

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

CUSTIS LAW, P.C.
1999 AVENUE OF THE STARS, SUITE 1100
LOS ANGELES, CALIFORNIA 90067

1 Keith A. Custis (SBN 218818)
kcustis@custislawpc.com
2 **CUSTIS LAW, P.C.**
1999 Avenue of the Stars, Suite 1100
3 Los Angeles, California 90067
4 Telephone: (213) 863-4276
Facsimile: (213) 863-4277

5
6 Attorneys for Plaintiff
RHEA DEVULGT

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

9 RHEA DEVULGT, as an aggrieved
employee on behalf of the State of
10 California and other aggrieved employees,

11 Plaintiff,

12 vs.

13 PKSD HOLDINGS L.L.C. DBA DRIP IV
THERAPY, a California limited liability
14 company; PAUL Y. SONG, M.D., an
individual; KWESI DEI, an individual;
15 and DOES 1 through 10, inclusive,

16 Defendants.
17

Case No. 21STCV41030

REPRESENTATIVE ACTION COMPLAINT

- (1) Claim for Civil Penalties for Violations of the
California Labor Code Pursuant to Private
Attorneys General Act of 2004 (Labor Code §
2698, *et seq.*)

Plaintiff Rhea Devulgt, as an aggrieved employee on behalf of the State of California and all other aggrieved employees, alleges on information and belief as follows:

INTRODUCTION

1. This is a representative action under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* (“PAGA”) that challenges systemic employment practices resulting in violations of the California Labor Code against the non-exempt, hourly paid and/or the non-exempt, piece-rate paid employees who worked for Defendants in California during the relevant time period, regardless of whether Defendants classified them as employees or independent contractors.

2. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power. PAGA was enacted to improve the enforcement of California’s Labor Code by empowering an aggrieved employee to bring an enforcement action as a private attorney general and proxy for the State of California for an employer’s violations of California labor law.

3. By this action, Plaintiff seeks civil penalties and any other available relief under the PAGA on behalf of herself, the State of California and other current and former employees who worked for Defendant PKSD Holdings as non-exempt, hourly paid and/or non-exempt, piece-rate paid employees regardless of whether Defendants classified them as employees or independent contractors.

4. This Complaint seeks civil penalties and other relief pursuant to the PAGA for Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

THE PARTIES

5. Plaintiff Rhea Devulgt (“Plaintiff”) is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California.

6. Defendant PKSD Holdings L.L.C dba Drip IV Therapy (“PKSD Holdings”) is and at

all times relevant to this Complaint was a California limited liability company with its principal place of business located in Los Angeles County, California.

7. Defendant Paul Y. Song, M.D. (“Song”) is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California. Mr. Song is and at all times relevant to this Complaint was an owner, director, officer and/or managing agent of Defendant PKSD Holdings, and, therefore, is liable in his individual capacity as an employer pursuant to Labor Code Section 558.1.

8. Upon information and belief, defendant Kwesi Dei (“Dei”) is and at all time relevant to this Complaint was an individual residing in Los Angeles County, California. Mr. Dei is and at all times relevant to this Complaint was an owner, director, officer and/or managing agent of Defendant PKSD Holdings, and, therefore, is liable in his individual capacity as an employer pursuant to Labor Code Section 558.1.¹

9. Plaintiff is unaware of the true names and capacities, whether individual, corporate, associate, or otherwise of the defendants sued herein as Doe 1 through 10. Plaintiff therefore sues those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of each Doe Defendant when such information has been ascertained.

10. Except as otherwise noted, a reference to “Defendants” in this Complaint shall include the named Defendant PKSD Holding and the Doe defendants, but excludes Individual Defendants Song and Dei.

11. Upon information and belief, Defendants acted as the employers and/or joint employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or other persons, employed Plaintiff, and exercised control over her wages, hours, and working conditions. Defendants’ control included, but was not limited to, the authority to hire and fire, assign

¹ The Individual Defendants are liable in their individual capacity for the civil penalties, attorneys’ fees and litigation costs available pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* See, e.g., *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 824 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes”) (emphasis in original).

1 work tasks and engage in day-to-day supervision.

2 12. Upon information and belief, at all relevant times, each of the Defendants is and was
3 the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or
4 abettor of each of the other Defendants, and in doing the things alleged was acting within the course
5 and scope of their agency or employment and with the knowledge and consent of each of the other
6 Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known
7 to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly
8 and severally responsible and liable for the damages alleged herein.

9 **JURISDICTION AND VENUE**

10 13. This Court has subject matter jurisdiction over all causes of action alleged in this
11 Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior
12 Court “original jurisdiction in all causes except those given by statute to other courts.” Plaintiff’s
13 claims arise under the laws of the State of California and are not statutorily assigned to any other trial
14 court.

15 14. The amount in controversy under this Complaint exceeds the minimal jurisdictional
16 limit of the Superior Court and will be established according to proof at trial.

17 15. This Court has personal jurisdiction over all Defendants because Defendants have
18 sufficient minimum contacts in California, or otherwise intentionally avail themselves of the
19 California market so as to render the exercise of jurisdiction over them by the California courts
20 consistent with traditional notions of fair play and substantial justice.

21 16. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and
22 395.5 because the principal place of business of Defendant PKSD Holdings is located in Los Angeles
23 County, Plaintiff resides in Los Angeles County and the liability for the alleged wrongs described
24 herein arose in Los Angeles County. Venue is also proper in this Court because “venue is proper in
25 any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.”
26 *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (Cal. Ct. App., Feb. 17,
27 2021) No. A160523, 2021 WL 613700, at *2. The Aggrieved Employees worked, and the alleged
28 Labor Code violations occurred, in Los Angeles County, California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. On September 2, 2021, Plaintiff provided written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant PKSD Holdings of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. A true and correct copy of Plaintiff’s PAGA Notice is attached hereto as **Exhibit 1**.

18. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent the September 2, 2021 LWDA Notice, and the LWDA has not responded that it intends to investigate Plaintiff’s claims, and Defendants have not cured the violations. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

GENERAL ALLEGATIONS

19. This is a representative action brought pursuant to the PAGA on behalf of the State of California and the following individuals:

All current and former non-exempt, hourly-paid employees, and non-exempt, piece-rate paid employees who worked for PKSD Holdings in California at any time during the PAGA Period, regardless of whether they were classified as employees or independent contractors (“Aggrieved Employees”).

20. The PAGA Period is defined as the period of time beginning on September 2, 2020 and continuing to the present (“PAGA Period”).

21. Defendant PKSD Holdings does business as “Drip IV Therapy.”

22. Drip IV Therapy provides California consumers with registered nurses who administer a variety of “IV drips” intravenously including but not limited to the “hangover drip,” the “jet lag drip,” and the “super cleanse drip.”

23. Defendants employed Plaintiff to work as an administrative assistant from January 2021 to June 2021, intentionally misclassifying Plaintiff as an independent contractor and paying her

1 a flat hourly rate of \$18.00 for all recorded hours worked, including all overtime hours.

2 24. Defendants employed other employees as nurses, intentionally misclassifying the
3 nurses as independent contractors and compensating them on a piece-rate basis based on the number
4 of “drips” they administered and/or the number of clients they treated.

5 25. On information and belief, Defendants also employed other workers as non-exempt,
6 hourly paid employees and non-exempt, piece-rate paid employees but intentionally misclassified
7 them as independent contractors.

8 26. On information and belief, Defendants maintain a centralized Human Resources
9 department, which is responsible for communicating and implementing Defendants’ company-wide
10 policies to employees throughout California.

