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 Superior Court of California
 County of Los Angeles

JUN 15 2021

Sherri R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES

CEDAR KNEBEL, on behalf of herself and
 others similarly situated,

Plaintiff,

v.

NUWEST GROUP HOLDINGS, LLC; and
 DOES 1-20, inclusive

Defendants.

Case No: 21STCV11666

**SECOND-AMENDED CLASS ACTION
 COMPLAINT FOR:**

- 1) FAILURE TO PAY OVERTIME**
- 2) FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS**
- 3) FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS**
- 4) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
- 5) WAITING TIME PENALTIES**
- 6) UNFAIR BUSINESS PRACTICES**
- 7) PENALTIES UNDER LABOR CODE SECTION 210**
- 8) PAGA VIOLATIONS**

[AMOUNT DEMANDED EXCEEDS
 \$25,000.00]

RECEIVED
JUN 15 2021
FILING WINDOW

1 Plaintiffs Cedar Knebel (“Plaintiff Knebel”) and Susan Tidwell (“Plaintiff Tidwell”)
2 (collectively “Plaintiffs”), individually, on behalf of themselves and on behalf all others
3 similarly situated, as defined below, hereby allege the following facts and claims against
4 NuWest Group Holdings, LLC, a Washington limited liability company (“Defendant”), and
5 respectfully request a trial by jury of all issues and causes of action so triable. Unless otherwise
6 specified, Defendant and Does 1-20 will collectively be referred to as “Defendants.”

7 **INTRODUCTION**

8 1. This class action complaint challenges Defendant’s past and ongoing unlawful
9 employment practices and policies on behalf of Plaintiffs and other similarly situated former and
10 current employees of Defendant, whose rights Defendant violated and continues to violate under
11 California law.

12 2. Specifically, as to Plaintiffs and others similarly situated, Defendant has:

- 13 a. Failed and continues to fail to pay lawful overtime rates for all overtime hours
14 worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;
- 15 b. Failed and continue to fail to authorize or permit lawful meal breaks in violation
16 of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;
- 17 c. Failed and continues to fail to authorize or permit lawful rest breaks in violation
18 of Labor Code §§ 226.7 and the Applicable Wage Orders;
- 19 d. Failed and continues to fail to timely furnish complete and accurate itemized wage
20 statements in violation of Labor Code § 226 and the Applicable Wage Orders;
- 21 e. Willfully failed to pay, without abatement or reduction, all final wages owed in
22 accordance with Labor Code §§ 201 or 202 and in violation of Labor Code § 203;
- 23 f. Committed and continues to commit unfair business practices in violation of
24 Business & Professions Code §17200, et seq.; and
- 25 g. Failed and continues to fail to pay all owed wages on regular paydays in
26 accordance with Labor Code § 204 and in violation of Labor Code § 210.
- 27
28

1 3. The acts complained of herein occurred and will occur, at least in part, within the
2 time-period of four (4) years preceding the filing of the original Complaint up to and through the
3 time of trial.

4 **JURISDICTION AND VENUE**

5 4. This Court has jurisdiction over Defendant because it is a corporation with
6 sufficient minimum contacts in California and/or because it intentionally availed and continues
7 to avail itself of the California market so as to render the exercise of jurisdiction over it by the
8 California courts consistent with traditional notions of fair play and justice.

9 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
10 at least some of the acts and omissions that are the subject matter of this Complaint occurred
11 herein and/or Defendant either is found, maintains offices, transacts business, exists and/or has
12 an agent herein.

13 **PARTIES**

14 6. At all relevant times mentioned herein, Plaintiff Knebel was a nurse and a resident
15 of the State of Maryland.

16 7. At all relevant times mentioned herein, Plaintiff Tidwell was a nurse and a resident
17 of the State of South Dakota.

18 8. Upon information and belief, Defendant is an employment staffing agency and is,
19 and at all times herein mentioned was, a Washington limited liability company duly authorized
20 to do business in California. In particular, Defendant employs, compensates and assigns
21 healthcare professionals to work at various kinds of healthcare facilities throughout California.

22 9. The true names or capacities, whether individual, associate or otherwise, of Does
23 1-20, inclusive, are unknown to Plaintiffs and, therefore, Plaintiffs sue these Doe Defendants by
24 such fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint to allege
25 such names and capacities as soon as they are ascertained. Upon information and belief, each of
26 these fictitiously named Defendants is responsible in some manner for the occurrences alleged
27 herein, and that Plaintiffs' injuries and damages as alleged and set forth herein were proximately
28 caused by such fictitiously named Defendants.

1 10. Upon information and belief, Plaintiffs allege that at all relevant times each
2 Defendant was the principal, agent, employer, employee, partner, joint venturer, officer, director,
3 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
4 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
5 of the other Defendants in a joint enterprise for profit, and bore such other relationships to
6 some or all of the other Defendants so as to be liable for the conduct of each of them.

7 11. Upon information and belief, Plaintiffs allege that each Defendant acted pursuant
8 to and within the scope of the relationships alleged above, that each Defendant knew or should
9 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
10 conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and
11 agreement to do the things alleged herein.

12 **GENERAL ALLEGATIONS**

13 12. Defendant hired, paid and assigned Plaintiff Knebel to work at Pacific Gardens
14 Medical Center in Los Angeles County, California as a non-exempt, hourly-paid travel nurse for
15 an approximately 3-month contract assignment starting on or about January 19, 2021 and ending
16 on or about April 15, 2021. Plaintiff Knebel was assigned to work, and did typically work, five
17 12-hour shifts per workweek.

