

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

1 GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
2 ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
3 vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
4 handerson@grahamhollis.com
Oswaldo X. Calvachi (SBN 336680)
5 ocalvachi@grahamhollis.com
3555 Fifth Avenue, Suite 200
6 San Diego, California 92103
Telephone: 619.692.0800
7 Facsimile: 619.692.0822

8 *Attorneys for Plaintiff Akimasia Walker*

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

JUN 11 2021

BY *Justin Manassee*
JUSTIN MANASSEE, DEPUTY

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12
13 AKIMASIA WALKER, in her representative
capacity, on behalf of the State of California, the
14 general public and all aggrieved employees,

15 Plaintiff,

16 v.

17 FAVORITE HEALTHCARE STAFFING,
INC., a Kansas corporation; KAISER
18 PERMANENTE FONTANA MEDICAL
CENTER, a California corporation; KAISER
19 FOUNDATION HOSPITALS, a California
corporation; and DOES 1 through 50, inclusive.,

20 Defendants.
21

Case No.: **CIV SB 2116994**

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004 (Labor Code §§ 2698 et seq.)**

22
23 Plaintiff Akimasia Walker ("Plaintiff") brings this representative enforcement action in her
24 representative capacity against Defendants Favorite Healthcare Staffing, Inc., Kaiser Permanente
25 Fontana Medical Center, Kaiser Foundation Hospitals, and DOES 1 through 50, inclusive (collectively,
26 "Defendants"), on the following grounds:
27
28

///

///

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of herself and all other current or former non-exempt employees of Defendants in California (referred to herein as “Kaiser Employees”).

2. Plaintiff alleges that during the relevant time period Defendants engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders to decrease their employment related costs by, among other things:

- a. Failing to timely pay all minimum, regular, and/or overtime wages;
- b. Failing to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods;
- c. Failing to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods;
- d. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties;
- e. Failing to reimburse for necessary business expenses;
- f. Failing to furnish accurate itemized wage statements; and
- g. Failing to maintain accurate records.

3. By and through this action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or her counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

///

///

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to §§ 2698 *et seq.*, Plaintiff brings this action, in her representative capacity, on behalf of herself and all other Kaiser Employees.

6. This Court has personal jurisdiction over Defendants because Defendants conduct business in the State of California and have caused injuries in the county of San Bernardino, as well as throughout the State of California, through its acts, omissions, and violations of the Labor Code and relevant IWC Wage Order.

7. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Defendants transact business in San Bernardino County and are otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Kaiser Employees within the county of San Bernardino and throughout the State of California.

THE PARTIES

I. PLAINTIFF

8. Plaintiff Akimasia Walker at all material times mentioned herein:
- a. Was employed by and/or has otherwise performed work for Defendants as a travel ER nurse from approximately February 22, 2021 through March 20, 2021;
 - b. Engaged in work for Defendants in San Bernardino County, California;
 - c. Was classified by Defendants as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
 - d. Earned an hourly wage and was paid on a biweekly basis;
 - e. Regularly worked approximately thirty-six (36) hours per week;
 - f. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time worked;
 - g. Was not provided with the opportunity to take legally compliant meal periods and/or paid premium wages for non-compliant meal periods;

- h. Was not authorized and permitted to take legally compliant rest periods and/or paid premium wages for non-compliant rest periods;
- i. Was not timely paid all wages due and payable upon separation of employment, and/or the necessary waiting time penalties;
- j. Was not reimbursed for all necessary business expenses;
- k. Was not furnished with accurate itemized wage statements;
- l. Contends her records were not accurately maintained by Defendants;
- m. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- n. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

II. DEFENDANTS

9. Defendant Favorite Healthcare Staffing, Inc. (“Favorite Health”) is a Kansas corporation that is authorized to do business, and is actually doing business, in the State of California. Favorite Health is a nationwide staffing provider of healthcare professionals, offering a full range of per diem, allied health, contract, and travel assignments, as well as permanent placement opportunities, to hospital locations throughout the country, including but not limited to Kaiser Foundation Hospitals in California, such as the Kaiser Permanente Fontana Medical Center. Favorite Health is organized in the state of Kansas and has its headquarters in Overland Park, Kansas.

10. Defendant Kaiser Permanente Fontana Medical Center (“Kaiser Fontana”) and Defendant Kaiser Foundation Hospitals (“Kaiser Foundation”) (collectively “Kaiser”) are California corporations that are authorized to do business, and are actually doing business, in the State of California. Kaiser is part of the nation’s largest vertically integrated healthcare delivery systems. Kaiser is organized in the state of California and has its headquarters in Oakland, California. Kaiser utilizes various healthcare staffing agencies, including, but not limited to, Favorite Healthcare Staffing, Inc., to staff its hospitals throughout the state of California.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendants Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously

1 named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that
2 basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged
3 in this Complaint.

4 12. At all times mentioned herein, the acts alleged to have been done and/or caused by the
5 named defendants are also alleged to have been done and/or caused by each of the fictitiously named
6 defendants, and by each of their agents and/or employees who acted within the scope of their agency
7 and/or employment.

8 13. At all times mentioned herein, each named defendant, including each fictitiously named
9 defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other
10 defendants.

11 14. At all times mentioned herein, each named defendant, including each fictitiously named
12 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of
13 the other defendants, and in doing the things alleged herein acted within the course and scope of such
14 agency, employment, alter-ego and/or in furtherance of the joint venture.

15 15. At all times mentioned herein, the acts and/or omissions of each of the named defendants,
16 including each fictitiously named defendant, concurrently contributed to the various acts and/or
17 omissions of each and every one of the other defendants, including each fictitiously named defendant, in
18 proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named
19 defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise
20 ratified each and every one of the acts and/or omissions complained herein. Each named defendant,
21 including each fictitiously named defendant, was and is acting with authority of each and every other
22 defendant and/or are acting as agents of each and every other defendant or Doe defendant.