11 27. On information and belief, Defendants subjected Plaintiff and other Aggrieved
12 Employees to the same policies, practices and procedures governing the control and payment of
13 wages and hours worked, the reimbursement of business expenses, and uniformly denied Plaintiff
14 and other Aggrieved Employees the rights afforded to them under the California Labor Code and
15 IWC Wage Order No. 4-2001.

16 28. On information and belief, Defendants process payroll for all departing Aggrieved
17 Employees in the same manner, regardless of the manner in which each employee’s employment
18 ends.

19 29. Plaintiff generally worked three (3) to five (5) shifts per week of between four (4) and
20 six (6) hours, but also worked shifts of approximately eight (8) hours and in excess of eight (8) hours.

21 30. On information and belief, the vast majority of other Aggrieved Employees worked
22 and continue to work on a piece rate basis.

23 31. On information and belief, other Aggrieved Employees worked, and continue to work,
24 shifts of between four (4) and six (6) hours, shifts of in excess of (6) hours and shifts in excess of
25 eight (8) hours.

26 32. Defendants continue to employ non-exempt, hourly paid employees and non-exempt,
27 piece-rate paid employees in California, the vast majority of whom Defendants have misclassified as
28 independent contractors.

1 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 intentionally misclassified Plaintiff and other Aggrieved Employees throughout their employment as
3 independent contractors when in reality, they were employees of Defendants, in violation of Labor
4 Code Section 226.8(a).

5 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
6 to pay all non-exempt, piece-rate paid Aggrieved Employees separately for rest periods and other
7 non-productive time, in violation of Labor Code Section 226.2.

8 35. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
9 Aggrieved Employees were not paid for all hours worked because all hours worked were not
10 recorded.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other Aggrieved Employees were entitled to receive certain
13 wages for overtime compensation and that they were not receiving certain wages for overtime
14 compensation.

15 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at least
17 minimum wages for compensation and that they were not receiving at least minimum wages for work
18 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
19 other Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

20 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other Aggrieved Employees were entitled to meal periods in
22 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rate of
23 pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that
24 Plaintiff and other Aggrieved Employees were not provided with all meal periods or payment of one
25 (1) additional hour of pay at her regular rate of pay when she did not receive a timely, uninterrupted,
26 thirty (30) minute meal period.

27 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other Aggrieved Employees were entitled to rest periods in

1 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional
2 hour of pay at their regular rate of pay when she was not provided with a compliant rest period and
3 that Plaintiff and other Aggrieved Employees were not provided compliant rest periods or payment
4 of one (1) additional hour of pay at her regular rate of pay when she was not provided a compliant
5 rest period.

6 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other Aggrieved Employees were entitled to receive complete
8 and accurate wage statements in accordance with California law. In violation of the California Labor
9 Code, Defendants did not provide Plaintiff and other Aggrieved Employees with complete and
10 accurate wage statements.

11 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to maintain accurate and complete payroll records in
13 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and
14 intentionally failed to do so.

15 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of
17 all wages earned upon termination of employment. In violation of the California Labor Code,
18 Defendants did not pay Plaintiff and other Aggrieved Employees all wages due, including, but not
19 limited to, minimum wages, overtime wages, separate payment for rest periods and other non-
20 productive time, and meal and rest period premium wages, within permissible time periods.

21 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of
23 wages during her employment. In violation of the California Labor Code, Defendants did not pay
24 Plaintiff and other Aggrieved Employees all wages due, including, but not limited to, minimum
25 wages, overtime wages, separate payment for rest periods and other non-productive time, and meal
26 and rest period premium wages, within permissible time periods.

27 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other Aggrieved Employees were entitled to receive full

reimbursement for all business-related expenses and costs they incurred during the course and scope of her employment and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

FIRST CAUSE OF ACTION

For Civil Penalties for Violations of the California Labor Code

Pursuant to Labor Code § 2698, *et seq.*

(By Plaintiff on Behalf of the State of California and Aggrieved Employees

Against all Defendants, Song and Dei)

45. Plaintiff incorporates all preceding allegations as if fully set forth herein.

46. This claim is brought against all Defendants and Individual Defendants Song and Dei.

47. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 1174(d), 1194, 1197, 1197.1, 1197.5, 1198, and 2802. Labor Code Section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code Sections not found in Section 2699.5, including Sections 226.2, 226.8, and 1182.12.

48. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- a. Violation of Labor Code Section 226.8 for willful misclassification of Plaintiff and other Aggrieved Employees as independent contractors, as set forth below;
- b. Violation of Labor Code Section 226.2 for failure to pay non-exempt, piece-rate employees separately for rest periods and non-productive time, as set forth below;
- c. Violation of Labor Code Sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for failure to compensate Plaintiff and other Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- d. Violation of Labor Code Sections 510 and 1198, and the applicable IWC Wage Order, for failure to compensate Plaintiff and other Aggrieved Employees with all required overtime wages to Plaintiff and other Aggrieved Employees, as set forth below;

- 1 e. Violation of Labor Code Sections 226.7, 516, and 1198, and the applicable IWC
2 Wage, Order for failure to authorize and permit Plaintiff and other Aggrieved
3 Employees to take compliant rest periods, as set forth below;
- 4 f. Violation of Labor Code Sections 226.7, 512(a), and 1198, and the applicable IWC
5 Wage Order, for failure to provide Plaintiff and other Aggrieved Employees with
6 compliant meal periods, as set forth below;
- 7 g. Violation of Labor Code Section 2802 for failure to reimburse Plaintiff and other
8 Aggrieved Employees for all business expenses necessarily incurred, as set forth
9 below;
- 10 h. Violation of Labor Code Sections 226(a) and 1198, and the applicable IWC Wage
11 Order, for failure to provide accurate and complete wage statements to Plaintiff and
12 other Aggrieved Employees, as set forth below;
- 13 i. Violation of Labor Code Sections 1174(d) and 1198, and the applicable IWC Wage
14 Order, for failure to maintain payroll records, as set forth below;
- 15 j. Violation of Labor Code Section 204 for failure to pay all earned wages during
16 employment, as set forth below; and
- 17 k. Violation of Labor Code Sections 201 and 202 for failure to pay all earned wages
18 upon termination, as set forth below.
- 19 49. Labor Code Section 558(a) provides that “[a]ny employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
22 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid . . . ; (2) For each subsequent
24 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
25 employee was underpaid. . . .” Labor Code Section 558(c) provides “[t]he civil penalties provided
26 for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff,
27 acting in the public interest as a private attorney general, seeks assessment and collection of civil
28 penalties under Labor Code Section 558 for herself, all other Aggrieved Employees, and the State of

California against Defendants for violations of Labor Code Section 510, 512(a), 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code Section 558 from Defendants for violations of Labor Code sections 510, 512(a), 1198, and the applicable IWC Wage Order.

50. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff, acting in the public interest as a private attorney general, may recover and hereby seeks civil penalties on behalf of herself, the State of California and all Aggrieved Employees for Defendants' violation of Defendants violated Labor Code Sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 226.8, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1197.5, 1198, and 2802.

INTENTIONAL MISCLASSIFICATION AS INDEPENDENT CONTRACTOR

(Labor Code § 226.8)

51. Plaintiff is informed and believes that Defendants had and has a policy or practice of failing to comply with Labor Code Section 226.8 as Defendants willfully misclassified Plaintiff and other Aggrieved Employees as independent contractors.

52. Labor Code Section 226.8 provides that "It is unlawful for any person or employer to engage in . . . [w]illful misclassification of an individual as an independent contractor" "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."

53. During the last twelve months and beyond, Defendants engaged in a pattern or practice of intentionally misclassifying Plaintiff and other Aggrieved Employees, including each and every nurse, as independent contractors.

