restitution under California Business & Professions Code ("Cal. Bus. & Prof. Code") § 17203; and 7) injunctive relief under Labor Code § 226(h) and Cal. Bus. & Prof. Code § 17200.

4. The State of California Private Attorneys General Act of 2004 ("PAGA") allows for a tolling of the limitations period during the period during which the California Labor and Workforce Development Agency (hereinafter the "LWDA") is assessing, or the employer may be

curing, the alleged violations. Cal. Labor Code § 2699.3(d). On October 23, 2020, pursuant to Labor Code § 2699.3(a)(1), counsel for Plaintiff, on behalf of Andrade, provided written notice via online filing with the LWDA and via certified mail, with return-receipt, to the employer / Defendant, alleging violations of the Labor Code and the facts and theories that support the alleged violations. (*see* **Exhibit 1**, attached hereto and incorporated by this reference herein). Additionally, on October 23, 2020, pursuant to Labor Code § 2699.3(a)(1)(B), counsel for Plaintiff, on behalf of Andrade, submitted the required filing fee of $75.00 to the LWDA. (*see* **Ex. 1**).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure ("Cal. Code of Civ. Proc.") § 410.10 and Cal. Bus. & Prof. Code § 17203. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendant, pursuant to Cal. Code of Civ. Proc. § 382. Additionally, Plaintiff previously made requests to Defendants for employee's personnel file and employment records, pursuant to Labor Code §§ 432 and 1198.5 and thereafter Defendants produced documents responsive to Plaintiff's requests, none of which indicated the existence of any arbitration agreement executed by Plaintiff.

6. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5, because Plaintiff performed work on behalf of Defendants in the County of San Bernardino, and Defendants committed the wrongful conduct herein alleged in the County of San Bernardino, against Plaintiff and Members of the Class.

THE PARTIES

A. Plaintiff and the Class

7. Plaintiff Carmen Prado Andrade was employed by Defendants in the State of California as a non-exempt operational staff person, and more specifically, a "Staffing Assistant," from approximately October 8, 2018 through approximately December 27, 2019. Plaintiff worked inside Defendants' Select Staffing office located at 650 E. Hospitality Lane, #110, San Bernardino, California 92408, where she performed recruitment and job placement activities.[1] Upon her hiring, Plaintiff was paid at the rate of $16.00/hr., which was eventually increased to $18.00/hr. and

[1] According to the company web site, Select Staffing is "part of the EmployBridge family of supply chain workforce solutions – the nation's largest industrial staffing company."

thereafter to $21.00/hr. Plaintiff also earned certain monetary non-discretionary bonuses and incentive payments during her employment, based upon certain pre-determined metrics, as indicated in Defendants' written incentive plan; however, Defendants failed to incorporate these non-discretionary bonus/incentive amounts into the regular rate of pay calculation, for purposes of determining the overtime rate of pay correctly under California law.

8. The Members of the Class are similarly situated persons, who are presently employed or were formerly employed by Defendants in California as non-exempt employees who worked directly for Defendants as operational staff, reporting to work at a Select Staffing location. These Members of the Class were not paid overtime wages at the lawful rate of pay; were not paid all wages due each and every pay period; were not provided with all earned wages upon their separation of employment; and/or were not provided accurate itemized wage statements.

B. Defendants

9. Defendant Employment Management Solutions, Inc. *d/b/a* EmployBridge, LLC, is an entity created under the laws of the State of Georgia. At all relevant times mentioned herein, Defendant Employment Management Solutions, Inc. conducted substantial business in the State of California, County of San Bernardino, and employed Plaintiff. According to the company website (*www.select.com/locations/*), Defendant EMS conducts its staffing business in 13 different states and maintains 53 Select Staffing locations in California alone. Defendant EMS was the employer of Plaintiff during her employment, as indicated by her paystubs and Labor Code § 2810.5 "Notice to Employee" document, previously produced by Defendants. Defendant was the employer of Plaintiff during her employment, as indicated by her paystubs, the Labor Code § 2810.5 "Notice to Employee," and other documents, as produced by Defendants, pursuant to a prior employment file request made under the California Labor Code.