18 13. Defendant hired, paid and assigned Plaintiff Tidwell to work at Pacific Gardens
19 Medical Center in Los Angeles County, California as a non-exempt, hourly-paid travel nurse for
20 an approximately 3-month contract assignment starting on or about January 22, 2021 and ending
21 on or about April 15, 2021. Plaintiff Tidwell was assigned to work, and did typically work, six
22 12-hour shifts per workweek.

23 **I. Defendant's Failure to Take "Travel Stipends" into Account in Determining**
24 **Overtime Rates**

25 14. Under Labor Code § 200, "wages" consist of "all amounts for labor performed by
26 employees of every description, whether the amount is fixed or ascertained by the standard of
27 time, task, piece, commission basis, or other method of calculation." In California, overtime is
28

1 computed based on the regular rate of pay. The regular rate of pay includes many different kinds
2 of remuneration, including hourly earnings, salary, piece work earnings, commissions, certain
3 bonuses, and the value of meals and lodging.

4 15. During the applicable recovery period, Defendant has had a policy and/or practice
5 of adjusting “travel stipends” it promises to its employees, including housing, meal and/or
6 incidental payments, based on number of hours or shifts they work in a given workweek. For
7 instance, pursuant to Plaintiffs’ employment agreements with Defendant, Defendant promised to
8 pay them \$672.00 per “40 hour week” for “Housing stipends” and another \$385.00 per “40 hour
9 week” for “Meal and incidental stipends.” The employment agreements also provide that,
10 “Stipend amounts will be prorated at a rate of \$26.42 by the hour for any hours.” Plaintiffs’
11 employment agreements with Defendant also described its Stipend Adjustment policy and
12 practice: “In the event of voluntarily (sick days, requested time off) or involuntary (low census
13 within facility agreement) call off, untaxed per diem stipend will not be paid for hours not
14 worked. The stipend can be earned back by picking up additional shifts at the facility’s availability
15 and agreement.”

16 16. Defendant’s promised “travel stipends” are not intended to actually or reasonably
17 reimburse its employees for their travel expenses, but, in fact, are a form of disguised wages.

18 17. Despite the fact that the amount of the promised “travel stipends” are based upon,
19 and vary with, the number of weekly hours or shifts worked by its employees, and thus are
20 actually a form of disguised wages, during the applicable recovery period Defendant has had a
21 policy and/or practice of not including the value of those “travel stipends,” including lodging,
22 meals and/or incidentals, whether paid in cash or in kind, in its employees’ regular rates of pay,
23 including Plaintiff’s regular rates of pay, for the purposes of calculating their lawful overtime or
24 double-time rates of pay.
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1 **II. Defendant's Failure to Take Non-Discretionary Bonuses into Account in**
2 **Determining Overtime Pay**

3 18. During the applicable recovery period, Defendant has had a policy and/or practice
4 of not including earned non-discretionary bonuses as part of its employees' regular rates of pay
5 in determining their overtime or double-time pay. For instance, Defendant promised Plaintiffs a
6 "\$500.00 to be distributed in the form of an extension bonus, to be paid out within the first week
7 of extension," but it failed to include these bonuses in Plaintiffs' regular rates of pay in order to
8 determine their proper overtime and double-time pay.

9 19. Upon information and belief, during the applicable recovery period, Defendant
10 also failed to include non-discretionary bonuses earned by its other non-exempt employees in
11 their regular rates of pay in order to determine their lawful overtime or double-time rates of pay.
12

13 **III. Defendant's Failure to Authorize or Permit Lawful Meal or Rest Breaks**

14 20. During the relevant period, Defendant did not, from time to time, authorize or
15 permit its non-exempt employees, including Plaintiffs, to take lawful meal or rest breaks under
16 California law. For example, for her shifts on March 14, 15, 16, 18 & 19, 2021, Plaintiff Tidwell
17 recorded no meal breaks on her time card, but her corresponding paystub for that workweek
18 shows that Defendant did not pay her any meal break premiums.

19 **CLASS ACTION ALLEGATIONS**

20 21. This action is brought and may properly be maintained as a class action pursuant
21 to the provisions of Code of Civil Procedure § 382.

22 22. Plaintiffs reserve the right under California Rules of Court, Rule 1855 (b) to
23 amend or modify the description of the class, as defined below, with greater specificity or further
24 division into sub-classes, or limitation to certain issues.

25 23. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
26 because there is a well-defined community of interest in the litigation and the proposed class is
27 easily ascertainable.
28

1 24. For the purposes of this Complaint, “Class Period” means any time from four
2 years prior to the filing of this Complaint until the date of class certification.

3 25. The putative class Plaintiffs will seek to certify are currently composed of and
4 defined as follows:

5 All of Defendant’s non-exempt employees who were assigned to work at
6 any facility inside California during the Class Period (the “Class”).

7 26. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
8 are so numerous that their individual joinder is impracticable. The precise number of class
9 members and their addresses will be known to Plaintiffs through discovery. Class members may
10 be notified of the pendency of this action by mail, electronic mail, the internet, or published
11 notice.