54. On April 30, 2018, in *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903, 964 (2018), the California Supreme Court adopted the "ABC" test for determining whether a worker is an employee under the California Industrial Welfare Commission's wage orders. Under the ABC test, a worker is an employee rather than an independent contractor unless the hiring entity establishes each of the following three conditions:

- a. that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work

and in fact;

b. that the worker performs work that is outside the usual course of the hiring entity's business; and

c. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

55. Defendants cannot satisfy parts A, B and C of the ABC test as to Plaintiff who worked as an administrative assistant and customer liaison. Defendants also cannot satisfy parts B and C of the ABC test as to the Aggrieved Employees who worked as nurses. The nurses did not perform work "outside" the usual course of Defendants' business. Defendants' entire business model requires nurses to provide services directly to Defendants' customers. Under *Dynamex*, Plaintiff and all other Aggrieved Employees, including each and every nurse, who Defendants classified as independent contractors should have been classified as employees.

56. To the extent the ABC test does not apply to Plaintiff's and other Aggrieved Employees' PAGA claims, Defendants also cannot satisfy its burden of establishing that Plaintiff and other Aggrieved Employees are independent contractors under the *Borello* standard. *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).

57. Defendants have thus violated Labor Code Section 226.8. As a result, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 226.8 and/or 2699(a), (f) and/or (g).

FAILURE TO PAY SEPARATELY FOR REST PERIODS

AND NON-PRODUCTIVE TIME

(Labor Code § 226.2)

58. Labor Code Section 226.2 provides that employees who are paid on a piece-rate basis "shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation."

59. Labor Code Section 226.2(a)(1) defines "nonproductive time" as "time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis."

60. Labor Code Section 226.2(a)(3) provides that employees shall be compensated for rest periods at a regular hourly rate that is no less than the higher of (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods; and (ii) the applicable minimum wage.

61. Labor Code Section 226.2(a)(4) provides that “[e]mployees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.”

62. Within the previous twelve months and beyond, Defendants maintained a policy and practice of failing to pay all non-exempt, piece-rate paid Aggrieved Employees in compliance with Labor Code Section 226.2. For example, Defendants paid each of the Aggrieved Employees working as nurses on a piece-rate basis, paying a set amount, i.e., \$75.00 or \$100.00, for each IV drip that the Aggrieved Employee administered to a customer. However, as a uniform practice and policy, Defendants never paid non-exempt, piece-rate paid Aggrieved Employees separately for their rest periods and non-productive time, including the time spent driving from one client to another client.

63. Defendants’ failure to pay non-exempt, piece-rate paid Aggrieved Employees separately for their rest period and non-productive time violates Labor Code Section 226.2. As a result, the non-exempt, piece-rate paid Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code Sections 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGE

(Labor Code §§ 1182.12, 1194, 1197 and 1198)

64. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

65. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

66. Labor Code Section 1194(a) provides that “Notwithstanding any agreement to work

1 for a lesser wage, any employee receiving less than the legal minimum wage . . . is entitled to recover
2 in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest
3 thereon, reasonable attorney's fees, and costs of suit."

4 67. Defendants employed Plaintiff and other Aggrieved Employees as hourly-paid and
5 piece-rate paid independent contractors who should have been classified as employees who were
6 entitled to the protections of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage
7 Order 4-2001.

8 68. Within the previous twelve months and beyond, in violation of Labor Code Sections
9 1182.12, 1194, 1197 and 1198 and IWC Wage Order 4-2001, Defendants maintained a policy and
10 practice of failing to pay Plaintiff and other Aggrieved Employees the applicable minimum wage for
11 all hours worked because Defendants misclassified Plaintiff and other Aggrieved Employees as
12 independent contractors, because Defendants required Plaintiff and other Aggrieved Employees to
13 work off-the-clock without compensation, and because, as noted above, Defendants violated Labor
14 Code Section 226.2. Defendants required Plaintiff and other Aggrieved Employees to work off the
15 clock in several ways including that they were required to access and use an app on their personal
16 cell phones for work purposes while off the clock; and they were required to respond to work-related
17 emails and text messages while off the clock.

18 69. Defendants' failure to pay Plaintiff and other Aggrieved Employees the applicable
19 minimum wage for all hours worked violates Labor Code Sections 1182.12, 1194, 1197 and 1198.
20 Defendants' failure to pay non-exempt, piece-rate paid Aggrieved Employees in compliance with
21 Labor Code Section 226.2 also violates Labor Code Sections 1182.12, 1194, 1197 and 1198. Plaintiff
22 and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
23 Code Sections 1197.1 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY OVERTIME WAGES**

25 **(Labor Code §§ 510, 1198)**

26 70. Labor Code Section 510 provides that "Any work in excess of eight hours in one
27 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the
28 rate of no less than one and one-half times the regular rate of pay for an employee."

1 71. An employee's regular rate of pay includes all remuneration for employment paid to,
2 or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

3 72. Labor Code Section 1198 provides that it is unlawful to employ persons for longer
4 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
5 applicable IWC Wage Order.

6 73. Section 3 of IWC Wage Order No. 4-2001 provides in pertinent part that:

7 [E]mployees shall not be employed more than eight (8) hours in any
8 workday or more than 40 hours in any workweek unless the employee
9 receives one and one-half (1½) times such employee's regular rate of
10 pay for all hours worked over 40 hours in the workweek. Eight (8)
11 hours of labor constitutes a day's work. Employment beyond eight (8)
hours in any workday or more than six (6) days in any workweek is
permissible provided the employee is compensated for such overtime
at not less than:

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

15 (b) Double the employee's regular rate of pay for all hours worked in
16 excess of 12 hours in any workday and for all hours worked in excess
17 of eight (8) hours on the seventh (7th) consecutive day of work in a
workweek.

18 74. Labor Code Section 1194(a) provides that "Notwithstanding any agreement to work
19 for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
20 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
21 the full amount of this minimum wage or overtime compensation, including interest thereon,
22 reasonable attorney's fees, and costs of suit."

23 75. Defendants employed Plaintiff and other Aggrieved Employees as hourly-paid and
24 piece-rate paid independent contractors who should have been classified as employees who were
25 entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-2001.

26 76. Within the previous twelve months and beyond, in violation of Labor Code Sections
27 510, 1194, 1198 and IWC Wage Order 4-2001, Defendants maintained a policy and practice of failing
28 to pay Plaintiff and other Aggrieved Employees the applicable overtime wages for all overtime hours

1 worked because Defendants misclassified Plaintiff and other Aggrieved Employees as independent
2 contractors, because Defendants required Plaintiff and other Aggrieved Employees to work off-the-
3 clock without compensation, and because, as noted above, Defendants violated Labor Code Section
4 226.2. Defendants required Plaintiff and other Aggrieved Employees to work off the clock in several
5 ways including that they were required to access and use an app on their personal cell phones for
6 work purposes while off the clock; and they were required to respond to work-related emails and text
7 messages while off the clock.

8 77. For Plaintiff and all other Aggrieved Employees who were paid a flat hourly rate,
9 Defendants never paid the applicable overtime rate for overtime hours worked even though those
10 Aggrieved Employees often worked in excess of eight hours in a day and/or in excess of 40 hours in
11 a week.

12 78. In addition, as detailed above, within the previous twelve months and beyond,
13 Defendants knowingly required, suffered and permitted Plaintiff and other Aggrieved Employees to
14 perform duties off-the-clock and failed to compensate them for all hours worked, including all
15 overtime hours worked. Because Plaintiff and other Aggrieved Employees often worked close to
16 eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or in close to and/or
17 close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed by
18 Plaintiff and other Aggrieved Employees qualified as overtime, and should have been paid at the
19 applicable overtime rate.