10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, and therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code § 474. Plaintiff is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such

fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained; to the extent required, Plaintiff will seek leave of Court.

11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Plaintiff is informed and believes, and based thereon, alleges that each of the Defendants designated herein is legally responsible in some manner for the unlawful acts referred to herein.

12. The agents, servants and/or employees of Defendants and each of them, acting on behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of herself and all other similarly situated persons as a class action, pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class that is composed of and defined as follows:

> **All persons who, at any time since October 16, 2016 ("Class Period"), were employed by Defendants in California as non-exempt operational employees, working internally for Defendants out of Defendants' 'Select Staffing' office locations, and were eligible to participate in one or more bonus/incentive compensation plans, including the EmployBridge Operations Incentive Plan ("Class Members").**

14. Plaintiff also seeks to bring this action on behalf of herself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

All Class Members whose employment ended at any time since October 16, 2017 ("Separated Subclass Members").

15. Plaintiff also seeks to bring this action on behalf of herself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

All Class Members employed at any time since October 16, 2019 ("Wage Statement Subclass Members").

16. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among many persons who comprise a readily ascertainable class.

a. The Class Members are so numerous that individual joinder of all of them as plaintiffs is impractical. Although the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are not less than 100 Class Members.

b. The identity of Class Members can readily be determined from Defendants' records. Defendants' records include the name and address of every person who performed work for them during the Class Period.

c. Common questions of law and fact exist as to Class Members and predominate over any questions that may affect only individual Class Members. These common questions include, but are not limited to:

(1) Did Defendants, in violation of Labor Code §§ 510 and 1194, fail to pay Plaintiff and Class Members for all overtime wages at the lawful rate of pay owed to them?

(2) Did Defendants, in violation of Labor Code §§ 201 or 202, fail to pay timely all wages owed to Separated Subclass Members upon separation?

(3) Did Defendants act willfully when they failed to pay timely all wages owed to Separated Subclass Members upon separation?

(4) Are Defendants liable for penalty wages under Labor Code § 203?

(5) Did Defendants fail to provide Wage Statement Subclass Members with

accurate, compliant, itemized wage statements?

(6) Are Defendants liable for civil penalties under Labor Code § 226?

(7) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*., by their unlawful practices, as alleged herein?

(8) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*., by failing to pay Plaintiff and Class Members all overtime wages earned each pay period, in violation of Labor Code § 204, as alleged herein?

(9) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?

(10) Are Defendants liable for pre-judgment interest?

(11) Are Defendants liable for attorney's fees and costs?

d. Plaintiff is a Member of the Class and the Subclasses, and her claims are typical of the claims of the other Class Members and Subclass Members. Plaintiff is informed and believes and thereon alleges that Defendants maintain policies or practices of: 1) failing to pay overtime wages at the lawful rate of pay by leaving out non-discretionary bonus/incentive compensation from the overtime rate calculation; 2) failing to pay employees for all overtime wages earned during each pay period at the lawful rate of pay; 3) failing to pay employees all earned wages due upon separation of employment; and/or 4) failing to provide employees with accurate, compliant wage statements.

e. Plaintiff will adequately and fairly protect the interests of the Class Members and Subclass Members. Plaintiff has no interest adverse to the interests of absent Class Members and Subclass Members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

17. A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and

expense that numerous individual actions would require. The monetary amounts due to many individual Class Members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

FIRST CAUSE OF ACTION
Failure to Pay Overtime Wages
(By Plaintiff and the Class Members against all Defendants)

18. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19. At all relevant times, Plaintiff and the Class Members were and/or are employees of Defendants covered by Labor Code §§ 510 and 1194, and the applicable I.W.C. Wage Order.

20. By their failure to pay overtime wages at the lawful rate of pay for all time worked, Defendants willfully breached their agreement to pay wages, in violation of Labor Code §§ 510, and 1194 and the applicable I.W.C. Wage Order.

21. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of paying Class Members monetary non-discretionary bonuses and/or incentives without properly factoring the additional non-discretionary income into the regular rate of pay calculation when paying overtime wages.