23 16. At all times mentioned herein there was a unity of interest and ownership between each
24 defendant, including each fictitiously named defendant, such that all defendants acted as a single
25 employer of Plaintiff and all other Kaiser Employees.

26 17. At all times mentioned herein, each defendant, including each fictitiously named
27 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
28

1 Plaintiff and all other Kaiser Employees, including, but not limited to, implementing standard policies
2 and procedures.

3 18. At all times mentioned herein, each defendant, including each fictitiously named
4 defendant, caused Kaiser Employees, including Plaintiff, to work and/or prevented Plaintiff and other
5 Kaiser Employees from working.

6 19. At all times mentioned herein, each defendant, including each fictitiously named
7 defendant, had control over Kaiser Employees.

8 20. Each named defendant, including each fictitiously named defendant, is alleged to have
9 caused each of the violations alleged herein.

10 21. Each defendant, including each fictitiously named defendant, is jointly and severally
11 liable for each of the violations alleged herein.

12 **FACTUAL ALLEGATIONS**

13 22. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 23. Plaintiff was employed by, or otherwise performed work for, Defendants from
16 approximately February 22, 2021 to March 20, 2021, at the Kaiser Permanente Fontana Medical Center
17 located in Fontana, California. Plaintiff performed work for Defendants as a Travel ER Nurse. As a
18 Travel ER Nurse, Plaintiff's job duties included, but were not limited to, treating both critical and non-
19 critical injuries, such as cleaning wounds, administering medications, taking blood, monitoring
20 diagnostic equipment, and providing assistance to the team of physicians. Plaintiff was also responsible
21 for keeping up her with paperwork, charting, communications, labs, and medications for her patients. At
22 all times during her employment, Plaintiff was classified by Defendants as a non-exempt employee,
23 earned an hourly wage, and was paid on a weekly basis. Plaintiff typically worked approximately thirty-
24 six (36) hours per week.

25 24. Plaintiff asserts that Defendants have employed, and will continue to employ, several
26 individuals in various non-exempt positions, in San Bernardino County and throughout the State of
27 California.
28

1 25. Plaintiff further asserts that throughout the relevant time period all Kaiser Employees
2 earned an hourly wage, were paid at least twice per month, and worked at least eight (8) hours a day
3 and/or forty (40) hours per week.

4 26. Plaintiff contends that she and all other Kaiser Employees were subject to, and continue
5 to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture
6 described herein.

7 27. Plaintiff further alleges that she and all other Kaiser Employees have suffered, and will
8 continue to suffer, the same and/or similar violations of law described herein.

9 28. Plaintiff contends that Defendants had, and continue to have, a policy, practice,
10 procedure, guideline, and/or culture of not compensating her and all other Kaiser Employees minimum,
11 regular, and/or overtime wages for all time engaged in work on behalf of Defendants and/or time spent
12 under the control of Defendants at least twice per calendar month on the days designated in advance by
13 Defendants as the regular pay day.

14 29. Plaintiff asserts that she and other Kaiser Employees were directed, pressured, compelled
15 and/or otherwise coerced by Defendants to perform their job duties while off-the-clock, before starting
16 their scheduled shifts. For instance, as a travel ER nurse, Plaintiff and other Kaiser Employees were
17 housed in hotels near the hospital jobsites and each hotel had one of Defendants' representative
18 stationed there. Before each shift, Plaintiff and other Kaiser Employees were required to report to the
19 hotel lobby no later than 2:20 p.m. to meet the representative for pre- shift duties, which included
20 undergoing a COVID-19 temperature check, picking up a time sheet, waiting for their co-workers to
21 check in, and waiting for Defendants' bus to pick them up, which Plaintiff estimates took about 10
22 minutes each shift. After Plaintiff and other Kaiser Employees finished their pre-shift duties, they
23 boarded Defendants' bus, which they were required to use, and were transported to Kaiser Fontana,
24 which Plaintiff estimates took approximately 20 to 30 minutes each shift. Once Plaintiff and other
25 Kaiser Employees arrived a Kaiser Fontana, they were required to use Kaiser Fontana's manual time
26 punch machine to officially clock-in.

27 30. Plaintiff also contends that she and other Kaiser Employees were directed, pressured,
28 compelled and/or otherwise coerced by Defendants to perform their job duties while off-the-clock, after

1 finishing their scheduled shifts. For instance, Plaintiff and other Kaiser Employees were required to wait
2 for their co-workers to clock-out, wait for Defendants' bus to pick them up, load Defendants' bus, travel
3 back to the hotel, and drop off their timesheets with Defendants' representative once they arrived to the
4 hotel, which Plaintiff estimates took about 30 to 40 minutes each shift.

5 31. In addition, Plaintiff contends she and other Kaiser Employees were directed, pressured,
6 compelled and/or otherwise coerced by Defendants to respond to text messages, telephone calls, and
7 messages in the "Group Me" app, from their co-workers and supervisors regarding work-related issues
8 while off-the-clock. Further, Plaintiff and other Kaiser Employees were also required to perform work
9 while they were clocked out for their meal periods. As a result, Defendants improperly considered time
10 spent by Plaintiff and Kaiser Employees answering and responding to text messages and phone calls and
11 working through meal periods as non-compensable and failed to provide any remuneration on the days
12 designated in advance by Defendants as the regular pay day.

13 32. Lastly, Defendants failed to compensate Plaintiff and other Kaiser Employees for the
14 time spent traveling from their home locations to the jobsite, including air travel, the ride from the
15 airport to the hotel, and the time spent checking into the hotel upon arrival. Therefore, based on the
16 foregoing, Plaintiff, and on information and belief other Kaiser Employees, were not paid on the days
17 designated in advance by Defendants as regular pay days for all time actually worked and/or spent under
18 the control of Defendants.