20 79. Defendants' failure to pay Plaintiff and other Aggrieved Employees all earned
21 overtime compensation, as required by California law, violates the provisions of Labor Code Sections
22 510 and 1198. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

24 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

25 **(Labor Code §§ 226.7, 1198 and IWC Wage Order No. 4-2001, § 12)**

26 80. Labor Code Section 226.7 provides that no employer shall require an employee to
27 work during any rest period mandated by an applicable order of the California IWC.

28 81. IWC Order No. 4-2001(12)(A) provides, in pertinent part:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

82. Labor Code Section 226.7 further provides that, "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 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."

83. Upon information and belief, Plaintiff and other Aggrieved Employees were subject to the same policies, practices and procedures governing the provision of rest periods.

84. Within the previous twelve months and beyond, Defendants required Plaintiff and other Aggrieved Employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

85. Within the previous twelve months and beyond, and as a result of Defendants' intentional misclassification of its workers as independent contractors, as well as its scheduling and staffing policies and practices, or lack thereof, Defendants prevented Plaintiff and other Aggrieved Employees from being relieved of all duty in order to take compliant, off-duty rest periods. Defendants did not notify Plaintiff and other Aggrieved Employees that they were entitled to legally compliant, off-duty rest periods.

86. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of providing legally required rest periods by misclassifying workers as independent contractors, pressuring employees to perform their duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an informal anti-rest-period policy enforced

1 through pressure, failing to schedule rest periods, failing to provide rest-period coverage, and
2 otherwise discouraging employees from taking legally compliant, off-duty rest periods.

3 87. Because Defendants required Plaintiff and other Aggrieved Employees to remain on-
4 duty, and/or because they did not provide them with rest period coverage, Plaintiff and other
5 Aggrieved Employees were subject to Defendant's control and required, permitted and suffered to
6 work during rest periods.

7 88. Defendants as a matter of practice and/or policy also failed to pay Plaintiff and other
8 Aggrieved Employees an additional one hour of compensation at their regular rate of pay for each
9 day that they were not provided with a compliant, off-duty, uninterrupted 10-minute rest period as
10 required by Labor Code Sections 226.7 and Section 12 of IWC Wage Order No. 4-2001.

11 89. Defendants' conduct violates Labor Code Sections 226.7, 1198 and the applicable
12 IWC Wage Order. As a result, Plaintiff and other Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 **(Labor Code §§ 226.7, 512(a) and 1198)**

16 90. Labor Code Section 512(a) provides in pertinent part that:

17 An employer shall not employ an employee for a work period of more
18 than five hours per day without providing the employee with a meal
19 period of not less than 30 minutes, except that if the total work period
20 per day of the employee is no more than six hours, the meal period
21 may be waived by mutual consent of both the employer and employee.
22 An employer shall not employ an employee for a work period of more
23 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.

24 91. Under California law, first meal periods must start after no more than five hours.
25 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.

26 92. Labor Code Section 226.7 provides in pertinent part that:

27 (b) An employer shall not require an employee to work during a meal
28 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 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.

93. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable IWC Wage Order.

94. IWC Wage Order No. 4-2001, Section 11 provides, in pertinent part:

(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.

(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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(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.

95. Upon information and belief, Plaintiff and other Aggrieved Employees were subject

1 to the same policies, practices and procedures governing the provision of meal periods.

2 96. Within the previous twelve months and beyond, Plaintiff and other Aggrieved
3 Employees regularly worked more than five (5) hours per shift and were entitled to an uninterrupted,
4 off-duty meal period of not less than thirty (30) minutes.

5 97. Notwithstanding any formal written policy to the contrary, Defendants' actual custom
6 and business practice was to undermine any formal policy of providing legally required meal periods
7 by intentionally misclassifying workers as independent contractors, and pressuring employees to
8 perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a
9 heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-
10 meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide
11 meal-period coverage, and otherwise discouraging employees from taking legally protected meal
12 periods. Within the last twelve months and beyond, Plaintiff and on information and belief other
13 Aggrieved Employees worked straight through their shifts without receiving a timely meal period
14 and/or without taking an off-duty, uninterrupted thirty (30) minute meal period.

15 98. Within the previous twelve months and beyond, and as a result of Defendants'
16 intentional misclassification of its workers as independent contractors, as well as its scheduling and
17 staffing policies and practices, or lack thereof, Defendants prevented Plaintiff and other Aggrieved
18 Employees from being relieved of all duty in order to take compliant, off-duty meal periods.

19 99. Upon information and belief, Plaintiff and other Aggrieved Employees did not validly
20 or legally waive their first meal periods by mutual consent with Defendants or otherwise.

21 100. Upon information and belief, Plaintiff and other Aggrieved Employees did not enter
22 into any written agreement with Defendants agreeing to an on-the-job paid meal period.

23 101. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees with
24 meal periods as required by Labor Code Sections 226.7 and 512, and IWC Wage Order No. 4-2001.

25 102. Defendants have also engaged in a company-wide practice and/or policy of not paying
26 meal periods premium wages owed when compliant meal periods are not provided. As a result,
27 Plaintiff and other Aggrieved Employees were denied meal periods and Defendants failed to pay
28 Plaintiff and other Aggrieved Employees the meal period premiums due, in violation of Labor Code

1 Sections 226.7 and 512, and IWC Wage Order No. 4-2001.

2 103. Defendants' conduct violates Labor Code Sections 226.7, 512(a), 1198 and the
3 applicable IWC Wage Order. As a result, Plaintiff and other Aggrieved Employees are therefore
4 entitled to recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

5 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

6 **(Labor Code § 2802)**

7 104. Labor Code Section 2802(a) provides that an employer "shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
9 the discharge of his or her duties, or of his or her obedience to the directions of the employer."

10 105. Within the previous twelve months and beyond, Defendants as a matter of practice
11 and/or policy violated Labor Code Section 2802 by denying Plaintiff and Aggrieved Employees
12 reimbursement for necessary expenditures that they incurred as a result of discharging their duties
13 and/or obeying the directions of Defendants.

14 106. Within the previous twelve months and beyond, Defendants had a uniform policy
15 and/or practice that required Plaintiff and other Aggrieved Employees to use their personal cell phone
16 and cell phone data plan to carry out their job duties. For example, Plaintiff and other Aggrieved
17 Employees were required to download mobile applications to their personal cell phones and to access
18 them frequently for scheduling and communication purposes.

19 107. Within the previous twelve months and beyond, Defendants also required Plaintiff
20 and other Aggrieved Employees to respond to Defendants' work-related emails and messages; and
21 Plaintiff and other Aggrieved Employees used their personal cell phones to respond to such emails
22 and messages.

23 108. In addition, within the previous twelve months and beyond, Defendants also had a
24 consistent policy and/or practice that required the Aggrieved Employees who worked as nurses to
25 use their personal vehicle, gas and auto insurance to carry out work-related duties for the benefit of
26 Defendants, but Defendants failed to reimburse those Aggrieved Employees the reasonable costs of
27 the use of their personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-
28 related expenses.

109. Defendants could have provided Plaintiff and Aggrieved Employees with the actual tools required for use on the job, including company phones and/or work vehicles. Defendants also could have reimbursed Plaintiff and other Aggrieved Employees for the costs they incurred in obtaining and maintaining a personal cell phone and cell data plan, and vehicles and related costs. Instead, Defendants passed those operating costs off onto Plaintiff and other Aggrieved Employees in violation Labor Code Section 2802.