22. As a result of Defendants' unlawful and willful conduct, employees have suffered damages in an amount, subject to proof, to the extent they were not paid all overtime wages for all hours actually worked and owed to them under Labor Code §§ 510 and 1194, and the applicable I.W.C. Wage Order.

23. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-judgment interest, reasonable attorney's fees and costs of suit.

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SECOND CAUSE OF ACTION
Failure to Pay All Wages Owed Upon Separation
(By Plaintiff and the Separated Subclass Members against all Defendants)

24. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

25. At all relevant times, Plaintiff and the Separated Subclass Members, were employees of Defendants covered by Labor Code §§ 201 and/or 202.

26. Pursuant to Labor Code §§ 201 and 202, Plaintiff and the Separated Subclass Members were entitled upon separation to timely payment of all wages earned and unpaid prior to separation. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

27. Defendants have failed to pay Plaintiff and the Separated Subclass Members all wages earned and unpaid prior to separation, in accordance with Labor Code §§ 201 and/or 202. Plaintiff is informed and believes and thereon alleges that during the three (3) year limitations period applicable to this cause of action, Defendants maintained and continue to maintain a policy or practice of failing to pay all overtime wages at the lawful rate of pay for all time actually worked at the time of separation from employment.

28. Defendants' failure to pay Plaintiff and the Separated Subclass Members all overtime wages earned prior to separation in accordance with Labor Code § 201 and/or § 202 was and is willful. Defendants have had the ability to pay all overtime wages at the lawful rate of pay, but intentionally have adopted policies or practices incompatible with the requirements of Labor Code §§ 510 and 1194, and the applicable I.W.C. Wage Order. When Defendants failed to pay upon separation all wages earned prior to separation, Defendants knew what they were doing and intended to do what they did.

29. Pursuant to Labor Code § 201 or § 202, Plaintiff and the Separated Subclass Members are entitled to all wages earned prior to separation that Defendants did not pay them.

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30. Pursuant to Labor Code § 203, Plaintiff and the Separated Subclass Members are entitled to penalty wages, from the day their earned and unpaid wages were due upon separation until paid, up to a maximum of 30 days.

31. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation in violation of Labor Code § 201 or § 202.

32. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty wages owed to them in violation of Labor Code § 203.

33. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Separated Subclass Members are entitled to recover the full amount of their unpaid overtime wages, unpaid penalty wages, and reasonable attorney's fees and costs of suit. Plaintiff and the Separated Subclass Members are entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under Labor Code § 218.6 and/or Civil Code § 3287(a).

THIRD CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and the Wage Statement Subclass Members against all Defendants)

34. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

35. At all relevant times, Plaintiff and the Wage Statement Subclass Members were and/or are employees of Defendants covered by Labor Code § 226.

36. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass Members are entitled to receive, semi-monthly or at the time of each payment of wages, an accurate, compliant itemized statement showing gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period; and the corresponding number of hours worked at each hourly rate by the employee.

37. Defendants have failed to provide Plaintiff and the Wage Statement Subclass Members accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2. Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year preceding the filing of the Complaint in this action (the "Penalty Period"), Defendants

maintained a policy or practice of failing to pay overtime wages at the lawful rate of pay. Defendants' practice resulted and continues to result in the issuance of non-compliant 'wage statements' to Class Members that do not show the correct amount of gross wages earned, the correct amount of net wages earned, the correct hourly rates of pay in effect for each overtime hour worked, and the correct deductions made thereto for taxing authority purposes.

38. Defendants' failure to provide Plaintiff and the Wage Statement Subclass Members with accurate itemized wage statements was and is knowing and intentional. Defendants have had the ability to provide Plaintiff and Wage Statement Subclass Members with accurate wage statements, but intentionally provided 'wage statements' that Defendants knew were not accurate or compliant.

39. As a result of Defendants' conduct, Plaintiff and the Wage Statement Subclass Members have suffered injury. The absence of accurate and complete information on their wage statements has prevented timely challenges to Defendants' unlawful pay practices, has and will require discovery and mathematical computations to determine the amount of overtime wages owed, and led to the submission of inaccurate information about wages and deductions to state and federal government agencies.

40. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass Members are entitled to recover fifty dollars ($50) for the initial pay period during the Penalty Period in which a violation of Labor Code § 226 occurred and one hundred dollars ($100) for each violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000) per employee.

41. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant 'wage statements' in violation of Labor Code § 226(a) and currently employed Wage Statement Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available

for ensuring Defendants' compliance with Labor Code § 226(a).

42. Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement Subclass Members are entitled to recover the full amount of penalties due under Labor Code §226(e), reasonable attorney's fees and costs of suit.

FOURTH CAUSE OF ACTION
Violation of California's Unfair Competition Law ("UCL")
[Cal. Bus. & Prof. Code § 17200, *et seq*.]
(By Plaintiff and the Class Members against all Defendants)

43. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

44. Plaintiff brings this claim on behalf of herself and all others similarly situated in her representative capacity against Defendants and Does 1 through 50, for their unlawful business acts and/or practices, pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL"), which prohibits all unlawful business acts and/or practices.

45. Defendants are each a "person," as that term is defined under Cal. Bus. & Prof. Code § 17021.

46. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

47. By the conduct alleged herein, Defendants have engaged and continue to engage in business practices that violate California law, including but not limited to, the applicable I.W.C. Wage Order(s), the California Code of Regulations, and the California Labor Code, including §§ 201-204, 226, 510, 558, and 1194, thereof, for which this Court should issue declaratory and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to prevent and

remedy the conduct held to constitute unfair competition, including restitution of wages and premium pay wrongfully withheld.

48. By the conduct alleged herein, Defendants' practices were and are unlawful and unfair in that these practices have violated public policy, are immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and are without valid justification or utility, for which this Court should issue equitable and injunctive relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages and premium pay wrongfully withheld.

49. By the conduct alleged herein, Defendants' practices were and are deceptive and fraudulent, in that Defendants' uniform policy and practices have failed to pay Plaintiff and the Class Members overtime wages at the lawful rate of pay, have failed to pay wages earned each and every pay period, have failed to provide accurate itemized wage statements, and have failed to pay all wages owed upon separation of employment, as alleged herein, pursuant to the applicable Cal. Lab. Code, and I.W.C. requirements in violation of Cal. Bus. & Prof. Code § 17200, *et seq*., and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages and premium pay wrongfully withheld.

50. By the conduct alleged herein, Defendants' practices are also unlawful, unfair and deceptive, in that Defendants' employment practices have caused Plaintiff and the Class Members to be underpaid during their employment with Defendants.

51. By and through the unlawful and unfair business practices described herein, Defendants have obtained valuable property, money, and services from Plaintiff and the Class Members, including earned overtime wages, and have deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of Defendants, so as to allow Defendants to unfairly compete against competitors who comply with the law.

52. All of the acts described herein as violations of, among other things, the I.W.C. Wage Orders, the California Code of Regulations, and the Cal. Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are deceptive, and thereby constitute unlawful, unfair, and/or deceptive business practices, in violation of Cal. Bus. &

Prof. Code § 17200, *et seq*.

53. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be necessary to restore to them the money and property that Defendants have acquired, or of which Plaintiff and the Class Members have been deprived, by means of the above described unlawful and unfair business practices, including but not limited to earned, unpaid wages for all time worked.

54. Plaintiff and the Class Members are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued, restraining Defendants from engaging in any such unlawful and unfair business practices in the future.

55. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of Defendants. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, Plaintiff and the Class Members have suffered and will continue to suffer irreparable legal and economic harm, unless Defendants are restrained from continuing to engage in these unlawful and unfair business practices.

56. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief, including restitution, attorneys' fees and costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful and/or unfair activity.

FIFTH CAUSE OF ACTION
Violation of the Private Attorneys General Act
[Cal. Bus. & Prof. Code §§ 2698, *et seq*.]
(By Plaintiff on behalf of all aggrieved employees against all Defendants)

57. Plaintiff and all aggrieved employees of all Defendants incorporate all the preceding paragraphs as though fully set forth herein.

58. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"

citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

59. Plaintiff brings this Representative Action on behalf of the State of California with respect to herself and other non-exempt employees of Defendant in California who worked directly for Defendant as operational staff, reporting to work at "Select Staffing" locations in California since October 23, 2019, and who are Class Members (the "Aggrieved Employees").

60. On October 23, 2020, Counsel for Plaintiff on behalf of Andrade gave written notice by online filing to the LWDA and the employer via U.S. Certified Mail, Return-Receipt of the specific code provisions alleged to have been violated as required by Labor Code § 2699.3. (*See* **Exhibit 1**). The statutory waiting period to commence this action has expired. As a result, pursuant to § 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to § 2699 as the proxy of the State of California with respect to all Aggrieved Employees as herein defined.

61. The policies, acts, and practices heretofore described were and are an unlawful business act or practice because of Defendants failure to pay all overtime wages owed at the lawful rate of pay, failure to pay all wages due each and every pay period, failure to provide accurate itemized wage statements, and failure to provide all wages owed upon separation of employment and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff hereby seeks recovery of civil penalties as prescribed by PAGA as the representatives of the State of California for the illegal conduct perpetrated on Plaintiff and the other Aggrieved Employees, against whom one or more of the violations of the California Labor Code was committed.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for judgment against Defendants, as follows:

A. An order certifying this case as a class action;

B. An order appointing Plaintiff as representative for the Class;

C. An order appointing Plaintiff's counsel as counsel for the Class;

D. Damages for unpaid overtime wages;

E. Damages for unpaid final wages, under Labor Code § 201 and/or § 202;

F. Penalty continuation wages, under Labor Code § 203;

G. Civil Penalties under Labor Code § 226(e);

H. Restitution for unpaid wages, under Cal. Bus. & Prof. Code § 17203;

I. Injunctive relief, under Labor Code § 226(h) and Cal. Bus. & Prof. Code § 17200, *et seq.*, requiring that Defendants provide compliant, itemized wage statements and cease and desist from their other unlawful and/or unfair employment practices;

J. Recovery of civil penalties as prescribed by PAGA;

K. An award of penalties, attorneys' fees, and costs of suit pursuant to Labor Code § 2699(g);

L. Prejudgment interest at the maximum legal rate;

M. Reasonable attorneys' fees;

N. Costs of suit; and

O. Such other relief as the Court may deem just and proper.

Dated: February 1, 2021

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

By: _____
Alexander I. Dychter
Attorneys for Plaintiff Andrade

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for herself and the Class on all claims so triable.

Dated: February 1, 2021

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

By: _____
Alexander I. Dychter
Attorneys for Plaintiff Andrade

EXHIBIT 1

DYCHTER
LAW OFFICES
A PROFESSIONAL CORPORATION

1010 SECOND AVENUE, SUITE 1835, SAN DIEGO, CALIFORNIA 92101
TEL 619.487.0777 | FAX 619.330.1827

October 23, 2020

VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED
[7019 1640 0001 9438 0489]

Employment Solutions Management, Inc.
c/o Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292

VIA ONLINE FILING ONLY
California Labor & Workforce Development Agency ("LWDA")

Re: Notice of Violation of California Labor Code Sections 201-204, 226, 510, and 1194; Industrial Welfare Commission Wage Order(s), And Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam,

Our office represents Plaintiff Carmen Prado Andrade (the "Plaintiff" or "Andrade"), and other aggrieved employees in a class action lawsuit against Employment Solutions Management, Inc. *d/b/a* EmployBridge (hereinafter the "Defendant" or "ESM" or "EmployBridge"), a Georgia Corporation. Plaintiff and other employees were employed by Defendant in California as non-exempt employees working directly for Defendant as operational staff, reporting to work at "Select Staffing" locations in California. Defendant has failed to pay all overtime wages at the lawful rate of pay, failed to pay all wages due each and every pay period, failed to provide all wages owed upon separation of employment, and failed to provide accurate itemized wage statements in violation of the California Labor Code, and are therefore actionable under California Labor Code Section 2699.3.