12 27. **Common Questions Predominate:** Common questions of law and fact exist as
13 to all members of the Class and predominate over any questions that affect only individual
14 members of the Class. The predominant common questions of law and fact include:

- 15 a. Whether Defendant failed and continues to fail to pay lawful overtime rates for
16 all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the
17 Applicable Wage Orders;
- 18 b. Whether Defendant failed and continue to fail to authorize or permit lawful meal
19 breaks in violation of Labor Code §§ 226.7 and 512 and the Applicable Wage
20 Orders;
- 21 c. Whether Defendant failed and continues to fail to authorize or permit lawful rest
22 breaks in violation of Labor Code §§ 226.7 and the Applicable Wage Orders;
- 23 d. Whether Defendant failed and continues to fail to timely furnish complete and
24 accurate itemized wage statements in violation of Labor Code § 226 and the
25 Applicable Wage Orders;
- 26 e. Whether Defendant willfully failed to pay, without abatement or reduction, all
27 final wages owed in accordance with Labor Code §§ 201 or 202 and in violation
28 of Labor Code § 203;

1 f. Whether Defendant committed and continues to commit unfair business practices
2 in violation of Business & Professions Code §17200, et seq.; and

3 g. Whether Defendant failed and continues to fail to pay all owed wages on regular
4 paydays in accordance with Labor Code § 204 and in violation of Labor Code §
5 210.

6 28. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class
7 she seeks to represent because Plaintiffs, as employees of Defendant, were exposed and subjected
8 to the same unlawful business practices as the other members of the Class. Thus, Plaintiffs and
9 the members of the Class they seek to represent sustained the same types of damages and losses.

10 29. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class.
11 Plaintiffs' attorneys have experience in employment and class action matters and may adequately
12 represent the class in this matter. Plaintiffs have no adverse interests to those in the Class.

13 30. **Superiority:** A class action is superior to other available means for the fair and
14 efficient adjudication of this controversy. Because individual joinder of all members of each of
15 the Class is impractical, class action treatment will permit a large number of similarly situated
16 persons to prosecute their common claims in a single forum simultaneously, efficiently and
17 without the unnecessary duplication of effort and expense that numerous individual actions
18 would engender. The relatively minor amount of individual damages in question coupled with
19 the expenses and burdens of individual litigation would make it difficult or impossible for
20 individual members of the Class to redress the wrongs done to them, while important public
21 interests will be served by addressing the matter as a class action. The cost to and burden on the
22 court system of adjudication of individualized litigation would be substantial and substantially
23 more than the costs and burdens of a class action. Individualized litigation would also present the
24 potential for inconsistent or contradictory judgments.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 **(Plaintiffs and the Class Against Defendant and Does 1-20)**

4 31. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 32. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage
7 Orders at all times relevant hereto, Defendant was required to compensate Plaintiffs and the Class
8 for all overtime hours worked, which is calculated at one and one-half times the regular rate of
9 pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendant was
10 also required to compensate Plaintiffs and the Class for all hours worked in excess of 12 hours
11 in any workday at double their regular rate of pay. Additionally, under California law, Defendant
12 was required to include any payments for work in the regular rate of pay for overtime and double-
13 time calculation purposes.

14 33. As fully alleged above, during the applicable recovery period, Defendant failed to
15 include the value of the “travel stipends,” including, but not limited to, lodging, meal and
16 incidental payments, whether paid in cash or in kind, and the earned non-discretionary bonuses,
17 in Plaintiffs’ and the Class’s regular rates of pay for purposes of calculating their overtime and
18 double-time pay. Therefore, Plaintiffs and the Class were not fully paid for all the overtime and/or
19 double-time payments legally owed to them.

20 34. As a direct result of aforementioned violations, Plaintiffs and the Class have
21 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
22 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendant to
23 fully perform its obligations under state law, all to their respective damage in amounts according
24 to proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

25 35. Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Plaintiffs and the
26 Class are entitled to recover owed overtime and double-time compensation from Defendant and
27 civil penalties, plus interest penalties, attorney's fees, expenses, and costs of suit.
28

(Plaintiffs and the Class Against Defendant and Does 1-20)

41. Plaintiffs and the Class are entitled to recover one additional hour of pay at their regular rate of compensation with Defendant for each work day that a meal break was not authorized and/or permitted. Plaintiffs and the Class are also entitled to their costs and reasonable

attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS

(Plaintiffs and the Class Against Defendant and Does 1-20)

42. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein

43. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

44. The Applicable Wage Orders require that employers authorize or permit nonexempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

45. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with an applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the Applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

46. During the applicable recovery period, Defendant did not, from time to time, authorize and/or permit Plaintiffs and the Class to take legally-complaint rest breaks when they worked long enough to be entitled to rest breaks under California.

47. During the applicable recovery period, Defendant failed to pay Plaintiffs and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful rest breaks. As a result of violations of Labor Code §§ 226.7 and the Applicable Wage Orders, Defendant is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

1 48. Plaintiffs and the Class are entitled to recover one additional hour of pay at their
2 regular rate of compensation with Defendant for each work day that a rest break was not
3 authorized and/or permitted. Plaintiffs and Class are also entitled to their costs and reasonable
4 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
5 interest.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

8 **(Plaintiffs and the Class Against Defendant and Does 1-20)**

9 49. Plaintiffs hereby incorporate by reference all other allegations contained in this
10 Complaint as though fully set forth herein.

11 50. This claim is brought under Labor Code § 226(a), which sets forth reporting
12 requirements for employers when paying wages, including that every employer shall furnish each
13 of his or her employees an itemized statement in writing showing, among other things, (1) gross
14 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
15 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
16 each hourly rate, and (6) the name and address of the legal entity that is the employer.

17 51. Labor Code § 226(e) provides that an employee suffering injury as a result of a
18 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
19 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
20 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
21 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled
22 to an award of costs and reasonable attorney's fees.

23 52. Defendant knowingly and intentionally failed to provide Plaintiffs and the Class
24 with paycheck deduction statements accurately displaying the information required by Labor
25 Code § 226(a).

26 53. As a direct and proximate result of Defendant's conduct as alleged above,
27 Plaintiffs and the Class are each entitled to a civil penalty of \$50 for the initial pay period and
28 \$100 for each subsequent pay period in which Defendant violated the reporting requirements of

1 Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3,
2 Defendant are subject to a civil penalty in the amount of \$250 per employee per violation in an
3 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
4 employer fails to provide the employee a wage deduction statement or fails to keep the records
5 required under Labor Code § 226(a).

6 **FIFTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(Plaintiffs and the Class Against Defendant and Does 1-20)**

9 54. Plaintiffs hereby incorporate by reference all other allegations contained in this
10 Complaint as though fully set forth herein.

11 55. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
12 employee after said employee is discharged or quits.

13 56. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
14 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
15 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
16 an amount not to exceed the equivalent of 30 days' pay.

17 57. During the applicable recovery period, Plaintiffs and numerous members in the
18 Class employed have separated from Defendant as a result of being discharged or having
19 voluntarily resigned their employment.

20 58. While employed by Defendant, these employees were entitled to compensation
21 for the violations set forth in this Complaint. Defendant failed to pay all wages due to the
22 Plaintiffs and the members of the Class who separated from Defendant, by failing to pay for,
23 among other things, overtime and double-time, and premium wages for unlawful meal and rest
24 breaks. Defendant is required to compensate these employees for all their unpaid wages earned
25 and an additional penalty equal to the daily earnings of such employees up to an amount equal to
26 those owed for 30 days of work.

1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

3 **(By Plaintiffs and the Class Against Defendant and Does 1-20)**

4 59. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 60. Defendant has engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in this Complaint by requiring its
8 non-exempt employees to perform the labor complained of herein without proper compensation.
9 Defendant's utilization of such unfair business practices constitutes unfair competition and
10 provides an unfair advantage over its competitors.

11 61. Plaintiffs and the Class seek full restitution and disgorgement of monies, as
12 necessary and according to proof, to restore any and all monies withheld, acquired and/or
13 converted by Defendant by means of the unfair practices complained of herein.

14 62. Plaintiffs and the Class seek, on their own behalf and on behalf of the general
15 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
16 least in part, within the last four (4) years preceding the filing of the original complaint in this
17 action.

18 63. Upon information and belief, Plaintiffs allege that at all times herein mentioned
19 Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed by
20 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
21 thereby depriving Plaintiffs and the Class, and other members of the general public the minimum
22 working condition standards and conditions due to them under the California labor laws and the
23 applicable Wage Orders as specifically described herein.

24 64. Plaintiffs and the Class are further entitled to and do seek both a declaration that
25 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
26 relief restraining Defendant from engaging in any of such business practices in the future. Such
27 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
28 irreparable injury in that Defendant will continue to violate these California laws, represented by

labor statutes and the wage orders, unless specifically ordered to comply with same. This expectation of future violations will require current and future employees to repeatedly and continuously seek legal redress in order to gain compensation to which they are entitled under California law. Plaintiffs and the Class have no other adequate remedy at law to ensure future compliance with the California labor laws and the Applicable Wage Orders alleged to have been violated herein.

SEVENTH CAUSE OF ACTION

PENALTIES UNDER LABOR CODE § 210

(Plaintiffs and the Class Against Defendant and Does 1-20)

65. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

66. This claim is brought under Labor Code § 210, which relevantly provides:

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3...

67. Labor Code § 204(a) also pertinently provides:

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

1 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
2 month shall be paid for between the 16th and the 26th day of the month during
3 which the labor was performed, and labor performed between the 16th and the last
4 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th
5 day of the following month...

6 68. During the applicable recovery period, Defendant failed to pay Plaintiffs and the
7 Class their full overtime rates, and premium wages owed to them for not being, from time to time,
8 authorized and/or permitted to take their lawful meal or rest breaks, on their regular paydays. By
9 failing to pay such wages owed to Plaintiffs and the Class on their regular paydays, Defendant
10 violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200
11 for each subsequent violation, plus 25 percent of the premium wages they withheld from
12 Plaintiffs and the Class under Labor Code § 210.

13 **EIGHTH CAUSE OF ACTION**

14 **PAGA VIOLATIONS**

15 **(Against All Defendants)**

16 69. Plaintiffs hereby incorporate by reference all other allegations contained in this
17 Complaint as though fully set forth herein.

18 70. Plaintiffs bring this cause of action as representative claim on behalf of
19 themselves and other aggrieved employees in the capacity as private attorneys general pursuant
20 to the Private Attorneys General Act of 2004, Labor Code § 2698, et seq. ("PAGA").

21 71. Plaintiffs were employed by Defendant and the Labor Code violations alleged
22 above were committed against them during their time of employment. Plaintiffs and the other
23 non-exempt employees of Defendant are therefore "aggrieved employees" as defined by Labor
24 Code § 2699(c) in that they are all current or former non-exempt employees of Defendant in
25 California, and one or more of the alleged violations were committed against them ("Aggrieved
26 Employees").