110. As a result, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code Section 2699(a), (f)-(g).

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code § 226(a))

111. Labor Code Section 226(a) provides in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages 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 . . . , (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

112. Within the previous twelve months and beyond, Defendants knowingly and intentionally failed to provide accurate and complete itemized wage statements to Plaintiff and other Aggrieved Employees in violation of Labor Code Section 226(a) because Defendants intentionally misclassified its workers as independent contractors and failed to provide them with any wage statements.

113. In addition, Defendants violated Labor Code Section 226(a) as follows:

a. Defendants violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and

226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because Defendants failed to record and compensate Plaintiff and other Aggrieved Employees for all off-the-clock work;

b. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because Defendants did not include time spent working during on-duty rest and meal periods for which Plaintiff and other Aggrieved Employees should have been compensated; and

c. Defendants violated Labor Code Section 226(a)(9) by failing to include “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” because Defendants did not pay Plaintiff and other Aggrieved Employees the applicable overtime rate when they worked overtime hours.

d. Defendants failed to include a separate line item on the wage statements for all non-exempt, piece-rate paid Aggrieved Employees setting forth the amount of rest period time and other non-productive time that they had worked and should have been compensated, in violation of both Labor Code Sections 226 and 226.2.

114. As a result, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code Sections 226.3 and/or 2699(a), (f), and (g).

FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

(Labor Code § 1174(d))

115. Labor Code Section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . .”

116. During the relevant time period, and in violation of Labor Code Section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved

1 Employees showing the daily hours they worked, and the wages paid thereto as a result of failing to
2 record the off-the-clock hours that they worked.

3 117. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
4 penalties pursuant to Labor Code Sections 1174.5 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY WAGES TIMELY**

6 **(Violation of Labor Code § 204)**

7 118. Labor Code Section 204 requires that all wages earned by any person in any
8 employment between the 1st and the 15th days inclusive of any calendar month other than those
9 wages due upon termination of an employee are due and payable between the 16th and the 26th day
10 of the month during which the labor was performed Labor Code section 204 further provides that all
11 wages earned by any person in any employment between the 16th and the last day inclusive of any
12 calendar month other than those wages due upon termination of an employee are due and payable
13 between the 1st and the 10th day of the following month.

14 119. Labor Code section 204 also requires that all wages earned for labor in excess of the
15 normal work period shall be paid no later than the payday for the next regular payroll period
16 Alternatively at all relevant times herein.

17 120. Labor Code Section 204 further provides that the requirements of this section are
18 deemed satisfied by the payment of wages for weekly biweekly or semimonthly payroll if the wages
19 are paid not more than seven 7 calendar days following the close of the payroll period.

20 121. During the relevant time period Defendants willfully failed to pay Plaintiff and other
21 Aggrieved Employees all wages due to them within any time period specified by Labor Code section
22 204 including but not limited to minimum wages, overtime wages, separate rest period and other
23 non-productive time wages, and meal and rest period premium wages.

24 122. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code Sections 210 and/or 2699(a), (f), and (g).

26 **FAILURE TO PAY WAGES TIMELY AT SEPARATION**

27 **(Labor Code §§ 201, 202, 203)**

28 123. Labor Code Section 201 provides that, if an employer discharges an employee, the

1 wages earned and unpaid at the time of discharge are due and payable immediately.

2 124. Labor Code Section 202 provides that if an employee voluntarily leaves his or her
3 employment, the employee's wages shall become due and payable not later than seventy-two (72)
4 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her
5 intention to resign, in which case the employee is entitled to his or her wages at the time of
6 resignation.

7 125. Labor Code Section 203 provides that if an employer willfully fails to pay
8 compensation as required by Sections 201 and 202, then the employer is liable for waiting time
9 penalties in the form of continued compensation of up to thirty work days.

10 126. Within the previous twelve months and beyond, and in violation of Labor Code
11 Sections 201 and 202, Defendants willfully failed to pay Plaintiff and other Aggrieved Employees
12 all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of
13 their separation from employment with Defendants for several reasons:

14 a. Defendants failed to pay Plaintiff and other Aggrieved Employees for all hours
15 worked because Plaintiff and other Aggrieved Employees worked off-the-clock, as
16 detailed above.

17 b. Defendants failed to provide Plaintiff and other non-exempt, hourly paid Aggrieved
18 Employees overtime wages for overtime hours worked, as detailed above.

19 c. Defendants failed to compensate the non-exempt, piece-rate paid Aggrieved
20 Employees separately for all rest periods and non-productive time as required by
21 Labor Code Section 226.2.

22 127. Defendants' failure to pay Aggrieved Employees who separated from their
23 employment their earned and unpaid wages at the time of discharge, or within seventy-two (72) hours
24 after their resignation, violates Labor Code Sections 201 and 202.

25 128. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties
26 pursuant to Labor Code Sections 2699(a), (f)-(g).

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this

1 suit is brought against Defendants, jointly and severally, as follows:

2 1. That the Court declare, adjudge and decree that Defendants violated the following
3 California Labor Code provisions as to Plaintiff and/or other Aggrieved Employees: 226.8 (by
4 intentionally misclassifying employees as independent contractors); 226.2 (by failing to pay
5 aggrieved employees paid on a piece-rate basis for rest periods and non-productive time); 1182.12,
6 1194, 1197 and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198
7 (by failing to pay overtime wages); 226.7 and 1198 (by failing to authorize and permit all rest
8 periods); 226.7, 512(a) and 1198 (by failing to provide all meal periods); 226(a) and 1198 (by failing
9 to provide accurate wage statements); 2802 (by failing to reimburse business expenses); 226 (by
10 failing to provide accurate wage statements); 1174(d) and 1198 (by failing to maintain accurate
11 payroll records); 204 (by failing timely to pay all earned wages during employment); and 201 and
12 202 (by failing timely to pay all earned wages upon termination).

13 2. For civil penalties pursuant to Labor Code Sections 210, 226.3, 256, 558, 1174.5,
14 1197.1, 2699(a), (f) and (g), for Plaintiff, the State of California and all Aggrieved Employees for
15 Defendants' violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510,
16 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

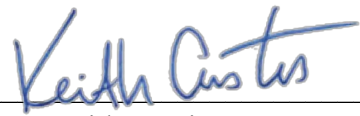
17 3. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and all other
18 relevant statutes, for Defendants' violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2,
19 226.7, 226.8, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

20 4. For pre-judgment and post-judgment interest as provided by law; and

21 5. For such other and further relief as the Court may deem equitable and appropriate.

22 Dated: November 8, 2021

CUSTIS LAW, P.C.

23
24 By:  _____

Keith Custis

26 Attorneys for Plaintiff

27 RHEA DEVULGT
28

Exhibit 1



September 2, 2021

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

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

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

PKSD Holdings, L.L.C.
234 Alta Ave.
Santa Monica, CA 90402

Legalinc Corporate Services Inc. |
Agent for Service of Process for PKSD Holdings, L.L.C.
101 N. Brand Blvd. 11th Floor
Glendale, CA 91203

Paul Y. Song, M.D.
Chief Medical Officer
PKSD Holdings, L.L.C.
234 Alta Ave.
Santa Monica, CA 90402

Kwesi Dei
Chief Executive Officer
PKSD Holdings, L.L.C.
234 Alta Ave.
Santa Monica, CA 90402

Re: *Rhea Devulgt v. PKSD Holdings, L.L.C.*: Written Notice of Intent to File Civil Action
Pursuant to Labor Code § 2699.3

Dear PAGA Administrator and Employer,

This office represents Rhea Devulgt (“Ms. Devulgt”) with respect to claims arising under California’s Labor Code from her employment by PKSD Holdings L.L.C dba Drip IV Therapy. PKSD Holdings employed Ms. Devulgt as an administrative assistant and customer liaison from January 2020 until June 20, 2021. PKSD Holdings paid Ms. Devulgt by the hour, but intentionally misclassified her as an independent contractor. Ms. Devulgt is referred to in this correspondence as the “Lead Aggrieved Employee.”