19 33. Plaintiff alleges that Defendants did not, and do not, have a policy, practice, procedure,
20 guideline, and/or culture of providing all Kaiser Employees with the opportunity to take an
21 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work
22 when they work five (5) or more hours in a day. Similarly, Plaintiff contends that Defendants did not,
23 and do not, have a policy, practice, procedure, guideline and/or culture of providing all Kaiser
24 Employees with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period
25 when they work more than ten (10) hours in a day.

26 34. Plaintiff alleges that she and other Kaiser Employees were not provided with the
27 opportunity to take lawful meal periods because Defendants had, and continue to have, a policy,
28 practice, procedure, guideline, and/or culture of instructing or otherwise compelling Kaiser Employees

1 to work through their meal periods. For instance, Plaintiff asserts that Defendants required her and, on
2 information and belief, other Kaiser Employees to work 12-hour shifts, but did not inform Plaintiff and
3 other Kaiser Employees of when they were required and/or permitted to take their meal periods.
4 Moreover, Plaintiff asserts that Defendants did not allow Plaintiff and other Kaiser Employees to clock-
5 in and clock-out for their meal periods on Kaiser Fontana's time punch machine. Rather, the Defendants
6 required Plaintiff and other Kaiser Employees to write in their scheduled shift times at the beginning of
7 their shifts on their timesheets provided by Favorite Health. As a result of this overly lax policy,
8 Plaintiff's and other Kaiser Employees' meal periods were either late or missed. Even though Plaintiff
9 and other Kaiser Employees often experienced late or missed meal periods, Defendants nonetheless
10 automatically deducted 30-minute meal periods from Kaiser Employees' paychecks, regardless of if
11 they received a meal period or not. As a result, Plaintiff and other Kaiser Employees received meal
12 periods that were late, interrupted by work duties, and/or less than thirty (30) minutes in length.

13 35. Despite not being provided with legally compliant meal periods, Plaintiff alleges that
14 Defendants did not, and do not, have a policy, practice, procedure, guideline and/or culture of paying
15 meal period premiums to Plaintiff and other Kaiser Employees for all meal periods that do not comply
16 with California law on the days designated in advance by Defendants as the regular payday.

17 36. Plaintiff further alleges that Defendants did not, and do not, have a policy, practice,
18 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Kaiser Employees
19 to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or
20 major fraction thereof.

21 37. Plaintiff alleges that she and other Kaiser Employees were not provided with the
22 opportunity to take lawful rest periods because Defendants had, and continue to have, a policy, practice,
23 procedure, guideline, and/or culture of instructing or otherwise compelling Kaiser Employees to work
24 through their rest periods. For instance, Plaintiff contends that she and other Kaiser Employees were not
25 authorized and permitted to take lawful rest periods during any of their shifts due to their workloads.
26 Defendants failed to provide a policy, practice, procedure, and/or guideline as to how the Kaiser
27 Employees were supposed to take legally compliant rest periods, thus, Plaintiff and other Kaiser
28 Employees never received rest periods. As a result, Plaintiff and other Kaiser Employees did not receive

1 rest periods that were timely, free from Defendants' control, uninterrupted, and/or at least ten (10)
2 minutes in length.

3 38. Despite not being provided with legally compliant rest periods, Plaintiff alleges that
4 Defendants did not, and do not, have a policy, practice, procedure, guideline, and/or culture of
5 compensating Plaintiff and other Kaiser Employees for all unlawful rest periods on the days designated
6 in advance by Defendants as the regular payday.

7 39. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
8 guideline, and/or culture of willfully failing to timely pay former Kaiser Employees with all wages due
9 and owing upon separation of employment and/or the mandated waiting time penalties for the late
10 payment of such wages. For instance, despite being allegedly terminated on March 19, 2021, Plaintiff
11 was not immediately paid her final wages nor has she received the necessary waiting time penalties for
12 the late payment of her final wages. Plaintiff also alleges that she and, based on information and belief
13 that former Kaiser Employees, were not timely paid all wages due and owed upon separation of
14 employment and/or paid the required waiting time penalties, in large part due to Defendants' policy,
15 practice, procedure, guideline, and/or culture of failing to properly pay all minimum, regular, overtime,
16 and/or premium wages.

17 40. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
18 guideline, and/or culture of failing to reimburse Plaintiff and other Kaiser Employees for all necessary
19 business expenses that were incurred in the discharge of their job duties. Plaintiff contends that Kaiser
20 Employees regularly used and often needed to use their personal cell phones to communicate with and to
21 respond to text messages, telephone calls, and messages in the "Group Me" app, her co-workers and
22 supervisors regarding work-related issues while off-the-clock. Despite requiring Kaiser Employees to
23 use their personal cell phones for work-related purposes, Defendants did not reimburse Kaiser
24 Employees, such as Plaintiff, a reasonable percentage of their cell phone bill.

25 41. Plaintiff asserts that Defendants had, and continue to have, a policy, practice, procedure,
26 guideline and/or culture of furnishing Kaiser Employees, including Plaintiff, with wage statements that
27 do not comply with California law. Plaintiff contends that the wage statements furnished to her and
28 other Kaiser Employees do not include, for instance, the total hours actually worked by the employee,

1 all applicable hourly rates in effect during the pay period, including the proper overtime rate, the
2 corresponding number of hours worked at each hourly rate by the employee, the gross wages actually
3 earned, and the net actual wages earned.

4 42. Due to the lack of information on the furnished wage statements, Kaiser Employees, such
5 as Plaintiff, were unable to promptly and easily determine the total hours actually worked, all applicable
6 hourly rates in effect during the pay period, including the proper overtime rate, the corresponding
7 number of hours worked at each hourly rate, the gross wages actually earned, and the net actual wages
8 earned, among other things.