27 72. Defendant committed violations of the Labor Code against Plaintiffs and the
28 Aggrieved Employees as alleged in this Complaint, including, but not limited to, the following:

- a. Failing to pay lawful overtime rates for all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;
- b. Failing to authorize or permit lawful meal breaks in violation of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;
- c. Failing to authorize or permit lawful rest breaks in violation of Labor Code §§ 226.7 and the Applicable Wage Orders;
- d. Failing to timely furnish complete and accurate itemized wage statements in violation of Labor Code § 226 and the Applicable Wage Orders;
- e. Willfully failing to pay, without abatement or reduction, all final wages owed in accordance with Labor Code §§ 201 or 202 and in violation of Labor Code § 203; and
- f. Failing pay all owed wages on regular paydays in accordance with Labor Code § 204 and in violation of Labor Code § 210.

73. On March 23, 2021, Plaintiff Knebel sent a written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) notifying them of the specific violations and the facts and theories supporting those violations. More than 60 days have passed since the date the notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiff Knebel’s written notice to Defendant and the LWDA is attached hereto as “Exhibit A,” which Plaintiffs incorporate by reference as though fully set forth herein.

74. On April 9, 2021, Plaintiff Tidwell sent a written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) notifying them of the specific violations and the facts and theories supporting those violations. More than 60 days have passed since the date the notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiff Tidwell’s written notice to Defendant and the LWDA is attached hereto as “Exhibit B,” which Plaintiffs incorporate by reference as though fully set forth herein.

75. Plaintiffs, individually and on behalf of the Aggrieved Employees and the State of California, seek to recover all civil penalties and all underpaid wages allowed under Labor Code §§ 558, 2698, 2699, 2699.3 and 2699.5, for which Defendant is liable as a result of its

violations of the Labor Code during the applicable recovery period, all in an amount to be proven at trial. These include, but are not limited to, penalties pursuant to Labor Code § 210 for violations of Labor Code §§ 201, 202, 203 and 204; penalties pursuant to Labor Code § 226.3 for violations of Labor Code § 226 and the Applicable Wage Orders; penalties and underpaid wages pursuant to Labor Code § 558, including an amount sufficient to recover underpaid wages due for violations of the Labor Code §§ 226.7 and 558 and the Applicable Wage Orders; and penalties pursuant to Labor Code § 1197.1 for violations Labor Code §§ 1182, 1182.12, and 1198 and the Applicable California Wage Orders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants as follows:

1. Certification of this action as a class action on behalf of the Class alleged in this Complaint;
2. For general damages, according to proof, on each cause of action for which such damages are available;
3. For compensatory damages, according to proof, on each cause of action for which such damages are available;
4. For restoration and restitution of lost wages, statutory penalties, and all other remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;
5. For declaratory and injunctive relief as requested herein;
6. For prejudgment and post-judgment interest according to law;
7. For reasonable attorneys' fees incurred in this action on those causes of action for which such fees are recoverable under the law;
8. For costs of suit incurred in this action;
9. Disgorgement of all gains unjustly gained by Defendants;
10. All civil penalties recoverable under PAGA; and
11. Any other remedies, whether in law or equity, that the Court deems properly.

1
2 Dated: June 15, 2021

Respectfully submitted,
3 SHAKOURI LAW FIRM

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5
6 By: Ashkan Shakouri
7 Ashkan Shakouri
8 Attorneys for Plaintiffs

9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs demand a jury trial on issues triable to a jury.
12

13 Dated: June 15, 2021

Respectfully submitted,
14 SHAKOURI LAW FIRM

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17 By: Ashkan Shakouri
18 Ashkan Shakouri
19 Attorneys for Plaintiffs
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23
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27
28

EXHIBIT A

SHAKOURI LAW FIRM
Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
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March 23, 2021

Via Online Filing:

California Labor & Workforce
Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

NuWest Group Holdings, LLC
c/o
InCorp Services, Inc.
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362-7354

NuWest Group Holdings, LLC
Corporate Headquarters
325 118th Ave SE
Suite #300
Bellevue, WA 98005

Re: *PAGA Notice Pursuant to California Labor Code § 2699*

Claimant: Cedar Knebel
Employer: NuWest Group Holdings, LLC

Dear Sir or Madam:

Claimant Cedar Knebel (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her former employer NuWest Group Holdings, LLC (“NuWest”).

During the relevant period NuWest has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §2698, *et seq.* We request that your agency investigate the claims alleged herein or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”) on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Claimant is bringing these PAGA claims on behalf of herself and all others who worked or work for NuWest inside California and were subject to the violations alleged herein during the applicable recovery period (“Aggrieved Employees”). Aggrieved Employees includes Claimant.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by NuWest, while other violations, though not personally suffered by her, were suffered, and continue to be suffered, by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, “[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that she alleges to have taken place for purposes of seeking PAGA penalties.” (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by NuWest against the Aggrieved Employees, including those she did not personally suffer.

Claimant’s Employment with NuWest

NuWest hired, paid and assigned Claimant to work at Pacific Gardens Medical Center in Los Angeles County, California as a non-exempt, hourly-paid travel nurse for an approximately 3-month contract assignment starting on or about January 19, 2021 and ending on April 15, 2021. Claimant was assigned to work, and did typically work, five 12-hour shifts per workweek.