The Lead Aggrieved Employee intends to file a civil action against PKSD Holdings L.L.C. dba Drip IV Therapy and their owners/officers Paul Song and Kwesi Dei (collectively, “PKSD Holdings” or “Employer”), seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the PAGA for violations of the Labor Code. The Lead

Aggrieved Employee shall seek relief on behalf of herself, the State of California, and all other aggrieved employees, who are defined as:

All current and former non-exempt and exempt employees, and workers classified as independent contractors, who worked for PKSD Holdings in California at any time between September 2, 2020 and continuing through the trial of the PAGA claim or the date judgment is entered” (“Aggrieved Employees”).

The group of “Aggrieved Employees” includes without limitation all nurses who performed services as independent contractors for PKSD Holdings in the State of California at any time between September 2, 2020 and continuing through the trial of the PAGA claim or the date judgment is entered. All Aggrieved Employees who performed services as a nurse for PKSD Holdings constitute a subclass of Aggrieved Employees as PKSD Holdings both misclassified them as independent contractors and compensated them on a piece-rate basis but failed to comply with Labor Code Section 226.2 by failing to pay them separately for rest periods and other non-productive time.

Paul Y. Song, M.D. and Kwesi Dei, as owners and officers of PKSD Holdings are each liable in his individual capacity for the civil penalties, attorneys’ fees and litigation costs available to the Lead Aggrieved Employee and other Aggrieved Employees pursuant to California Labor Code Sections 558 and 1197.1. *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes.”) (emphasis in original). Importantly, the *Atempa* court held that the alter ego doctrine does not apply in PAGA actions to immunize owners and CEOs from liability because the Labor Code imposed liability directly on owners and CEOs for the corporate employer’s violations of the Labor Code.

Additionally, as owners and officers of PKSD Holdings, Dr. Song and Mr. Dei are also each liable in his individual capacity as an employer pursuant to California Labor Code Section 558.1 for Employer’s (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal and rest periods and to pay meal and rest period premium wages in lieu thereof; (d) failure to provide accurate wage statements; (e) failure to provide employees with accurate itemized wage statements; and (f) failure to pay wages timely at time of termination or resignation. Labor Code § 558.1.

Pursuant to Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employee’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Employer regarding the following alleged violations of the Labor Code, and the facts and legal

theories that support those violations.¹ This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations' website.²

As detailed below, PKSD Holdings has violated the Labor Code within the last year and beyond as to the Lead Aggrieved Employee and other Aggrieved Employees in the following respects:

A. Willful Misclassification of Employees as Independent Contractors in Violation of Labor Code Section 226.8

Labor Code Section 226.8 provides "It is unlawful for any person or employer to engage in . . . [w]illful misclassification of an individual as an independent contractor 'Willful misclassification' means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." Labor Code § 226.8.

Labor Code § 226.8 imposes a civil penalty of not less than \$5,000, but not more than \$15,000 for willful misclassification of individuals as independent contractors, and a civil penalty of not less than \$10,000 and not more than \$25,000 if the employer has engaged in or is engaged in a pattern or practice of misclassifying individuals as independent contractors.

Here, PKSD Holdings has engaged in a pattern or practice of intentionally misclassifying the Lead Aggrieved Employee and all other Aggrieved Employees, including each and every nurse, as independent contractors.

On April 30, 2018, in *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903, 964 (2018), the California Supreme Court adopted the "ABC" test for determining whether a worker is an employee under the California Industrial Welfare Commission's wage orders. Under the ABC test, a worker is an employee rather than an independent contractor unless the hiring entity establishes each of the following three conditions:

- (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact;

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Lead Aggrieved Employee's experience and his counsel's review of the records currently available relating to the Lead Aggrieved Employee's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional Labor Code violations as well as additional facts and legal theories supporting the alleged Labor Code violations. Thus, the Lead Aggrieved Employee reserve the right to supplement this letter with additional Labor Code violations, facts, and legal theories if the Lead Aggrieved Employee becomes aware of them subsequent to the submission of this letter.

² See <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

- (b) that the worker performs work that is outside the usual course of the hiring entity's business; and
- (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

PKSD Holdings cannot satisfy parts A, B and C of the ABC test as to the Lead Aggrieved Employee who worked as an administrative assistant and customer liaison. PKSD Holdings also cannot satisfy parts B and C of the ABC test as to the Aggrieved Employees who worked as nurses. The nurses did not perform work "outside" the usual course of PKSD Holdings' business. Indeed, the entire business model of PKSD Holdings is to provide services to customers directly through the nurses that work for PKSD Holdings. The nurses clearly should have been classified as hourly-paid, non-exempt employees, and not independent contractors.

To the extent the ABC test does not apply to the Lead Aggrieved Employee's and other Aggrieved Employees' PAGA claims, PKSD Holdings also cannot satisfy its burden of establishing that the Lead Aggrieved Employee and other Aggrieved Employees are independent contractors under the *Borello* standard either. *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).

PKSD Holdings has thus violated Labor Code Section 226.8. PKSD Holdings has engaged in a willful practice of misclassifying all of its workers as independent contractors, from its administrative assistant to each and every nurse. As a result, PKSD Holdings is subject to a civil penalty in the amount of \$25,000 for each worker it misclassified as an independent contractor. On information and belief, PKSD Holdings intentionally misclassified over 90 employees as independent contractors.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 226.8 and/or 2699(a), (f) and/or (g). Applying the \$25,000 penalty amount, PKSD Holdings is subject to total civil penalties in the amount of \$2,250,000 for this violation alone.

B. Failure to Compensate Piece-Rate Employees Separately for Rest Periods and Other Non-Productive Time in Violation of Labor Code Section 226.2

California Labor Code Section 226.2(a) provides that piece-rate employees "shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Labor Code Section 226.2(a)(3) provides for compensation for rest and recovery periods at an hourly rate no less than the greater of either the applicable minimum wage or the employee's average hourly wage for all time worked as follows:

- (3)(A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is *no less than the higher of*:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

Labor Code § 226.2(a)(3).

Labor Code Section 226.2(a)(4) provides for compensation for “other nonproductive time” at no less than the applicable minimum wage. “Other nonproductive time” is defined as “time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.”

Within the previous twelve months and beyond, PKSD Holdings maintained a policy and practice of failing to pay all Aggrieved Employees who worked as nurses in compliance with Labor Code Section 226.2. PKSD Holdings paid each of the Aggrieved Employees working as nurses a set amount ranging from approximately \$75.00 to \$100.00 for each IV drip that the nurse administered to a customer. However, as a uniform practice and policy, PKSD Holdings never paid those Aggrieved Employees working as nurses any wages for their rest period time and for their non-productive time, including driving time.

PKSD Holdings has thus violated Labor Code Section 226.2. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

C. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198

Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198 require an employer to pay employees no less than the established minimum wage. These Labor Code Sections provide that payment of a wage less than the established minimum wage is unlawful. The applicable Industrial Welfare Commission (“IWC”) Wage Order defines compensable work time, or “hours worked,” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”). An employee is entitled to be paid no less than the established minimum wage for all hours worked.