9 43. Plaintiff contends that Defendants have, and continue to have, a policy, practice,
10 procedure, guideline, and/or culture of failing to keep and maintain accurate records reflecting, for
11 example, all of Plaintiff's and other Kaiser Employees' actual hours worked, the proper beginning and
12 end of each work period, the meal periods, the total hours worked during the pay period, and wages
13 earned and paid. For instance, Defendants had, and continue to have, a policy, practice, procedure,
14 and/or guideline of failing to record the actual hours worked by Kaiser Employees, including the proper
15 beginning and end of each work period, the total hours worked during the pay period, and all meal
16 periods, resulting in non-payment of earned wages and inaccurate wage statements.

17 44. On April 3, 2021, Plaintiff submitted written notice to the California Labor and
18 Workforce Development Agency ("LWDA"), and Defendants as required by the PAGA informing them
19 of Defendants' alleged violations of the Labor Code. A true and correct copy of the April 3, 2021
20 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

21 45. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has
22 not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

23 46. Plaintiff further believes that additional violations may be discovered and therefore
24 reserves her right to allege additional violations of the law as investigation and discovery warrants. In
25 the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as
26 necessary.

27 ///

28 ///

DEFINITION OF PAGA EMPLOYEES

47. By and through this representative enforcement action, Plaintiff intends to represent the following group of putative aggrieved employees, which is defined as:

All current or former non-exempt employees of Defendants, individually and/or collectively, in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period"). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA Employees against Defendants, the PAGA Period should be adjusted accordingly.

48. Members of the PAGA Employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the State of California.

49. A more precise definition of the aggrieved employees may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the PAGA Employees as permitted by California law.

PAGA DESIGNATION

50. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

51. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

52. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of her claims with the LWDA, Defendants were Plaintiff's and all other Kaiser Employees' employers or persons acting on behalf of Kaiser Employees' employers, either individually or as an

1 officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1,
2 who paid or caused to be paid to any employee a wage less than the minimum fixed by California state
3 law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages
4 pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

5 53. Plaintiff is an “aggrieved employee” under the PAGA because she was employed by the
6 alleged violators, Defendants, and had one or more of the alleged violations committed against her, and
7 therefore is properly suited to represent the interests of other Kaiser Employees. (See *Huff v. Securitas*
8 *Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018)
9 30 Cal.App.5th 504, 519.)

10 54. Plaintiff alleges that all other Kaiser Employees are also “aggrieved employees” under
11 the PAGA as Defendants employed them and all Kaiser Employees experienced one or more of the
12 alleged violations outlined herein.

13 55. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted her administrative
14 remedies because she complied with the notice requirements outlined in Labor Code § 2699.3. On April
15 3, 2021, Plaintiff submitted notice to the LWDA and Defendants informing them of Defendants’ alleged
16 Labor Code violations pursuant to the PAGA. (See Ex. 1.) Pursuant to the PAGA, the LWDA had 65
17 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA
18 has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right to
19 pursue, and does pursue, her claims under PAGA in a representative capacity pursuant to Labor Code §§
20 2698 *et seq.*

21 56. As set forth herein, Defendants have committed, and continue to commit, numerous
22 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in her
23 representative capacity, to recover, on behalf of herself, all other Kaiser Employees, the State of
24 California, and the general public, civil penalties as well as attorneys’ fees and costs from Defendants
25 for the alleged violations, described herein.

26 57. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
27 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
28 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,

1 Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, and
2 2802. Plaintiff and other Kaiser Employees are entitled to, and therefore seek, the civil penalties
3 described in Labor Code § 2699(f) for the violations of law described herein.

4 58. Plaintiff expressly disclaims the recovery of any “amount sufficient to recover underpaid
5 wages” on behalf herself and all other Kaiser Employees.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **(By Plaintiff in her Representative Capacity against Defendants and Does 1-50)**

9 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

10 [Labor Code §§ 2698 *et seq.*]

11 59. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
12 paragraphs of this Complaint.

13 60. Plaintiff, in her representative capacity on behalf of herself and all other Kaiser
14 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based
15 on violations of the following Labor Code and/or IWC Wage Order provisions:

- 16 a. Failure to timely pay all minimum, regular, and/or overtime wages in violation of
17 Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the
18 “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order
19 No. 5-2001;
- 20 b. Failure to provide legally compliant meal periods and/or pay premium wages for
21 non-compliant meal periods in violation of Labor Code §§ 204, 226.7, 512, 558 and
22 the “Meal Periods” section of IWC Wage Order No. 5-2001;
- 23 c. Failure to provide legally compliant rest periods and/or pay premium wages for
24 non-compliant rest periods in violation of Labor Code §§ 204, 226.7, and the “Rest
25 Periods” section of IWC Wage Order No. 5-2001;
- 26 d. Failure to timely pay all wages due and owing upon separation of employment
27 and/or the necessary waiting time penalties in violation of Labor Code §§ 201-203
28 and 210;

- e. Failure to reimburse all necessary business expenses in violation of Labor Code § 2802;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 5-2001; and
- g. Failure to maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of IWC Wage Order No. 5-2001.

61. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Kaiser Employees are entitled to, and do seek, such civil penalty.

62. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiff and all other Kaiser Employees are thus entitled to, and seek, the described civil penalty.

63. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Therefore, Plaintiff and all other Kaiser Employees are entitled to, and do seek, the described civil penalty.

64. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d). Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code § 1174.5 on behalf of herself and all other Kaiser Employees.

65. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff and all other Kaiser Employees are entitled to, and do seek, such civil penalty.

66. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff and other Kaiser Employees are entitled to, and therefore seek, the described civil penalty.

67. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other Kaiser Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

68. Plaintiff, in her representative capacity on behalf of herself and all other Kaiser Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

69. Plaintiff, in her representative capacity on behalf of herself and all other Kaiser Employees, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiff, in her representative capacity, prays for judgment against Defendants and in favor of the State of California, Plaintiff, and all other Kaiser Employees as follows:

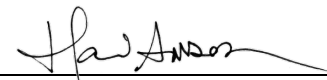
- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for

each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);

- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 218.6, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, 2699(g)(1), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, and/or other applicable law;
- d. For appropriate equitable relief pursuant to California law; and
- e. For any and all other relief as this Court deems proper and just.

Dated: June 10, 2021

GRAHAMHOLLIS APC

By: 

Graham S.P. Hollis
Vilmarie Cordero
Hali M. Anderson
Oswaldo X. Calvachi
Attorneys for Plaintiff Akimasia Walker

EXHIBIT 1

April 3, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Vilmarie Cordero
vcordero@grahamhollis.com
619.906-4025 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Favorite Healthcare Staffing, Inc.
7255 W. 98th Ter. Ste. 150
Overland Park, KS 66212

Favorite Healthcare Staffing, Inc.
c/o National Registered Agents, Inc.,
Agent for Service of Process
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Kaiser Permanente Fontana Medical Center
9961 Sierra Ave.
Fontana, CA 92335

Kaiser Foundation Hospitals
One Kaiser Plaza
Oakland, CA 94612

Kaiser Foundation Hospitals
c/o Corporation Service Company Which Will Do
Business In California As CSC - Lawyers
Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Akimasia Walker's Wage and Hour Claims Against Favorite Healthcare Staffing, Inc., Kaiser Permanente Fontana Medical Center, Kaiser Foundation Hospitals

Dear California Labor and Workforce Development Agency, Favorite Healthcare Staffing, Inc., Kaiser Permanente Fontana Medical Center, and Kaiser Foundation Hospitals:

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway J. Woulfe

April 3, 2021

Page 2

Please be advised that Akimasia Walker (“Claimant”) has retained our firm, GrahamHollis APC, to represent her for various claims against Favorite Healthcare Staffing, Inc. (“Favorite”), Kaiser Permanente Fontana Medical Center, and Kaiser Foundation Hospitals (collectively, “Kaiser”) (collectively, the “Companies”).

Please be advised that this letter shall serve as Claimant’s written notice to the California Labor and Workforce Development Agency (“LWDA”) and the Companies of the alleged California Labor Code (“Labor Code”) violations Claimant claims that the Companies, individually and collectively, committed against her and all other current or former non-exempt employees of the Companies, in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent, herself and all other current or former non-exempt employees who were hired by a temporary staffing agency, including, but not limited to, Favorite Healthcare Staffing, Inc., to perform work at a Kaiser Foundation Hospital facility, including, but not limited to, Kaiser Permanente Fontana Medical Center, in California during the relevant time period (referred to herein as the “Non-Exempt Employees”). All Non-Exempt Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that she and all other Non-Exempt Employees are “aggrieved employees” as defined by the PAGA.

For all, or a substantial portion of, the relevant time period, Claimant is informed and believes and thereon alleges, that although Non-Exempt Employees were and will continue to be hired by temporary staffing agencies, such as, Favorite Healthcare Staffing, Inc., to physically perform work, at Kaiser Foundation Hospitals throughout the state of California, such as Kaiser Permanente Fontana Medical Center, the Companies’ nevertheless exercised and will continue to exercise joint control of the terms and conditions of all Non-Exempt Employees’ jobs, and thereby are both jointly and severally liable for its Labor Code and IWC Wage Orders violations.

FACTUAL BACKGROUND

Favorite Healthcare Staffing, Inc. is the nation’s premier staffing provider of healthcare professionals, offering a full range of per diem, allied health, contract, and travel assignments, as well as permanent placement opportunities, to hospital locations throughout the country, including but not limited to Kaiser Foundation Hospitals in California, such as the Kaiser Permanente Fontana Medical Center. Favorite is organized in the state of Kansas and has its headquarters in Overland Park, Kansas.

Kaiser Permanente Fontana Medical Center, and its parent company, Kaiser Foundation Hospitals, are part of the nation’s largest vertically integrated healthcare delivery systems. Kaiser aims to provide high-quality, affordable health care services and improve the health of the communities they serve. Kaiser is organized in the state of California and has its headquarters in Oakland, California. Kaiser utilized various healthcare staffing agencies, including, but not limited to, Favorite Healthcare Staffing, Inc., to staff its hospitals throughout the state of California.

April 3, 2021

Page 3

Claimant is a travel ER nurse who frequently uses the services of temporary staffing agencies, such as Favorite, for job placement opportunities. On or about February 16, 2021, Favorite hired Claimant for a two-month assignment in which she was to perform work in an ER for one of the Kaiser Foundation Hospitals facilities in California. The Companies assigned Claimant to work at the Kaiser Permanente Fontana Medical Center located in Fontana, California. Prior to beginning her work assignment, the Companies purchased Claimant a ticket for a flight from Georgia to California, provided a shuttle service, and checked Claimant into a hotel upon arrival. At all relevant times, Claimant was classified as a non-exempt employee, earned an hourly rate, and was paid on a weekly basis. Claimant worked as a travel ER nurse at the Kaiser Permanente Fontana Medical Center located in Fontana, California from approximately February 22, 2021 to March 20, 2021. As a travel ER nurse, Claimant was paid an hourly rate of \$115.00 and she worked approximately thirty-six (36) hours per week. Claimant's job duties as an travel ER nurse included, but were not limited to, treating both critical and non-critical injuries, such as cleaning wounds, administering medications, taking blood, monitoring diagnostic equipment, and providing assistance to the team of physicians. In addition, Claimant was also responsible for keeping up her with paperwork, charting, communications, labs, and medications for their patients.

