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8 Attorneys for Plaintiff,
9 THERESA RIVES, and all other similarly situated

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MARIN**
13 **(UNLIMITED JURISDICTION)**

14 THERESA RIVES, as an "aggrieved
15 employee" on behalf of other similarly situated
16 "aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 CF SAN RAFAEL, LLC, a California limited
20 liability company; CAMBRIDGE
21 HEALTHCARE SERVICES, LLC, a
22 California limited liability company; and
DOES 1 through 50, inclusive,

23 *Defendant(s).*

Case No.: *Civ 2100671*

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

FILED

FEB 18 2021

**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Jones, Deputy**

By Fax



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1 Plaintiff THERESA RIVES (hereafter “Plaintiff”), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants CF SAN RAFAEL, LLC, a California limited liability
7 company; CAMBRIDGE HEALTHCARE SERVICES, LLC, a California limited liability
8 company; and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated aggrieved current and former employees
11 who worked in California as hourly, non-exempt employees, including, but not limited to,
12 medical records supervisors, and persons in similar positions, at any time during the period of
13 December 7, 2019, to the present, for civil penalties and other related relief. These claims are
14 based on Defendants’ failures to: (1) Provide all rest and meal periods; (2) Indemnify for
15 necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct
16 rates of pay; (4) Provide accurate and complete written wage statements; (5) Timely pay wages
17 during and upon termination of employment; and (6) Maintain accurate employment records.
18 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
19 representative action.

20 **II. JURISDICTION AND VENUE**

21 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
22 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

23 4. There is no basis for federal question subject matter jurisdiction in this case.
24 Specifically, Plaintiff asserts claims on behalf of herself, the State of California, and Aggrieved
25 Employees that solely arise under California law, rather than federal law.

26 5. There is also no basis for federal diversity jurisdiction in this case.

27 6. Venue is proper in Marin County pursuant to California Code of Civil Procedure
28 § 395(a) and § 395.5 in that liability arose in Marin County because at least some of the
transactions that are the subject matter of this Complaint occurred therein and/or because each
defendant is found, maintains offices, transacts business, and/or has an agent therein.



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III. THE PARTIES

7. Plaintiff, THERESA RIVES, is an individual and resident of California. Defendants first employed Plaintiff on or about September 9, 2019 to work as a medical records supervisor. Plaintiff worked for Defendants continuously from the time of her hire until approximately October 2, 2020, when Defendants terminated her employment. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050, and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

8. Defendant CF SAN RAFAEL, LLC, is a limited liability company organized and existing under the laws of California based on Plaintiff’s information and belief.

9. Defendant CAMBRIDGE HEALTHCARE SERVICES, LLC, is a limited liability company organized and existing under the laws of California based on Plaintiff’s information and belief.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but 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 the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

A. THE AGGRIEVED EMPLOYEES

11. The “Aggrieved Employees” are all individuals Defendants employed in California as hourly, non-exempt employees, including, but not limited to medical records supervisors, and persons in comparable positions, at any time during the period of December 7, 2019, and entry of judgment (“the PAGA Period”).

12. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

13. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack



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1 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
2 Employees in accordance with applicable California labor laws as alleged herein.

3 14. Plaintiff is informed and believes and thereon alleges that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment, and/or direction and control.

8 **IV. FACTUAL ALLEGATIONS**

9 15. On approximately September 9, 2019, Defendants first employed Plaintiff to work
10 as a medical records supervisor (though she and the Aggrieved Employees with “supervisor” in
11 their title did not hold any supervisory duties) at its Professional Post Acute Center located at 81
12 Professional Center Pkwy in San Rafael, California. Plaintiff worked at the Professional Post
13 Acute Center for Defendants continuously from the time of her hire until approximately October
14 2, 2020, when Defendants terminated her employment.

15 16. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees at
16 an hourly rate of pay on a semi-monthly basis. At all relevant times, Defendants classified
17 Plaintiff and the Aggrieved Employees as non-exempt employees entitled to the protections of
18 both the Labor Code and the Wage Order.

19 17. At all relevant times, Plaintiff and the Aggrieved Employees have worked over
20 eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this,
21 Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal
22 periods pursuant to California law, including but not limited to, two timely 30-minute
23 uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than
24 ten hours. Defendants expected Plaintiff and the Aggrieved Employees to respond to the
25 communications of coworkers at all times regardless of whether they were on a rest break or meal
26 periods. For example, when Plaintiff and the Aggrieved Employees took rest and/or meal periods,
27 other employees and managers, including Administrator Dennis Noss, past Administrators
28 Kristine Pacheco, Mike (last name unknown), and Wagner Tuley, Director of Nursing Wanda
Knowles, Social Services Director David O’Sullivan, Activities Director Ritzchell Carolino, and
Director of Staff Development Leticia Barahona (collectively “the Cambridge Directors”) knowingly interrupted them with requests for information, assistance, and for other work-related



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activities. Further, Defendants required Plaintiff and the Aggrieved Employees to remain on the Defendants' premises at all times during state inspections, which occurred regularly and frequently, and became a daily occurrence during the COVID-19 pandemic. Defendants did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement.

18. Defendants also often failed to provide Plaintiff and the Aggrieved Employees with 30-minute meal periods before the end of their fifth work hour. Defendants required Plaintiff and the Aggrieved Employees to attend daily "triple check meetings" with the other Cambridge Directors, which often lasted 4-5 hours and prevented them from taking their rest breaks and meal periods with the time periods set out in the Wage Order. On a number of occasions, the payroll department notified Defendants' Administrator about Defendants' failure to provide Plaintiff and the Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to make changes.

19. Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for days on which they failed to provide them with all timely meal periods and unrestricted rest periods as outlined above.

20. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and rest periods. During such periods, the Defendants' Directors frequently interrupted Plaintiff and the Aggrieved Employees' meal periods to attend to tasks needing immediate attention, including responding to requests for medical records, responding to calls, text messages and emails, creating new patient charts, copying records and documents for billing, compiling data and information for reports, and preparing necessary patient documents. Defendants, however, did not compensate Plaintiff and the Aggrieved Employees for this off-the-clock work. Defendants did not enter into valid on-duty meal period agreements with Plaintiff or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest breaks. The Defendants' Directors also sent text messages to Plaintiff and the Aggrieved Employees after they had already clocked-out at the end of their shifts and during weekends. Defendants did not compensate Plaintiff and the Aggrieved Employees for this off-the-clock work.

21. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Defendants required



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1 Plaintiff and the Aggrieved Employees to use their personal cell phones in the course of
2 performing their duties. The Defendants' Directors communicated with Plaintiff and the
3 Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work-
4 related issues and did not provide mobile phones or an alternative to them for this purpose.
5 Additionally, Defendants did not reimburse Plaintiff and the Aggrieved Employees for their cell
6 phone expenses.

7 22. As a result of the practices described above, Defendants failed to provide Plaintiff
8 and the Aggrieved Employees with accurate wage statements that properly and accurately
9 itemize Plaintiff and the Aggrieved Employees' gross and net wages earned and the total hours
10 worked. As a further result, Defendants failed to timely pay Plaintiff and the Aggrieved
11 Employees all earned and unpaid wages during, and upon termination of their employment

12 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
13 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 14 A. Not provided with all off duty meal periods;
- 15 B. Not provided with all rest break periods as required by law;
- 16 C. Not paid one hour's pay for each workday in which Defendants failed to
17 provide them with one or more timely rest periods;
- 18 D. Not paid one hour's pay for each workday in which Defendants failed to
19 provide them with one or more timely meal periods;
- 20 E. Not paid all wages earned, including, but not limited to, regular and
21 overtime wages for work performed while clocked out;
- 22 F. Not indemnified for all necessary business expenditures incurred during
23 the discharge of their duties;
- 24 G. Not provided with accurate and complete wage statements; and
- 25 H. Not timely paid all earned and unpaid wages during their employment with
26 Defendants and at the time such employment ended.

27 **V. FIRST (AND ONLY) CAUSE OF ACTION**

28 **CIVIL PENALTIES**

(Lab. Code §§ 2698, et seq.)

**(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all
Defendants)**



- 1 24. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 2 25. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
- 3 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

4 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

- 5 26. In relevant part, California Labor Code § 1198 states:

6 “The maximum hours of work and the standard conditions of labor fixed by

7 the commission shall be the maximum hours of work and the standard

8 conditions of labor for employees. The employment of any employee for

 longer hours than those fixed by the order or under conditions of labor

 prohibited by the order is unlawful.”

- 9 27. In relevant part, California Labor Code § 512 states:

10 An employer shall not employ an employee for a work period of more than

11 five hours per day without providing the employee with a meal period of not

12 less than 30 minutes, except that if the total work period per day of the

13 employee is no more than six hours, the meal period may be waived by mutual

 consent of both the employer and employee.

14 An employer shall not employ an employee for a work period of more than

15 10 hours per day without providing the employee with a second meal period

16 of not less than 30 minutes, except that if the total hours worked is no more

 than 12 hours, the second meal period may be waived by mutual consent of

 the employer and the employee only if the first meal period was not waived.

- 17 28. In relevant part, Section 11 of the Wage Order states:

18 **Meal Periods**

19 (A) “No employer shall employ any person for a work

20 period of more than five (5) hours without a meal period of

21 not less than 30 minutes, except that when a work period of

22 not more than six (6) hours will complete the day’s work the

23 meal period may be waived by mutual consent of the

24 employee and the employee. Unless the employee is relieved

25 of all duty during a 30-minute meal period, the meal period

26 shall be considered an ‘on duty’ meal period and counted as

27 time worked. An ‘on duty’ meal period shall be permitted

28 only when the nature of the work prevents an employee from

 being relieved of all duty and when by written agreement

 between the parties an on-the-job paid meal period is agreed

 to. The written agreement shall state that the employee may,

 in writing, revoke the agreement at any time.”



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(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

...

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

29. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations, 29 C.F.R. § 778.223 states:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

30. 29 C.F.R. § 785.7 states:

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business."



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(Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123 (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” Armour & Co. v. Wantock (1944) 323 U.S. 126; Skidmore v. Swift (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” Anderson v. Mt. Clemens Pottery Co. (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

31. 29 C.F.R. § 785.18 states:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (Mitchell v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); Ballard v. Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

32. 29 C.F.R. § 785.19 states:

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff’d 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff’d 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v.



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Tampa Cigar Co., 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

33. 29 C.F.R. § 785.19 states:

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

34. Wage Order 5, § 11(D) states:

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

35. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest



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period time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

36. In addition, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

37. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they worked more than ten hours.

38. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

39. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty-free meal periods and 10-minute rest periods in accordance with the Wage Order.

40. As described above, at all relevant times during the applicable time period, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely 30-minute duty-free meal periods. Defendants also required Plaintiff and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Plaintiff and the Aggrieved Employees to remain on work premises during their rest periods, Defendants have intentionally



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1 and improperly failed to provide Plaintiff and the Aggrieved Employees with all duty-free rest
2 periods. Further, Defendants failed to compensate Plaintiff and the Aggrieved Employees at one
3 hour's pay for each workday in which they failed to provide them with one or more timely rest
4 periods as provided by California law.

5 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal
8 periods and rest breaks required by California law.

9 **B. FAILURE TO INDEMNIFY**

10 42. In pertinent part, California Labor Code section 2802(a) states, "An employer
11 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee
12 in direct consequence of the discharge of his or her duties."

13 43. Labor Code section 1198 prohibits employers from employing their employees
14 under conditions prohibited by the Wage Order.

15 44. As described above, during the applicable limitations period, Defendants required
16 Plaintiff and the Aggrieved Employees to use their personal vehicles and personal mobile phones
17 for work-related activities without reimbursing them for their mileage and phone expenses.
18 Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these expenses both
19 during and after their employment ended.

20 45. Plaintiff is informed and believes and thereon alleges that, at all relevant time,
21 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
22 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
23 incurred during the course of performing their duties.

24 **C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

25 46. Section 2 of the Wage Order defines "hours worked" as "the time during which
26 an employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so[.]"

28 47. Section 4 of the Wage order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consist of all hours that
an employer has actual or constructive knowledge that employees are working.



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1 48. Within the health care industry, the term “hours worked” means the time during
2 which an employee is suffered or permitted to work for the employer, whether or not required to
3 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).
4 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is
5 defined by federal regulations. 29 C.F.R. § 778.223 states:

6 ...As a general rule the term “hours worked” will include: (a) All time during
7 which an employee is required to be on duty or to be on the employer’s
8 premises or at a prescribed workplace and (b) all time during which an
9 employee is suffered or permitted to work whether or not he is required to do
10 so. Thus, working time is not limited to the hours spent in active productive
11 labor, but includes time given by the employee to the employer even though
12 part of the time may be spent in idleness. Some of the hours spent by
13 employees, under certain circumstances, ... in meal periods and rest periods
14 are regarded as working time and some are not. The governing principles are
15 discussed in part 785 of this chapter (interpretative bulletin on “hours
16 worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal
17 Act of 1947). ...

18 49. In relevant part, California Labor Code § 510 states,

19 Any work in excess of eight hours in one workday and any work in excess of
20 40 hours in any one workweek and the first eight hours worked on the seventh
21 day of work in any one workweek shall be compensated at the rate of no less
22 than one and one-half times the regular rate of pay for an employee. Any work
23 in excess of 12 hours in one day shall be compensated at the rate of no less
24 than twice the regular rate of pay for an employee. In addition, any work in
25 excess of eight hours on any seventh day of a workweek shall be compensated
26 at the rate of no less than twice the regular rate of pay of an employee.

27 50. Section 3 of the applicable Wage Order states:

28 (A) Daily Overtime - General Provisions

 (1) The following overtime provisions are applicable to employees 18
 years of age or over and to employees 16 or 17 years of age who
 are not required by law to attend school and are not otherwise
 prohibited by law from engaging in the subject work. Such
 employees shall not be employed more than eight (8) hours in any
 workday or more than 40 hours in any workweek unless the
 employee receives one and one-half (1 1/2) times such employee’s
 regular rate of pay for all hours worked over 40 hours in the
 workweek. Eight (8) hours of labor constitutes a day’s work.
 Employment beyond eight (8) hours in any workday or more than
 six (6) days in any workweek is permissible provided the employee
 is compensated for such overtime at not less than:



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- 1 (a) One and one-half (1 1/2) times the employee's regular
2 rate of pay for all hours worked in excess of eight (8)
3 hours up to and including 12 hours in any workday, and
4 for the first eight (8) hours worked on the seventh (7th)
5 consecutive day of work in a workweek; and
- 6 (b) Double the employee's regular rate of pay for all hours
7 worked in excess of 12 hours in any workday and for all
8 hours worked in excess of eight (8) hours on the seventh
9 (7th) consecutive day of work in a workweek.
- 10 (c) The overtime rate of compensation required to be paid to
11 a nonexempt full-time salaried employee shall be
12 computed by using the employee's regular hourly salary
13 as one-fortieth (1/40) of the employee's weekly salary.

14 51. Labor Code § 1194 invalidates any agreement between an employer and an
15 employee to work for less than the minimum or overtime wage required under the applicable
16 Wage Order.

17 52. Under Labor Code § 1197, "The minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than
19 the minimum so fixed is unlawful."

20 53. Labor Code § 1198 makes it unlawful for an employer to employ an employee
21 under conditions that violate the Wage Order.

22 54. In conjunction, these provisions of the Labor Code require employers to
23 compensate non-exempt employees for "off-the-clock" work (before punching in or after
24 punching out on a time clock) if the employers knew or should have known that the employees
25 were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

26 55. At all relevant times during the applicable limitations period, Defendants
27 knowingly failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at
28 the correct rates of pay, including, but not limited to, all regular and overtime wages for the work
they performed during their off-the-clock meal periods and after clocking-out at the end of their
shifts.

56. Plaintiff is informed and believes that, at all relevant times, Defendants have
applied centrally devised policies and practices to her and the Aggrieved Employees with respect
to working conditions and compensation arrangements.



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1 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
3 failure to compensate the Aggrieved Employees for all hours worked, including but not limited
4 to, regular and overtime hours at the correct rates of pay.

5 **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

6 58. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
7 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an
8 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
9 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours
10 worked at each hourly rate by the employee.

11 59. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
12 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
13 if the employer fails to provide accurate and complete information as required by California
14 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
15 statement alone one or more of the following:

16 A. The amount of the gross wages or net wages paid to the employee during
17 the pay period or any of the other information required to be provided on the itemized wage
18 statement pursuant to California Labor Code § 226(a);

19 B. Which deductions the employer made from gross wages to determine the
20 net wages paid to the employee during the pay period;

21 C. The name and address of the employer and, if the employer is a farm labor
22 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
23 and address of the legal entity that secured the services of the employer during the pay period;

24 D. The name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number; and

26 E. The number of piece-rate units earned and the piece rate.

27 60. "Promptly and easily determine," as stated in California Labor Code § 226(e),
28 means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.

 61. Defendants did not pay Plaintiff and the Aggrieved Employees minimum, and
overtime wages for work it required them to perform during their off-the-clock meal periods and



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1 after clocking-out at the end of their shifts. Defendants failed to provide Plaintiff and the
2 Aggrieved Employees with all meal and rest periods in compliance with California law.
3 Defendants also failed to provide Plaintiff and the Aggrieved Employees with premium wages
4 on workdays they failed to provide them with one or more meal or rest periods in compliance
5 with California law. Defendants knowingly and intentionally did not state this worktime and
6 wages earned on the itemized wage statements they issued to Plaintiff and the Aggrieved
7 Employees. As a result, Defendants have failed to properly itemize Plaintiff and the Aggrieved
8 Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other
9 requirements of California Labor Code § 226. As a result, Defendants have violated California
Labor Code § 226.

10 62. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
11 accurate wage statements was knowing and intentional. Defendants had the ability to provide
12 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
13 wage statements that Defendants knew were not accurate.

14 63. As a result of being provided with inaccurate wage statements by Defendants,
15 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
16 accurate wage statements were violated and they were misled about the amount of wages they
17 had actually earned and were owed. In addition, the absence of accurate information on their
18 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
19 required discovery and mathematical computations to determine the amounts of wages owed, has
20 caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to
21 the submission of inaccurate information about wages to state and federal government agencies.
22 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
23 statements whether Defendants complied with their obligations under California Labor Code §
24 226(a) and 226.2.

25 **E. UNTIMELY WAGES DURING EMPLOYMENT**

26 64. Labor Code § 204 states:

27 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
28 or 204.2, earned by any person in any employment are due and payable twice
during each calendar month, on days designated in advance by the employer
as the regular paydays. Labor performed between the 1st and 15th days,
inclusive, of any calendar month shall be paid for between the 16th and the
26th day of the month during which the labor was performed, and labor



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performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

65. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages for work performed off-the-clock. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

F. UNTIMELY FINAL WAGES

66. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

67. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

68. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and overtime wages at the correct rates and 2) premium wages for all late or missed rest breaks and/or meal periods, Defendants failed to timely pay them all earned and unpaid wages in violation of



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Labor Code § 201 or § 202.

69. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

70. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

71. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

72. Section 7 of the Wage Order states,

(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation, and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.



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4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

73. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

74. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

H. CIVIL PENALTIES SOUGHT

75. Labor Code § 204 states

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.
...

- (b)
 - (i) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

- (ii) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

- (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to



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the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

76. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

77. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, , 1174, 1194, 1197, 1198, and 2802.

78. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

79. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established



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by Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

80. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated December 7, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated December 7, 2020, is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s letter.

81. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

82. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury



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trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 16, 2021

By: _____

Maralle Messrelia

DAVID SPIVAK,
MARALLE MESSRELIA,
MAYA CHEAITANI,
Attorneys for Plaintiff, THERESA RIVES,
the State of California, and the Aggrieved
Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

December 7, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: Theresea Rives/CF San Rafael, LLC

To whom it may concern:

This notice concerns the following employers:

1. CF San Rafael, LLC
2. Cambridge Healthcare Management Services, LLC
3. Cambridge Healthcare Services, LLC
4. Jacob Wintner

Collectively, the aforementioned employers are herein referred to as “Cambridge”.

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), Theresea Rives (hereafter “Rives”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to, medical records supervisor, and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Cambridge of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174.5, 1194, 1197, 1198 and 2802.

At all relevant times, Cambridge has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Rives and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Cambridge first employed Rives on or about September 9, 2019 to work as a medical records supervisor (though she and the other Aggrieved Employees with “supervisor” in their title did not hold any supervisory duties) at its Professional Post Acute Center located at 81 Professional Center Pkwy in San Rafael, California. Rives worked at Professional Post Acute Center for Cambridge continuously from the time of her hire until approximately October 2, 2020 when Cambridge terminated her employment.

At all relevant times, Cambridge paid Rives and the other Aggrieved Employees at an hourly rate of pay on a semi-monthly basis. At all relevant times, Cambridge classified Rives and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Rives and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Cambridge failed to provide Rives and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Cambridge expected Rives and the Aggrieved Employees to respond to the communications of coworkers at all times regardless of whether they were on a rest break or meal period. Thus, when Rives and the Aggrieved Employees took rest and/or meal periods, other Cambridge employees and managers, including Administrator Dennis Noss, past Administrators Kristine Pacheco, Mike (last name unknown), and Wagner Tuleu, Director of Nursing Wanda Knowles, Social Services Director David O’Sullivan, Activities Director Ritzchell Carolino, and Director

of Staff Development Leticia Barahona (collectively “the Cambridge Directors”) knowingly interrupted them with requests for information, assistance, and for other Cambridge business. Further, Cambridge required Rives and the Aggrieved Employees to remain on the premises at all times during state inspections, which occurred regularly and frequently, and became a daily occurrence during the COVID-19 pandemic. Cambridge did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Cambridge also often failed to provide Rives and the Aggrieved Employees with 30-minute meal periods before the end of their fifth work hour. Cambridge required Rives and the other Aggrieved Employees to attend daily “triple check meetings” with the other Cambridge Directors, which often lasted 4-5 hours and prevented them from taking their rest breaks and meal periods within the time periods set out in the Wage Order. On a number of occasions, the payroll department notified the Administrator about Cambridge’s failure to provide Rives and the Aggrieved Employees with timely rest and meal periods. In spite of this, Cambridge refused to make changes.

Cambridge failed to pay Rives and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal periods and unrestricted rest periods as outlined above.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and rest periods. During such periods, the Cambridge Directors frequently interrupted Rives and the Aggrieved Employees’ meal periods to attend to tasks needing immediate attention, including responding to requests for medical records, responding to calls, text messages and emails, creating new patient charts, copying records and documents for billing, compiling data and information for reports, and preparing necessary patient documents. Cambridge, however, did not compensate Rives and the Aggrieved Employees for this off-the-clock work. Cambridge did not enter into valid on-duty meal period agreements with Rives or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest breaks. The Cambridge Directors also sent text messages to Rives and the Aggrieved Employees after they had already clocked out at the end of

their shifts and during weekends. Cambridge did not compensate Rives and the Aggrieved Employees for this off the clock work.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Cambridge required Rives and other Aggrieved Employees to use their personal cell phones in the course of performing their duties. The Cambridge Directors communicated with Rives and the other Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, Cambridge did not reimburse Rives and the Aggrieved Employees for their cell phone expenses.

As a result of the practices described above, Cambridge failed to provide Rives and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Rives and the other Aggrieved Employees' gross and net wages earned and the total hours worked. As a further result, Cambridge failed to timely pay Rives and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

For the reasons herein, Rives alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and Aggrieved Employees:

- a) Cambridge failed to pay Rives and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;
- b) Cambridge failed to provide Rives and the Aggrieved Employees with all meal periods;
- c) Cambridge failed to pay Rives and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;

- d) Cambridge failed to provide Rives and the Aggrieved Employees with all rest breaks;
- e) Cambridge failed to pay Rives and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Cambridge failed to reimburse Rives and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) Cambridge failed to provide Rives and the Aggrieved Employees with accurate itemized wage statements;
- h) Cambridge failed to timely pay Rives and the Aggrieved Employees all earned and unpaid wages during their employment at Cambridge and at the time such employment ended; and
- i) Cambridge failed to maintain accurate employment records.

Accordingly, Rives now seeks civil penalties on behalf of herself and Aggrieved Employees based on Cambridge's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

“(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...”...

§ 2(P)(4). At all relevant times during the applicable limitations period, Rives was employed by Cambridge as a medical records supervisor who performed the majority of her duties in a nursing home setting. Accordingly, Rives and the Aggrieved Employees are entitled to the protections provided under the Wage Order

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

Within the health care industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during

which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any 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. 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. In addition, 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.

In relevant part, Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Cambridge knowingly failed to compensate Rives and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during their off-the-clock meal periods and after clocking out at the end of their shifts.

Accordingly, Rives now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

Failure to Provide Meal Periods

(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted

only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is

required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the

employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their

responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer

shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times during the applicable time period, Cambridge failed to provide Rives and the Aggrieved Employees with all timely 30-minute duty-free meal periods.

Accordingly, Rives seeks civil penalties for these Labor Code violations that Cambridge has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required

to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, Cambridge required Rives and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Rives and the Aggrieved Employees to remain on work premises during their rest periods, Cambridge has intentionally and improperly failed to provide Rives and the Aggrieved Employees with all duty-free rest periods. Further, Cambridge failed to compensate Rives and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Rives seeks civil penalties for these Labor Code violations that Cambridge has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Cambridge required Rives and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Rives seeks civil penalties for these Labor Code violations that Cambridge has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer;
and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Cambridge did not pay Rives and the Aggrieved Employees minimum, and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Cambridge failed to provide Rives and the Aggrieved Employees with all meal and rest periods in compliance with California law. Cambridge also failed to provide Rives and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Cambridge knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Rives and the Aggrieved Employees. As a result, Cambridge has failed to properly itemize Rives and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Cambridge has violated California Labor Code § 226.

Accordingly, Rives seeks civil penalties for the Labor Code violations that Cambridge has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

Failure to Timely Pay Wages During Employment **(Lab. Code § 204)**

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar

month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Cambridge's failure to pay Rives and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, Cambridge failed to timely pay all wages due during employment. Accordingly, Rives now seeks civil penalties for the Labor Code violations that Cambridge has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

Failure To Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the Employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or

until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Cambridge did not pay Rives and the Aggrieved Employees minimum and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Cambridge failed to provide Rives and the Aggrieved Employees with meal and rest periods in compliance with California law. Cambridge also failed to provide Rives and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Rives and the Aggrieved Employees at the time of termination, Cambridge is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Rives now seeks civil penalties for these Labor Code violations that Cambridge has committed against her and the other Aggrieved Employees as follows:

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay

period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided

all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Cambridge has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Rives and the Aggrieved Employees. Accordingly, Rives seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Individual Liability
(Labor Code § 558.1)

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee’s representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At all relevant times herein, Jacob Wintner was the “owner,” “director,” “officer,” or “managing agent” of CF San Rafael, LLC, and Cambridge Healthcare Services, LLC, and employed Rives and the Aggrieved Employees. Jacob Wintner directly or indirectly, or through an agent or any other person,

employed and exercised control over the wages, hours, or working conditions of Rives and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Theresa Rives
Walter Haines, Esq.

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12/7/2020

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