Within the previous twelve months and beyond, PKSD Holdings maintained a policy and practice of failing to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable minimum wage for all hours worked because PKSD Holdings misclassified the Lead Aggrieved Employee and other Aggrieved Employees as independent contractors, because PKSD

Holdings required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock without compensation, and because, as noted above, PKSD Holdings violated Labor Code Section 226.2. PKSD Holdings required the Lead Aggrieved Employee and other Aggrieved Employees to work off the clock in several ways including that they were required to access and use an app on their personal cell phones for work purposes while off the clock; and they were required to respond to work-related emails and text messages while off the clock.

Because PKSD Holdings misclassified the Lead Aggrieved Employee and other Aggrieved Employees as independent contractors, and required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock, PKSD Holdings failed to pay all required minimum wages due.

PKSD Holdings has thus violated Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

D. Failure to Pay Overtime in Violation of Labor Code Sections 510 & 1198

Labor Code Sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

Within the previous twelve months and beyond, PKSD Holdings maintained a policy and practice of failing to pay the Lead Aggrieved Employee and other Aggrieved Employees the correct amount of overtime wages for all overtime hours worked for several reasons:

As detailed above, within the previous twelve months and beyond, PKSD Holdings misclassified the Lead Aggrieved Employee and all other Aggrieved Employees as independent contractors. For the Lead Aggrieved Employee and all other Aggrieved Employees who were paid an hourly rate, PKSD Holdings never paid the applicable overtime rate even though those Aggrieved Employees worked in excess of eight hours in a day and/or in excess of 40 hours in a week.

In addition, as noted, within the previous twelve months and beyond, PKSD Holdings knowingly required, suffered and permitted the Lead Aggrieved Employee and other Aggrieved Employees to perform duties off-the-clock and failed to compensate them for all hours worked, including all overtime hours worked. Because the Lead Aggrieved Employee and other Aggrieved Employees often worked close to eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or in close to and/or close to and/or in excess of forty (40) hours in week, some of

the off-the-clock work performed by the Lead Aggrieved Employee and other Aggrieved Employees qualified as overtime, and should have been paid at the applicable overtime rate.

Because PKSD Holdings required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock, PKSD Holdings failed to pay all required overtime wages in violation of Labor Code Sections 510 and 1198 and the applicable IWC Wage Order.

PKSD Holdings has thus violated Labor Code Sections 510 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

E. Failure to Provide Rest Periods in Violation of Labor Code Sections 226.7 and 1198

Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

Within the previous twelve months and beyond, and as a result of PKSD Holdings' intentional misclassification of its workers as independent contractors, as well as its scheduling and staffing policies and practices, or lack thereof, PKSD Holdings prevented the Lead Aggrieved Employee and other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

Notwithstanding any formal written policy to the contrary, PKSD Holdings' actual custom and business practice was to undermine any formal policy of providing legally required rest periods by misclassifying workers as independent contractors, pressuring employees to perform their duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking legally protected rest periods.

PKSD Holdings also engaged in a systematic, firm-wide practice and/or policy of not paying rest period premiums owed when rest periods were not provided. Thus, PKSD Holdings

denied the Lead Aggrieved Employee and other Aggrieved Employees rest periods and failed to pay them rest period premium wages due in violation of Labor Code Section 226.7 and the applicable IWC Wage Order. PKSD Holdings also failed to compensate the Lead Aggrieved Employee and other Aggrieved Employees for the time they spent working instead of taking legally compliant rest periods.

Because PKSD Holdings failed to provide all required rest periods in violation of Labor Code Sections 226.7 and 1198, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

F. Failure to Provide Meal Periods In Violation of Labor Code §§ 226.7, 512(a) & 1198

Labor Code Sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal break is not provided. Pursuant to Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

Within the previous twelve months and beyond, and as a result of PKSD Holdings' intentional misclassification of its workers as independent contractors, as well as its scheduling and staffing policies and practices, or lack thereof, PKSD Holdings prevented the Lead Aggrieved Employee and other Aggrieved Employees from being relieved of all duty in order to take compliant meal periods.

Notwithstanding any formal written policy to the contrary, PKSD Holdings' actual custom and business practice was to undermine any formal policy of providing legally required meal periods by intentionally misclassifying workers as independent contractors, and pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking legally protected meal periods. Within the last twelve months and beyond, the Lead Aggrieved Employee and on information and belief other Aggrieved Employees worked straight through their

shifts without receiving a timely meal period and/or without taking an off-duty, uninterrupted thirty (30) minute meal period.

PKSD Holdings also has a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, the Lead Aggrieved Employee and other Aggrieved Employees have not received premium pay for all missed meal periods. Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law . . . , 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.”).

PKSD Holdings thus failed to provide all required meal periods in violation of Labor Code Sections 226.7, 512(a), and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to meal period premium wages, civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

G. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

Within the previous twelve months and beyond, PKSD Holdings, on a company-wide basis, systematically failed to reimburse the Lead Aggrieved Employee and other Aggrieved Employees for necessary business expenses incurred at the direction of PKSD Holdings.

Within the previous twelve months and beyond, PKSD Holdings had a uniform policy and/or practice that required the Lead Aggrieved Employee and other Aggrieved Employees to use their personal cell phone and cell phone data plan to carry out their job duties. For example, the Lead Aggrieved Employee and other Aggrieved Employees were required to download the Acuity mobile application to their personal cell phones and to access it frequently for scheduling and communication purposes. The Lead Aggrieved Employee and other Aggrieved Employees were also required to respond to PKSD Holdings’ work-related emails and messages; and the Lead Aggrieved Employee and other Aggrieved Employees used their personal cell phones to respond to such emails and messages.

In addition, within the previous twelve months and beyond, PKSD Holdings also had a consistent policy and/or practice that required the Aggrieved Employees who worked as nurses to use their personal vehicle, gas and auto insurance to carry out work-related duties for the benefit of PKSD Holdings, but PKSD Holdings failed to reimburse those Aggrieved Employees the reasonable costs of the use of their personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses.

PKSD Holdings could have provided the Lead Aggrieved Employee and other Aggrieved Employees with the actual tools required for use on the job, including company phones and company cars, or reimbursed employees for their cell phones and cell phone usage and vehicle usage, but instead, PKSD Holdings passed these operating costs off onto the Aggrieved Employees. Thus, PKSD Holdings violated Labor Code Section 2802 by uniformly failing to reimburse any portion of the Lead Aggrieved Employee's and other Aggrieved Employees' cell phone and data plan expenses, the costs of purchasing mobile applications and the cost of the use of their personal vehicles. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

PKSD Holdings' policy and/or practice of passing its operating costs on to the Lead Aggrieved Employees and other Aggrieved Employees violates Labor Code Section 2802. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

H. Failure to Provide Accurate Wage Statements in Violation of Labor Code Sections 226(a), 1174(d) and 1198

Labor Code Section 226(a) requires an employer to provide its employees with "an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (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 . . . , (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." The itemized wage statement must be provided semimonthly or otherwise when wages are paid.

PKSD Holdings did not provide the Lead Aggrieved Employee and other Aggrieved Employees with properly itemized wage statements. Labor Code Section 226(e) provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in Section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code Section 226.3 provides that

any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

Within the previous twelve months and beyond, PKSD Holdings knowingly and intentionally failed to provide accurate and complete itemized wage statements to the Lead Aggrieved Employee and other Aggrieved Employees in violation of Labor Code Section 226(a) because PKSD Holdings intentionally misclassified its workers as independent contractors and failed to provide them with any wage statement. In addition, PKSD Holdings violated Labor Code Section 226(a) as follows:

- PKSD Holdings violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because PKSD Holdings failed to record and compensate the Lead Aggrieved Employee and other Aggrieved Employees for all off-the-clock work;
- PKSD Holdings violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because PKSD Holdings did not include time spent working during on-duty rest and meal periods for which the Lead Aggrieved Employee and other Aggrieved Employees should have been compensated; and
- PKSD Holdings violated Labor Code Section 226(a)(9) by failing to include “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” because PKSD Holdings did not pay its workers the applicable overtime rate when they worked overtime hours.
- PKSD Holdings failed to include a separate line item on the wage statements for all Aggrieved Employees who worked as nurses identifying the rest period time and non-productive time that they had worked and should have been compensated, in violation of both Labor Code Sections 226 and 226.2.