Although Claimant had a great reputation at work and never received any disciplinary action, Claimant was allegedly terminated by the Companies on March 19, 2021. However, because no one from the Companies ever informed Claimant of her termination, she worked on both March 19, 2021 and March 20, 2021. Claimant did not find out she was terminated until March 23, 2021.

Claimant contends that at all relevant times, the Companies employed, and continues to employ, non-exempt employees who were hired by a temporary staffing agency, including, but not limited to, Favorite Healthcare Staffing, Inc., to perform work at a Kaiser Foundation Hospitals facility, including, but not limited to, Kaiser Permanente Fontana Medical Center, in California. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Companies applicable to Claimant were also applicable to all other Non-Exempt Employees who were hired by a temporary staffing agency to perform work at a Kaiser Foundation Hospitals facility throughout the state of California during the relevant time period. Claimant further contends that she and all other Non-Exempt Employees suffered, and current Non-Exempt Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Companies denied, and continues to deny, Claimant and other Non-Exempt Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Companies failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Non-Exempt Employees, including Claimant; failed, and continues to fail, to provide Claimant and other Non-Exempt Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed, and continues to fail, to pay Claimant and other Non-Exempt Employees for the hours spent reporting to work; failed, and continues to fail, to reimburse Claimant and other Non-Exempt Employees for necessary work expenditures; failed to timely pay former Non-Exempt Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Non-Exempt Employees, including Claimant, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment records.

April 3, 2021

Page 4

Claimant asserts that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying Non-Exempt Employees all minimum, regular, and/or overtime wages for all time actually worked on the designated pay days. For instance, the Companies failed to compensate Claimant and, on information and belief, other Non-Exempt Employees for work performed while off-the-clock. As a travel ER Nurse, Claimant and other Non-Exempt Employees were housed in hotels near the jobsite during their staffing assignments. As such, a Favorite representative was always stationed at the hotel site and Claimant and other Non-Exempt Employees were required to report to the representative several times a day. For example, before each shift Claimant and other Non-Exempt Employees, were required to report to the hotel lobby no later than 2:20 p.m. to meet the representative for pre-shift duties, which included undergoing a Covid-19 temperature check, picking up a time sheet, waiting for their co-workers to check in, and waiting for the Companies' bus to pick them up. Claimant estimates that she spent approximately 10-minutes each shift performing these pre-shift duties. After Claimant, and other Non-Exempt Employees finished their pre-shift duties they loaded the Companies' bus, which they were required to take, and were transported to Kaiser. Claimant estimates that the ride from the hotel to Kaiser was approximately 20 to 30 minutes long. Once Claimant and other Non-Exempt Employees arrived a Kaiser, they were required to use Kaiser's manual time punch machine to officially clock-in. After each shift, Claimant and other Non-Exempt Employees, were required to clock-out on Kaiser's manual time-punch machine and find a Kaiser charge nurse to sign off on their timesheet provided by Favorite. Moreover, Claimant and other Non-Exempt Employees, performed post-shift duties as well, which included, waiting for their co-workers to clock-out, waiting for the Companies' bus to pick them up, loading the companies' bus, traveling back to the hotel, and dropping off their timesheet with the Favorite Representative once they arrived to the hotel.

Claimant estimates that she spent approximately 10-minutes each shift performing these post-shift duties and another 20 to 30 minutes traveling on the bus back to the hotel. Throughout her employment, Claimant estimates that she spent approximately 60-minutes (60) to one hour and thirty minutes (1.5) performing these pre- and post-shift duties. In addition, Claimant, and other Non-Exempt Employees were also required to respond to text messages, telephone calls, and messages in the "Group Me" app, from her co-workers and supervisors regarding work-related issues while off-the-clock. Claimant and other Non-Exempt Employees also performed job duties during their meal periods, due in part to the Companies' policy of automatically deducting 30-minute meal periods from Non-Exempt Employees' paychecks, regardless of if they received a meal period or not. The Companies improperly considered the work that Claimant and, on information and belief, other Non-Exempt Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration on the Companies' designated pay days. Due to the Companies' policies requiring Claimant and other Non-Exempt Employees to remain in their hotel rooms at all times, including on their days off, the Companies' have failed to timely pay Non-Exempt Employees, including Claimant, all overtime wages no later than the payday for the next regular payroll period. Lastly, the Companies' failed to compensate Claimant, and other Non-Exempt Employees, for the time spent traveling from their home locations to the jobsite, including air travel, the ride from the airport to the hotel, and the time spent checking into the hotel upon arrival. Based on the foregoing, Claimant contends that she and, on information and belief, all other Non-Exempt Employees were not timely paid all minimum, regular, and/or overtime wages for all hours actually worked.

Claimant contends that the Companies had, and continues to have, a policy, practice, procedure and/or guideline of not providing Non-Exempt Employees, including Claimant, with the opportunity to take

April 3, 2021

Page 5

timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also alleges that the Companies' has a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Non-Exempt Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. For instance, Claimant asserts that the Companies required her and, on information and belief, other Non-Exempt Employees to work 12-hour shifts, but did not inform Claimant and other Non-Exempt Employees of when they are required to take their meal periods. Moreover, Claimant asserts that the Companies did not require Claimant and other Non-Exempt Employees to clock-in and clock-out for their meal periods on Kaiser's time punch machine. Rather, the Companies' required Claimant, and other Non-Exempt Employees to write in their scheduled shift times at the beginning of their shifts on their timesheets provided by Favorite. As a result of this overly lax policy, Claimant and other Non-Exempt Employees' meal periods were either late or missed. Although Claimant, and other Non-Exempt Employees often experienced late or missed meal periods, the Companies' automatically deducted 30-minute meal periods from Non-Exempt Employees' paychecks, regardless of if they received a meal period or not. As a result, Claimant and other Non-Exempt Employees received meal periods that were late, interrupted by work duties, and/or less than thirty (30) minutes in length.