NuWest’s Failure to Take “Travel Stipends” into Account in Determining Overtime Rates

Under Labor Code § 200, “wages” consist of “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of remuneration, including hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the value of meals and lodging.

Pursuant to Claimant’s last employment agreement with NuWest called “NuWest Contractor Agreement,” NuWest promised to pay Plaintiff \$672.00 per “40 hour week” for “Housing stipends” and another \$385.00 per “40 hour week” for “Meals and incidentals stipends.” In the employment agreement, NuWest also stated the “Stipend amounts will be prorated at a rate of \$26.42 by the hour for any hours.”

During the relevant period, NuWest has had a policy and/or practice of making the travel stipend payments it promises to Aggrieved Employees, including housing, meals and/or incidentals payments (“travel stipends”), adjustable based on number of hours or shifts they work in a given workweek. In particular, when Aggrieved Employees do not work the minimum number of hours or shifts per week that NuWest requires of them, NuWest deducts their promised travel stipends based on the number of hours or shifts they missed that workweek. Thus, NuWest’s promised travel stipends are not intended to actually or reasonably reimburse Aggrieved Employees for their housing, meal or incidental expenses, but in fact are a form of disguised wages.

Despite the fact that the amount of the promised stipend payments are based upon, and vary with, the number of weekly hours or shifts worked by Aggrieved Employees, during the relevant time period, NuWest has had a policy and/or practice of not including the value of those travel stipends, including those for housing, meals and/or incidentals, whether paid in cash or in kind, in Aggrieved Employees’ regular rates of pay for the purposes of calculating their overtime or double-time pay.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest’s Failure to Take Non-Discretionary Bonuses into Account in Determining Overtime Rates

Non-discretionary bonuses are considered wages under Labor Code § 210, and thus, must be included in the regular rate of pay to determine the overtime and double rates of pay. During the applicable recovery period, NuWest has had a policy and/or practice of not including earned non-discretionary bonuses as part of the Aggrieved Employees’ regular rates of pay in determining their overtime or double-time pay.

For instance, in Claimant’s last extension contract, NuWest promised Claimant, “\$500.00 to be distributed in the form of an extension bonus, to be paid out within the first week of extension.” NuWest paid Claimant said bonus on March 12, 2021, but failed to include this non-discretionary bonus in Claimant’s regular rate of pay in order to determine her proper overtime and double-time pay. Upon information and belief, during the applicable recovery period, NuWest also failed to include non-discretionary bonuses earned by other Aggrieved Employees in their regular rates of pay in order to determine their lawful overtime or double-time rates.

As a result of these violations, NuWest liable for, among other things, civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest’s Failure to Pay for All Hours Worked, Including Failure to Pay Minimum Wage

In California, an employer is required to compensate its non-exempt employees for all hours worked pursuant to the Applicable Wage Orders and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198. Furthermore, under Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying at least minimum wage for all time worked as required by the Applicable Wage Orders.

During the relevant period, NuWest has had a policy and/or practice of requiring Aggrieved Employees to take and complete training/orientation courses (or modules), which are client-specific, without compensating them for such time. Under California law, the time spent attending these training/orientation courses is compensable because, among other things, they are not voluntary and are directly related to employees' jobs as they are designed to make employees handle their jobs more effectively as opposed to training them for another job or a new or additional skill. By failing to compensate Aggrieved Employees for time spent reviewing and/or completing competency/training/orientation courses (or modules) that are facility-specific, NuWest failed to pay these employees their promised rates of pay, or even minimum wage.

In violation of California law, NuWest has intentionally and willfully refused to perform its obligations to compensate Aggrieved Employees for all wages earned and all worked hours. As a direct result, they have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys' fees in seeking to compel Employers to fully perform their obligations under California law.

NuWest's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1194, 1194.2, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, liquidated damages, reasonable attorneys' fees, expenses, and costs of suit.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Authorize or Permit Lawful Meal Breaks

During the relevant period, NuWest has had policy and/or practice of not, from time to time, authorizing or permitting Claimant and other Aggrieved Employees to take lawful meal or rest breaks under California law.

Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

During the applicable recovery period, Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful first and/or second meal break, as required by Labor Code §§ 226.7, 512 and the applicable wage orders.

During the applicable recovery period, NuWest failed to pay Aggrieved Employees' wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, NuWest is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, NuWest has had policy and/or practice of not, from time to time, authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." The applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, NuWest, from time to time, did not authorize and/or permit Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and understaffing at their jobsites.

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a rest break was not authorized and/or permitted by NuWest. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, NuWest is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Pay Wages Due Upon Termination

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code §§ 201 and 227.3.) Pursuant to Labor Code § 202 (a), "[i]f 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."

Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the

employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

While employed by NuWest, Aggrieved Employees were entitled to compensation for the violations set forth herein. NuWest failed to pay all wages due to the Claimant and other Aggrieved Employees who separated from NuWest, by failing to pay for, among other things, all hours worked, overtime and double-time, and premium wages for unlawful meal and rest breaks. NuWest are required to compensate these Aggrieved Employees for all their unpaid wages earned and an additional penalty equal to the daily earnings of such employees up to an amount equal to those owed for 30 days of work.

NuWest willfully failed to pay Aggrieved Employees who are no longer employed by it all compensation due upon termination of employment as required by Labor Code §§ 201 and 202. Pursuant to §203, Aggrieved Employees who are no longer employed by NuWest are now also entitled to recover up to thirty (30) days of wages due to NuWest's "willful" failure to comply with the statutory requirements of Labor Code §§ 201 and 202.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

Failure to Furnish Accurate Wage Statements

This claim is brought under Labor Code § 226(a), which sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5) the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

NuWest knowingly and intentionally failed to provide Aggrieved Employees with paycheck deduction statements accurately displaying the information required by Labor Code § 226(a).

As a direct and proximate result of NuWest's conduct as alleged above, Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which NuWest violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, NuWest is subject to a civil penalty in the amount of \$250 per Aggrieved Employee per violation in an initial citation and \$1,000 per Aggrieved Employee for each violation in a subsequent citation, for which it failed to

provide them a wage deduction statement or fails to keep their wage statements as required under Labor Code § 226(a).

Aggrieved Employees will seek penalties as permitted under Labor Code §226 for each violation. Further, Aggrieved Employees will seek recovery of civil penalties under Labor Code §226.3, 558 and §2698, *et seq*

NuWest's Failure to Timely Pay Wages During Employment

As alleged above, during the applicable recovery period, NuWest failed to pay Claimant and other Aggrieved Employees all wages owed to them to this date. By failing to pay wages on their regular paydays, NuWest violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, NuWest is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq*.

Without limitation, Claimant, if permitted, will further seek any and all penalties otherwise capable of being collected under Labor Code § 558 and PAGA. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802,

2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform them if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court on behalf of herself and other Aggrieved Employees.

Respectfully Submitted,
SHAKOURI LAW FIRM

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT B

SHAKOURI LAW FIRM
Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
Los Angeles, CA 90025
Tel: (310) 575-1827
Fax: (310) 575-1890
ash@shakourilawfirm.com
shakourilawfirm.com

April 9, 2021

Via Online Filing:

California Labor & Workforce
Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

NuWest Group Holdings, LLC
c/o
InCorp Services, Inc.
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362-7354

NuWest Group Holdings, LLC
Corporate Headquarters
325 118th Ave SE
Suite #300
Bellevue, WA 98005

Re: *PAGA Notice Pursuant to California Labor Code § 2699*

Claimant: Susan Tidwell
Employer: NuWest Group Holdings, LLC

Dear Sir or Madam:

Claimant Susan Tidwell (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her employer NuWest Group Holdings, LLC (“NuWest”).

During the relevant period NuWest has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §2698, *et seq.* We request that your agency investigate the claims alleged herein or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”) on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Claimant is bringing these PAGA claims on behalf of herself and all others who worked or work for NuWest inside California and were subject to the violations alleged herein during the applicable recovery period (“Aggrieved Employees”). Aggrieved Employees includes Claimant.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by NuWest, while other violations, though not personally suffered by her, were suffered, and continue to be suffered, by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, “[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that she alleges to have taken place for purposes of seeking PAGA penalties.” (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by NuWest against the Aggrieved Employees, including those she did not personally suffer.

Claimant’s Employment with NuWest

NuWest hired, paid and assigned Claimant to work at Pacific Gardens Medical Center in Los Angeles County, California as a non-exempt, hourly-paid travel nurse for an approximately 3-month contract assignment starting on or about January 22, 2021 and ending on or about April 15, 2021. Claimant was assigned to work, and did typically work, six 12-hour shifts per workweek.

NuWest’s Failure to Take “Travel Stipends” into Account in Determining Overtime Rates

Under Labor Code § 200, “wages” consist of “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of remuneration, including hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the value of meals and lodging.

During the relevant period, NuWest has had a policy and/or practice of making the travel stipends it promises to Aggrieved Employees, including housing, meals and/or incidentals payments (“travel stipends”), adjustable based on number of hours or shifts they work in a given workweek. In particular, when Aggrieved Employees do not work the minimum number of hours or shifts per week that NuWest requires of them, NuWest deducts their promised travel stipends based on the number of hours or shifts they missed that workweek. Thus, NuWest’s promised

travel stipends are not intended to actually or reasonably reimburse Aggrieved Employees for their housing, meal or incidental expenses, but in fact are a form of disguised wages.

For instance, pursuant to Claimant's last employment with NuWest, NuWest promised to pay her \$672.00 per "40 hour week" for "Housing stipends" and another \$385.00 per "40 hour week" for "Meal and incidental stipends." The employment agreement also provided that, "Stipend amounts will be prorated at a rate of \$26.42 by the hour for any hours." The employment agreement also described NuWest's Stipend Adjustment policy and practice: "In the event of voluntarily (sick days, requested time off) or involuntary (low census within facility agreement) call off, untaxed per diem stipend will not be paid for hours not worked. The stipend can be earned back by picking up additional shifts at the facility's availability and agreement."

Despite the fact that the amount of the promised stipend payments are based upon, and vary with, the number of weekly hours or shifts worked by Aggrieved Employees, during the relevant time period, NuWest has had a policy and/or practice of not including the value of those travel stipends, including those for housing, meals and/or incidentals, whether paid in cash or in kind, in Aggrieved Employees' regular rates of pay for the purposes of calculating their overtime or double-time pay.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Take Non-Discretionary Bonuses into Account in Determining Overtime Rates

Non-discretionary bonuses are considered wages under Labor Code § 210, and thus, must be included in the regular rate of pay to determine the overtime and double rates of pay. During the applicable recovery period, NuWest has had a policy and/or practice of not including earned non-discretionary bonuses as part of the Aggrieved Employees' regular rates of pay in determining their overtime or double-time pay.

For instance, NuWest promised Claimant a "\$500.00 to be distributed in the form of an extension bonus, to be paid out within the first week of extension," but it failed to include these bonuses in her regular rates of pay in order to determine her proper overtime and double-time pay.

As a result of these violations, NuWest liable for, among other things, civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Pay for All Hours Worked, Including Failure to Pay Minimum Wage

In California, an employer is required to compensate its non-exempt employees for all hours worked pursuant to the Applicable Wage Orders and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198. Furthermore, under Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying at least minimum wage for all time worked as required by the Applicable Wage Orders.

During the relevant period, NuWest has had a policy and/or practice of requiring Aggrieved Employees to take and complete training/orientation courses (or modules), which are client-

specific, without compensating them for such time. Under California law, the time spent attending these training/orientation courses is compensable because, among other things, they are not voluntary and are directly related to employees' jobs as they are designed to make employees handle their jobs more effectively as opposed to training them for another job or a new or additional skill. By failing to compensate Aggrieved Employees for time spent reviewing and/or completing competency/training/orientation courses (or modules) that are facility-specific, NuWest failed to pay these employees their promised rates of pay, or even minimum wage.

In violation of California law, NuWest has intentionally and willfully refused to perform its obligations to compensate Aggrieved Employees for all wages earned and all worked hours. As a direct result, they have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys' fees in seeking to compel Employers to fully perform their obligations under California law.

NuWest's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1194, 1194.2, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, liquidated damages, reasonable attorneys' fees, expenses, and costs of suit.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Authorize or Permit Lawful Meal Breaks

During the relevant period, NuWest has had policy and/or practice of not, from time to time, authorizing or permitting Claimant and other Aggrieved Employees to take lawful meal or rest breaks under California law.

Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

During the applicable recovery period, Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful first and/or second meal break, as required by Labor Code §§ 226.7, 512 and the applicable wage orders.

During the applicable recovery period, NuWest failed to pay Aggrieved Employees' wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, NuWest is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

For example, for her shifts on March 14, 15, 16, 18 & 19, 2021, Claimant recorded no meal breaks on her time card, but her corresponding paystub for that workweek shows that NuWest did not pay her any meal break premiums.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

NuWest's Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, NuWest has had policy and/or practice of not, from time to time, authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." The applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, NuWest, from time to time, did not authorize and/or permit Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and understaffing at their jobsites.

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a rest break was not authorized and/or permitted by NuWest. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, NuWest is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Pay Wages Due Upon Termination

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code §§ 201 and 227.3.) Pursuant to Labor Code § 202 (a), "[i]f 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."

Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

While employed by NuWest, Aggrieved Employees were entitled to compensation for the violations set forth herein. NuWest failed to pay all wages due to Aggrieved Employees who separated from NuWest, by failing to pay for, among other things, all hours worked, overtime and double-time, and premium wages for unlawful meal and rest breaks. NuWest is required to compensate these Aggrieved Employees for all their unpaid wages earned and an additional penalty equal to the daily earnings of such employees up to an amount equal to those owed for 30 days of work.

NuWest willfully failed to pay Aggrieved Employees who are no longer employed by it all compensation due upon termination of employment as required by Labor Code §§ 201 and 202. Pursuant to §203, Aggrieved Employees who are no longer employed by NuWest are now also entitled to recover up to thirty (30) days of wages due to NuWest's "willful" failure to comply with the statutory requirements of Labor Code §§ 201 and 202.

As a result of these violations, NuWest is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

Failure to Furnish Accurate Wage Statements

This claim is brought under Labor Code § 226(a), which sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5) the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

NuWest knowingly and intentionally failed to provide Aggrieved Employees with paycheck deduction statements accurately displaying the information required by Labor Code § 226(a).

As a direct and proximate result of NuWest's conduct as alleged above, Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which NuWest violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, NuWest is subject to a civil penalty in the amount of \$250 per Aggrieved Employee per violation in an initial citation and

\$1,000 per Aggrieved Employee for each violation in a subsequent citation, for which it failed to provide them a wage deduction statement or fails to keep their wage statements as required under Labor Code § 226(a).

Aggrieved Employees will seek penalties as permitted under Labor Code §226 for each violation. Further, Aggrieved Employees will seek recovery of civil penalties under Labor Code §226.3, 558 and §2698, *et seq.*

NuWest's Failure to Timely Pay Wages During Employment

As alleged above, during the applicable recovery period, NuWest failed to pay Claimant and other Aggrieved Employees all wages owed to them to this date. By failing to pay wages on their regular paydays, NuWest violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, NuWest is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Without limitation, Claimant, if permitted, will further seek any and all penalties otherwise capable of being collected under Labor Code § 558 and PAGA. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802,

2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court on behalf of herself and other Aggrieved Employees.

Respectfully Submitted,

SHAKOURI LAW FIRM

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

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SECOND-AMENDED CLASS ACTION COMPLAINT

 X BY ELECTRONIC TRANSMISSION ONLY VIA CALIFORNIA RULES OF COURT, EMERGENCY RULE 12: I electronically caused to be served the foregoing document on all interested parties in this action via email only. The document will be deemed served on the date it was emailed.

Ashkan Shakouri
Ashkan Shakouri