A true and correct copy of the Complaint filed by Plaintiff on October 19, 2020 is attached hereto as **Exhibit 1**, which **(i)** identifies the alleged violations, **(ii)** details the facts and theories which support the alleged violations, **(iii)** details the specific work performed by Plaintiff, **(iv)** sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and **(v)** sets forth the illegal practices used by Defendant. This information provides notice to the Labor and Workforce Development Agency ("LWDA") of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint (**Exhibit 1**) into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask. Attachment of **Exhibit 1** herein is **NOT** meant to act as "service" of the Complaint on Defendant. Service of the attached **Exhibit 1** will be conducted by Plaintiff on Defendant in the near future.

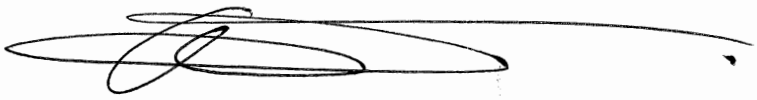
NOTE: The attached Complaint as **Exhibit 1** is **NOT** meant to act as "service" on Defendant.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Superior Court of California – County of San Bernardino on October 19, 2020, against Employment Solutions Management, Inc. *dba* EmployBridge as authorized by California Labor Code Section 2699, *et seq*. The pending class action lawsuit consists of a class of other aggrieved non-exempt operational employees working internally for Defendants out of Defendants' "Select Staffing" office locations in California and who were eligible to participate in one or more bonus/incentive compensation plans, including the EmployBridge Operations Incentive Plan. As class counsel, our intention is to vigorously prosecute the class-wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorneys General Statute of 2004 on behalf of Plaintiff Andrade and all aggrieved Class Members.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully Submitted,

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC



Alexander I. Dychter, Esq.
Attorneys for Plaintiff
Carmen Prado Andrade

encl: ***Exhibit 1*** = *non-conformed* copy of Complaint

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- ☐ Adult Signature Required $ _____
- ☐ Adult Signature Restricted Delivery $ _____

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Postmark Here

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EMPLOYMENT Solutions MANAGEMENT, INC. c/o Corp. Creations Network Inc.

Street and Apt. No., or PO Box No.
4640 ADMIRALTY WAY, 5th Floor

City, State, ZIP+4®
MARINA del Rey, CA 90292

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Alexander Dychter
Subject: Thank you for submission of your PAGA Case.
Date: Friday, October 23, 2020 4:41:36 PM

10/23/2020

LWDA Case No. LWDA-CM-810554-20
Law Firm : Dychter Law Offices, APC
Plaintiff Name : Carmen Prado Andrade
Employer: Employment Solutions Management, Inc. d/b/a EmployBridge
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Alexander Dychter
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Friday, October 23, 2020 4:41:48 PM

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-810554-20
Order Number: ORD-000084574
Total:$75.00
Card Type: Visa
Date: 10/23/2020

Billing Information
Name: Alexander Dychter
Email: alex@dychterlaw.com
Billing Address:
180 Broadway, Ste.1835
San Diego, California
92101

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I, the undersigned, declare that I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 180 Broadway, Suite 1835, San Diego, California 92101. On February 1, 2021, I served upon the interested party(ies) in this action the following document(s) described as:

FIRST AMENDED COMPLAINT

By the following method:

[X] Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the document(s) to be sent to the persons at the electronic notification addresses listed directly below.

David G. Hagopian, Esq. Garrett Jensen, Esq. Robyn E. Frick, Esq. **CDF LABOR LAW LLP** 18300 Von Karman Ave., Ste. 800 Irvine, CA 92612 Telephone: (949) 622-1661 Email: dhagopian@cdflitigation.com gjensen@cdflaborlaw.com rfrick@cdflaborlaw.com	Attorneys for Defendant Employment Solutions Management, Inc.
Walter L. Haines, Esq. **UNITED EMPLOYEES LAW GROUP** 5500 Bolsa Avenue, Suite 201 Huntington Beach, CA 92649 Telephone: (562) 256-1047 Email: admin@uelglaw.com	Co-Counsel for Plaintiff Carmen Prado Andrade

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

Executed on February 1, 2021, at San Diego, California.

Alexander I. Dychter