Claimant further alleges that the Companies had, and continues to have, a policy, practice, procedure and/or guideline of not authorizing and permitting Non-Exempt Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Claimant alleges that Non-Exempt Employees, such as herself, were not authorized and permitted to take lawful rest periods during any of her shifts due to their workloads. The Companies failed to provide a policy, practice, procedure, and/or guideline as to how the Non-Exempt Employees were supposed to take legally compliant rest breaks. For that purpose, Claimant and, on information and belief, other Non-Exempt Employees never received rest breaks as required by California law. As a result, Claimant and other Non-Exempt Employees did not receive rest periods that were timely, free from the Companies' control, uninterrupted, and/or at least ten (10) minutes in length.

Claimant asserts that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying premium wages for non-compliant meal and/or rest periods during the relevant time period. For instance, despite not regularly receiving legally compliant meal and/or rest periods as described herein, Claimant and, on information and belief, other Non-Exempt Employees did not timely receive premium wages on the designated pay days for unlawful meal and/or rest periods.

Additionally, Claimant asserts that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of failing to pay Non-Exempt Employees for the time they spent reporting to the Favorite representative before each shift. For instance, the Companies failed to pay Claimant, and other Non-Exempt Employees, for the time spent reporting to the hotel lobby to meet the Favorite representative for their check-in, covid-19 temperature screening, and time sheet retrieval. As mentioned above, Claimant estimates that she spent approximately ten to twenty (10-20) minutes performing these pre shift duties. To date, Claimant has not yet received compensation for the time she spent reporting to work.

Similarly, Claimant asserts that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of failing to reimburse Claimant and other Non-Exempt Employees for

April 3, 2021

Page 6

necessary work expenditures. For instance, Claimant, and other Non-Exempt Employees were required to use their personal cell phones to respond to text messages, telephone calls, and messages in the “Group Me” app, from her co-workers and supervisors regarding work-related issues while off-the-clock. Despite mandating Non-Exempt Employees, including Claimant, to use their personal cell phones in the discharge of their work duties, the Company did not have a policy, practice, procedure, and/or guideline of reimbursing its employees in violation of California law.

Claimant asserts that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying former Non-Exempt Employees all wages due and payable upon separation of employment and/or the required waiting time penalties for the late payment of wages. For instance, the Company failed to timely pay Claimant and, on information and belief, other former Non-Exempt Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Additionally, although the Companies allegedly terminated Claimant on March 19, 2021, the Companies’ failed to inform her that she was terminated, and allowed her to work a full twelve (12) hour shift on March 20, 2021. To date, Claimant has not receive her final payment for her final shift worked. Therefore, Claimant, and other former Non-Exempt Employees, have not yet received payment for all hours worked or the required waiting time penalties for the Companies’ failure to immediately pay all wages due and owing upon separation of employment.

Claimant contends that the Companies had, and continues to have, a policy, practice, procedure, and/or guideline of furnishing Non-Exempt Employees, including Claimant, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to her and other Non-Exempt Employees did not correctly show the information required by California law including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actual wages earned. Due to the missing and/or incorrect information, Claimant and other Non-Exempt Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Companies had, and continues to have, a policy, practice, procedure and/or guideline of failing to maintain accurate employment records. The Companies’ illegal policies, practices, procedures and/or guidelines, such as those described herein, have resulted in the Companies’ failure to maintain accurate records reflecting Non-Exempt Employees’ actual time worked, the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, among other things, in violation of California law.

Due to the foregoing Labor Code violations, the Companies denied, and continues to deny, Claimant and other Non-Exempt Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies on behalf of herself and all other Non-Exempt Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Non-Exempt Employees. The facts and/or claims contained in

April 3, 2021

Page 7

this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of herself and other current or former Non-Exempt Employees against the Companies and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage Order No. 4-2001)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].)

The "Minimum Wages" section of IWC Wage Order No. 4-2001 further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

April 3, 2021

Page 8

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard 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.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. 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.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 4-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

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.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

April 3, 2021

Page 9

Labor Code section 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies have a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other Non-Exempt Employees for all hours actually worked. For instance, the Companies required Claimant and other Non-Exempt Employees to undergo pre-shift Covid-19 temperature screenings; pre- and post-shift check-ins in the hotel lobby; wait for other Non-Exempt Employees pre – and post shift; ride a company provided bus to and from the hotel and the jobsite; refrain from leaving the hotel sight on off days; respond to Group Me messages and answer company calls; and perform other work duties while off-the-clock without compensation. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, 512, and 558, and the “Meal Periods”
section of IWC Wage Order No. 4-2001)

Labor Code § 512(a) provides:

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 pertinent part, the “Meal Periods” section of IWC Wage Order No. 4-2001 states:

(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 is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (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....

(D) 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.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code section 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

April 3, 2021

Page 11

As set forth above, the Companies have a policy, practice, procedure, guideline, and/or culture of failing to provide Claimant and, on information and belief, other Non-Exempt Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Non-Exempt Employees are entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Companies. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 4-2001)

The “Rest Periods” section of IWC Wage Order No. 4-2001 provides:

(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 of 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 ½) 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 workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies have a policy, practice, procedure, guideline, and/or culture of failing to authorize and permit Claimant and, on information and belief, other Non-Exempt Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Non-Exempt Employees are entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

FAILURE TO PAY REPORTING TIME PAY

(Labor Code sections 1194, 1194.2 1198, 1199, and
the "Reporting Time Pay" section of the Applicable IWC Wage Order)

Labor Code § 1194(a) provides:

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.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard 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.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

The “Reporting Time Pay” section of the applicable IWC Wage Order states:

[E]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.

As discussed herein, the Companies violated these Labor Code sections by failing to pay Non-Exempt Employees for the time they spent reporting to the Favorite representative before each shift. For instance, the Companies failed to pay Claimant, and other Non-Exempt Employees, for the time spent reporting to the hotel lobby to meet the Favorite representative for their check-in, covid-19 temperature screening, and time sheet retrieval. Thus, the Companies violated California law. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that she receives interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Companies required Claimant and other Non-Exempt Employees to use their personal cell phones in the discharge of their job duties without reimbursement. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND
OWING UPON SEPARATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[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, 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies violated these Labor Code sections by not timely paying to Claimant and other former Non-Exempt Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. For instance, to date Claimant has not received her final wages for her final shift after being terminated by the Companies. The Companies also did not pay Claimant and, on information and belief, other former Non-Exempt Employees the required waiting time penalties for the late payment of wages. Thus, the Companies violated California law. Claimant will pursue all available remedies against the Companies for its violations of California law on behalf of herself and all former Non-Exempt Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 4-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages

April 3, 2021

Page 15

are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 4-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage 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 and 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 aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of 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 to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies failed to furnish Claimant and other Non-Exempt Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Companies for

its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the “Records” section of IWC Wage Order No. 4-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions 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.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...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.

The “Records” section of IWC Wage Order No. 4-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] 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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Companies violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies for its violations of the Labor Code on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC
WAGE ORDER**

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil

April 3, 2021

Page 18

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 2802 and relevant IWC Wage Orders.

As set forth above, the Companies violated the Labor Code and IWC Wage Order No. 4-2001 by failing to timely pay Claimant and all Non-Exempt Employees all regular, minimum, and/or overtime wages for all time actually worked; failing to timely pay all meal and/or rest period premium wages; failing to pay reporting time pay; failing to reimburse for necessary business expenses; failing to pay all wages due and owing upon the separation of employment; failing to furnish accurate itemized wage statements; and failing to maintain accurate employee records, as required under the Labor Code and the applicable sections of IWC Wage Order No. 4-2001. As a result, the Companies is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies' violations on behalf of herself and all Non-Exempt Employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies is liable for these items. Claimant has

April 3, 2021

Page 19

already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Companies' unlawful actions. Claimant will pursue all available remedies against the Companies, including those provided under the PAGA, on behalf of herself and other Non-Exempt Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Companies have violated the Labor Code and IWC Wage Order No. 4-2001, thereby depriving Claimant and other Non-Exempt Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Non-Exempt Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Non-Exempt Employees, as permitted by the PAGA.

Sincerely,



Vilmarie Cordero

GRAHAMHOLLIS APC; Graham S.P. Hollis (SBN 120577); Vilmarie Cordero (SBN 268860)
 Hali M. Anderson (SBN 261816); Oswaldo X. Calvachi (SBN 336680)
 3555 Fifth Avenue, Suite 200, San Diego, California 92103

TELEPHONE NO.: 619-692-0800

FAX NO. (Optional): 619-692-0822

ATTORNEY FOR (Name): Plaintiff Akimasia Walker

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

JUN 11 2021

BY Justin Manassee
 JUSTIN MANASSEE, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 247 West 3rd Street

MAILING ADDRESS: 247 West 3rd Street

CITY AND ZIP CODE: San Bernardino, CA 92415-0210

BRANCH NAME: Civil Division of the San Bernardino District

CASE NAME:

Akimasia Walker v. Favorite Healthcare Staffing, Inc., et al

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
 (Amount (Amount
 demanded demanded is
 exceeds \$25,000) \$25,000)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

CIV SB 2116994

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)☐ Product liability (24)☐ Medical malpractice (45)☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)☐ Civil rights (08)☐ Defamation (13)☐ Fraud (16)☐ Intellectual property (19)☐ Professional negligence (25)☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)☐ Rule 3.740 collections (09)☐ Other collections (09)☐ Insurance coverage (18)☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)☐ Wrongful eviction (33)☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)☐ Residential (32)☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)☐ Petition re: arbitration award (11)☐ Writ of mandate (02)☐ Other judicial review (39)Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)☐ Antitrust/Trade regulation (03)☐ Construction defect (10)☐ Mass tort (40)☐ Securities litigation (28)☐ Environmental/Toxic tort (30)☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)☐ Other petition (not specified above) (43)2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:a. ☐ Large number of separately represented partiesd. ☐ Large number of witnessesb. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolvee. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal courtc. ☐ Substantial amount of documentary evidencef. ☐ Substantial postjudgment judicial supervision3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1 - Private Attorneys General Act of 2004

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 10, 2021

Hali M. Anderson

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 22 2021

BY Justin Manassee
JUSTIN MANASSEE, DEPUTY

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Favorite Healthcare Staffing, Inc., a Kansas corporation; Kaiser Permanente Fontana Medical Center, a California corporation; Kaiser Foundation Hospitals, a California corporation; and Does 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Akimasia Walker, in her representative capacity, on behalf of the State of California, the general public and all aggrieved employees

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino - Civil Division
247 West 3rd Street
San Bernardino, CA 92415

CASE NUMBER: (Número del Caso):
CIV SB 2116994

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Graham S.P. Hollis (SBN 120577); Vilmarie Cordero (SBN 268860); Hali M. Anderson (SBN 261816); Oswaldo X. Calvachi (SBN 336680)
GRAHAMHOLLIS APC 3555 Fifth Avenue, Suite 200, San Diego, California 92103; 619-692-0800

DATE: June 10, 2021 JUN 22 2021 Clerk, by Justin Manassee, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

COPY

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date)