Because PKSD Holdings violated Labor Code Section 226 in numerous ways, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code Sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

I. Failure to Pay Wages Timely Upon Termination in Violation of Labor Code Sections 201, 202 & 203

Labor Code Section 201 provides that if an employer discharges an employee, the employee’s earned and unpaid wages at the time of discharge are due and payable immediately. Labor Code Section 202 provides that, if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,

unless the employee has given seventy-two (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. Failure to pay all wages in compliance with Labor Code Sections 201 and 202 subjects the employer to the penalties outlined in Labor Code Section 203. Section 203, in turn, requires the employer to pay the employee a full day of wages (8 hours) at the employee's last hourly rate for each day that all earned but unpaid wages remain unpaid up to a total of 30 days.

Within the previous twelve months and beyond, and in violation of Labor Code Sections 201 and 202, PKSD Holdings willfully failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with PKSD Holdings for several reasons:

- PKSD Holdings failed to pay the Lead Aggrieved Employee and other Aggrieved Employees for all hours worked because the Lead Aggrieved Employee and other Aggrieved Employees worked off-the-clock, as detailed above, and PKSD Holdings failed to compensate the Lead Aggrieved Employee and other Aggrieved Employees for all off-the-clock work.
- PKSD Holdings failed to provide the Lead Aggrieved Employee and other Aggrieved Employees with statutory meal and rest breaks and to pay meal and rest period premium wages for missed meal and rest breaks, as detailed above.
- PKSD Holdings failed to compensate the Lead Aggrieved Employee and other Aggrieved Employees for the time they spent working during on-duty rest and meal periods.
- PKSD Holdings failed to compensate the Aggrieved Employees who worked as nurses and were paid on a piece-rate basis for all rest period time and non-productive time as required by Labor Code Section 226.2.

The Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

J. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204

Labor Code Section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code Section 204 further provides that all wages earned by any person in any employment between the 16th and the last day of any calendar month (other than those wages due upon termination of an employee) are due and payable between the

1st and the 10th day of the following month. Labor Code Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

Within the previous twelve months and beyond, for all the reasons detailed above, PKSD Holdings failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages and minimum wages, as well as all wages required by Labor Code Section 226.2, within the time period specified by Labor Code Section 204.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 210 and/or 2699(a), (f)-(g).

K. Unlawful Deductions from Wages in Violation of Labor Code Sections 221 and 223

Labor Code Section 221 provides that "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code Section 223 provides that "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

Within the previous twelve months and beyond, PKSD Holdings violated the Labor Code Sections 221 and 223 by unlawfully taking unauthorized deductions from the wages of the Lead Aggrieved Employee and, on information and belief, other Aggrieved Employees to cover certain ordinary business expenses of PKSD Holdings that should have been borne by PKSD Holdings. Because of these unlawful and unauthorized deductions from the wages of the Lead Aggrieved Employee and, on information and belief, other Aggrieved Employees, PKSD Holdings violated Labor Code Sections 221 and 223.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code Section 2699(a), (f)-(g).

L. Failure To Maintain Accurate Records In Violation Of Labor Code § 1174(d)

Labor Code Section 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee with respect to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records

showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

Within the previous twelve months and beyond, for all the reasons detailed above, PKSD Holdings violated Labor Code Section 1174(d) by knowingly, intentionally, and willfully failing to keep required accurate payroll records for the Lead Aggrieved Employee and other Aggrieved Employees. PKSD Holdings misclassified all of its workers as independent contractors and, as a result, did not accurately record all hours worked by the Lead Aggrieved Employee and other Aggrieved Employees including the off-the-clock work detailed above, which caused the payroll records of the Aggrieved Employees to be inaccurate.

M. Penalties Pursuant to Labor Code Section 558(a)

Labor Code Section 558(a) provides that “[a]ny 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 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code Section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Within the previous twelve months and beyond, PKSD Holdings was an employer who violated the Lead Aggrieved Employee’s and other Aggrieved Employees’ rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employee shall seek all applicable remedies available under Labor Code Section 558 for herself, the State of California, and all other Aggrieved Employees.

N. Violations of Labor Code Section 1102.5

Labor Code Section 1102.5(b) provides that “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employees job duties.”

Within the previous twelve months, including in May and June 2021, the Lead Aggrieved Employee engaged in protected activity under Labor Code Section 1102.5(b) by complaining about Labor Code violations including but not limited to PKSD Holding’s failure to pay her

overtime hours, PKSD Holding's unlawful deductions from her wages and PKSD Holding's failure to pay minimum wage for all hours worked.

The Lead Aggrieved Employee's conduct constituted a disclosure of and/or opposition to conduct that the Lead Aggrieved Employee had reasonable cause to believe disclosed a violation of state, local and/or federal laws, rules, or regulations. The Lead Aggrieved Employee made such disclosures to person(s) with authority over the Lead Aggrieved Employee who had the authority to investigate, discover, or correct the violation or non-compliance, and directly to the California LWDA. PKSD Holdings also perceived, feared and/or believed that the Lead Aggrieved Employee may make protected disclosures in the future. The Lead Aggrieved Employee's conduct was thus protected under Labor Code Section 1102.5.

On June 20, 2021, PKSD Holdings retaliated against the Lead Aggrieved Employee in violation of Labor Code Sections 98.6 and 1102.5(b) by terminating her employment.

The Lead Aggrieved Employee's protected activities, refusals and/or opposition was/were a contributing factor to the PKSD Holdings' decision to terminate the Lead Aggrieved Employee in June 2021.

Labor Code Section 1102.5(f) provides that "In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."

Upon information and belief, PKSD Holdings has also violated Labor Code Section 1102.5 with respect to other Aggrieved Employees.

The Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 1102.5(f) and/or 2699(a), (f)-(g).

O. Violations of Labor Code Section 98.6

Labor Code Section 98.6 prohibits an employer from discriminating against, retaliating against, or taking any adverse action against an employee because the employee has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or because of the exercise by the employee for employment on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code. Labor Code Section 98.6(b)(3) provides that, "[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation."

PKSD Holdings violated Labor Code Section 98.6 with respect to the Lead Aggrieved

Employee for the same reasons it violated Labor Code Section 1102.5, detailed above. Upon information and belief, PKSD Holdings also violated Labor Code Section 98.6 with respect to other Aggrieved Employees.

The Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 98.6 and/or 2699(a), (f)-(g).

* * *

If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for herself, all other Aggrieved Employees, and the State of California—against PKSD Holdings, Dr. Song and Mr. Dei, jointly and severally, for violations of Labor Code Sections 98.6, 201, 202, 203, 204, 221, 223, 226, 226.2, 226.7, 510, 512, 558, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code Section 2699(g).

With respect to all the aforementioned Labor Code violations, the Lead Aggrieved Employee shall seek civil penalties and all other available relief under the PAGA for all violations for the time period beginning on September 2, 2020 and continuing through the trial of the PAGA claim.

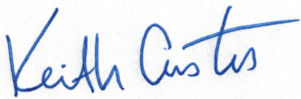
The employer may be contacted at:

PKSD Holdings, Inc.
234 Alta Ave.
Santa Monica, CA 90402

If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis