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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 ALMA CORTEZ, on behalf of herself and
12 others similarly situated as a Private Attorney
General Representative,

13 Plaintiffs,

14 vs.

15
16 VA SAN DIEGO HEALTHCARE SYSTEM;
17 and DOES 1-50, inclusive,

18 Defendants.

CASE NO.: 37-2021-00054274-CU-OE-CTL

[REPRESENTATIVE AND ACTION]

**COMPLAINT FOR CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS GENERAL ACT
OF 2004, CALIFORNIA LABOR CODE § 2698 et
seq. ("PAGA")**

1. Violation of California Labor Code § 510,
1194, 1198, and 1199 (Failure to Pay
Overtime)
2. Violation of California Labor Code § 226.7
(Meal Breaks)
3. Violation of California Labor Code § 226.7
(Rest Breaks)
4. Violation of California Labor Code § 226
(Inaccurate Wage Statements)
5. Violation of California Labor Code § 203
(Waiting Time)
6. California Business and Professions Code §
17200 et seq.

[JURY TRIAL DEMANDED]

1 **INTRODUCTION**

2 1. This case is brought by Alma Cortez (“Plaintiff”), individually and on behalf of the state
3 of California and other similarly situated aggrieved individuals who have worked for Defendant VA San
4 Diego Healthcare System (“Defendant”) as Nursing Assistants in California. Defendant is engaged in
5 the business of providing a wide range of health, support, and facility services for Veterans in San Diego
6 and Imperial Valley counties. Defendant is based in San Diego, California.

7 2. As described below, this is an action for Defendant’s willful failure to pay overtime wages
8 to Plaintiff and all similarly situated aggrieved workers (collectively “Workers” or “Nursing Assistants”)
9 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”),
10 Cal. Bus. & Prof. Code § 17500, the California Labor Code, as penalized under the Private Attorneys
11 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”).

12 3. Defendant willfully failed to pay Workers the required overtime wages for all hours
13 worked in violation of Cal. Lab. Code §§ 510, 1194, 1198, and 1199 and has not paid appropriate overtime
14 premiums for hours worked in excess of eight hours per day or forty hours per week, in violation of Cal.
15 Lab. Code §§ 1194, 1198, 510, and 554.

16 4. Plaintiff brings these claims pursuant to PAGA on behalf of the state of California and all
17 other similarly situated aggrieved workers who have been Defendant’s employees as Nursing Assistants
18 in California during the applicable time period. Plaintiff brings this action to recover civil penalties, fees
19 and costs, and any other remedies to which she may be entitled under PAGA, Cal. Lab. Code § 2699 *et*
20 *seq.*

21 **PARTIES**

22 5. Plaintiff Alma Cortez is an adult resident of Imperial Beach, San Diego County,
23 California, where she has worked as a Nursing Assistant for Defendant in San Diego County, California.

24 6. Similarly situated aggrieved workers are current and former Assistant Nurses that work
25 or worked for Defendant.

26 7. Plaintiff along with other current and former Nursing Assistants all worked for Defendant
27 in the State of California.

28 8. Defendant VA San Diego Healthcare System is a medical center that is located at 3350

1 La Jolla Village Dr., San Diego, California, 92161.

2 9. Plaintiff started working for Defendant in November 2018. Plaintiff stopped working for
3 the Defendant in December 2020.

4 10. Other than the manner in which Defendant is presently identified, Defendants by the
5 name of DOES 1 through 50, are legally responsible for the wrongful conduct allege herein. Plaintiff is
6 unaware of these Defendants' true names, capacities, relationships, and extent of participation in the
7 conduct alleged herein, and therefore sue these Defendants by such fictitious names. Plaintiff will amend
8 this Complaint when their true names and capacities are ascertained.

9 11. Plaintiff alleges that each Defendant, directly or indirectly, or through agents, affiliates,
10 or other persons, employed Plaintiff and other similarly situated aggrieved workers ("Class Members"),
11 and exercised control over their wages, hours, and working conditions. Each Defendant acted in all
12 respects pertinent to this action as the agent of the other Defendants, to willfully operate and participate
13 in a joint scheme, producing a business model allowing for the unlawful conduct alleged; thus, the acts
14 of each Defendant are legally attributable to the other Defendants.

15 12. At all times relevant, the policies and practices that are complained of in this Complaint
16 have occurred throughout the class period and are currently applied by Defendants throughout
17 California.

18 JURISDICTION AND VENUE

19 13. This Court has jurisdiction over Plaintiff's claims for civil penalties under the Private
20 Attorneys General Act ("PAGA"), Cal. Labor Code § 2699 *et seq.*

21 14. Venue is proper under California Code of Civil Procedure § 395 and under California
22 Government Code § 12965(b), in that Plaintiff resides within the County of San Diego.

23 STATEMENT OF FACTS

24 15. Plaintiff was hired by Defendant as a nursing assistant reporting to Defendant's location
25 in San Diego, California.

26 16. During the entire period of Plaintiff's employment with Defendants, Plaintiff was a
27 dedicated and exemplary employee, and performed Plaintiff's duties as a nursing assistant for
28 Defendants in a diligent and thorough manner.

1 17. While employed by Defendants, Plaintiff and Class Members were regularly required to
2 work shifts in excess of eight hours a day and 40 hours a week.

3 18. Defendants have consistently failed to pay for overtime hours after 8 hours of work in a
4 workday by Defendants in California in violation of California law.

5 19. Defendants were explicit in not wanting to give overtime to their employees.

6 20. Moreover, Defendants provided wage statements that listed the incorrect earnings as a
7 result of their failure to pay overtime after 8 hours of work in a workday. Therefore, the total gross and
8 net earnings, as well as regular time and overtime hours listed on the employee's pay stubs are incorrect
9 as they do not pay overtime after 8 hours in a workday even though employees were regularly scheduled
10 and encouraged to work 12-hour shifts.

11 21. Plaintiff and Class Members seek compensation for all sustained damages, including
12 loss of earnings for all hours of overtime worked; all penalties pursuant to Cal. Lab. Code § 510,
13 liquidated damages, or other damages permitted by law; restitution or disgorgement of all benefits
14 obtained by Defendants from their unlawful business practices; injunctive and declaratory relief; all
15 forms of equitable relief permitted by law; prejudgment interest and reasonable attorneys' fees and
16 costs.

17 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

18 22. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
19 length herein.

20 23. Prior to filing this complaint, Plaintiff complied with notice requirements pursuant to
21 California Labor Code § 2699.3. A copy of the letter sent to the Labor & Workforce Development
22 Agency ("LWDA") is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants had
23 notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five (65) or
24 more days have passed and the LWDA has not indicated intent to investigate claims. Therefore, Plaintiff
25 may proceed with this action in a representative capacity. Plaintiff also sent a copy of this PAGA
26 Representative Action Complaint to the LWDA, providing timely notice to the LWDA for the substance
27 and violations set forth in this Complaint.

28 24. Plaintiff and Class Members are aggrieved employees as defined in California Labor

Code § 2699(a). Plaintiff brings this cause of action on behalf of all current and former non-exempt employees of Defendants in the State of California.

25. On October 26, 2021, Plaintiff gave written notice of Defendant's violations of the California Labor Code as alleged in this Complaint in Intervention to the Labor and Workforce Development Agency ("LWDA") via online filing (LWDA-CM-850021-21) and to Defendants via certified mail. LDWA has not provided notice indicating an intent to investigate the alleged violations and it is Plaintiff's position that, barring extraordinary circumstances, the lack of notice by the LWDA can be interpreted as a decision not to investigate the alleged violations.

26. Plaintiff and all similarly situated aggrieved workers are all subject to Defendants' common plan or practice of failing to pay the California minimum wage for all hours worked, and overtime for hours worked by Workers in excess of forty in a given week.

27. Plaintiff and similarly situated aggrieved workers allege the following:

Penalties Pursuant to Labor Code Private Attorneys General Act of 2004

Violations of Cal. Lab. Code § 2698, *et seq.*

28. Plaintiff and all similarly situated aggrieved workers re-allege and incorporate all previous paragraphs as fully set forth herein. Plaintiff is an "aggrieved employee" as defined by California Labor Code § 2699(c) as she was employed by Defendants during the applicable statutory period and suffered injury as a result of Defendants' various violations of the California Labor Code. Accordingly, Plaintiff seeks to recover, on behalf of the State of California as well as herself and all other current and former aggrieved employees of Defendants who have worked in California, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

29. Plaintiff and all similarly situated aggrieved workers are entitled to penalties under PAGA for Defendant's following violations:

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of themselves, and all others similarly situated as a class action pursuant to Section 382 of the California Code of Civil Procedure.

31. Plaintiff seeks to represent Classes composed of and defined as follows:

1 **Failure to Pay Overtime Class.** All persons who are employed or have
2 been employed by Defendants in California in a non-exempt position who
3 are or were not paid overtime for all work after 8 hours in a workday.

4 **Failure to Provide Adequate Meal and Rest Breaks Class.** All persons
5 who are or were employed by Defendants in California in a non-exempt
6 position who did not receive adequate meal breaks for work in excess of
7 five hours and did not receive rest breaks after working in excess of four
8 hours.

9 **Waiting Time Penalties Class.** All persons who are employed or were
10 employed by Defendants in California in a non-exempt position who did
11 not receive all wages owed to them at the time of their termination.

12 32. Plaintiff also seek to represent a Class composed of and defined as follows:

13 **Itemized Wage Statement Class.** All persons who are employed or have
14 been employed by Defendants in California in a non-exempt position who
15 did not receive an itemized wage statement that listed the correct straight
16 and overtime hours that the employee worked in the pay period or the
17 correct gross and net wages earned.

18 33. This action has been brought and may be properly maintained as a class action under the
19 provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined
20 community of interest in the litigation and the proposed Classes are easily ascertainable.

21 **A. Numerosity**

22 34. The potential members of the Classes as defined are so numerous that joinder of all the
23 members of the Classes is impracticable. While the precise number of class members for each Class has
24 not been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
25 and during the relevant period employed, hundreds of employees in the State of California, in non-
26 exempt positions who are or have been affected by Defendants' unlawful and uniform policies of: (1)
27 failing to pay for all overtime worked after 8 hours in a workday or over 40 hours in a week; (2) failing
28 to provide adequate meal breaks for work in excess of 5 hours and rest breaks for work in excess of 4
hours; (3) failing to pay all wages owed at termination; and (4) failure to provide accurate itemized wage
statements.

35. Plaintiff alleges that Defendant's employment records will provide information as to the
number and location of all members of the Classes. Joinder of all members of the proposed Classes is
not practicable.

1
2 **B. Commonality**

3 36. There are questions of law and fact common to the Classes that predominate over any
4 questions affecting only individual Class Members. These common questions of law and fact include,
5 without limitation:

- 6 a. Whether Defendants violated California Labor Code §§ 510, 1194, 1198 and
7 1199 by failing to pay proper overtime wages to the putative Class Members;
8 b. Whether Defendants violated California Labor Code § 226.7 in failing to provide
9 adequate meal and rest breaks to the putative Class Members;
10 c. Whether Defendants violated California Labor Code § 226 for failure to furnish
11 its employees with a complete and accurate itemized wage statement; and
12 d. Whether Defendants violated California Labor Code § 203 by failing to pay
13 overtime wages due and owing at the time of termination of employment for the
14 putative Class Members.

15 **C. Typicality**

16 37. The claims of the Plaintiff are typical of the claims of the Classes. Plaintiff and all
17 members of the Classes sustained injuries and damages arising out of and caused by Defendants'
18 common course of conduct in violation of the law as alleged therein.

19 **D. Adequacy of Representation**

20 38. Plaintiff will fairly and adequately represent and protect the interests of the members of
21 the Classes. Counsel who represents the Plaintiff are competent and experienced class action litigators.

22 **E. Superiority of Class Action**

23 39. A class action is superior to other available means for the fair and efficient adjudication
24 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
25 fact common to the Classes predominate over any questions affecting only individual members of the
26 Classes. Each member of each Class has been damaged and is entitled to recovery by reason of
27 Defendants' illegal policy and practice of failing to properly compensate Class Members as alleged
28 above.

40. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Failure to Pay Overtime

Violation of Cal. Lab. Code § 510, 1194, 1198, 1199

41. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at length herein.

42. During the relevant time period, Plaintiff and Class Members often worked in excess of eight hours in a workday, and 40 hours in a workweek.

43. During the class period, Defendants failed to compensate Plaintiff and Class Members for some or all of the overtime worked, in violation of California Labor Code § 510.

44. Defendant's willful conduct, as set forth herein, in failing to pay its Nursing Assistants who have worked in California one and one-half their regular rate of pay for all hours worked beyond forty hours per week as required by California law, violates Cal. Lab. Code § 510.

45. At all relevant times, Defendant was aware of, and was under a duty to comply with, various provisions of the California Labor Code.

46. At all relative times, Defendant was aware of, and had a duty to comply with, the provision of California Labor Code § 510. California Labor Code § 510 includes:

- a. California Labor Code § 510: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular pay for an employee...”
- b. California Labor Code § 1194: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than ... the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this ... overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

1 c. California Labor Code § 1198: “The maximum hours of work and the standard conditions of
2 labor fixed by the commission shall be the maximum hours of work and the standard conditions
3 of labor for employees. The employment of any employee for longer hours than those fixed by
4 the order or under conditions of labor prohibited by the order is unlawful.”

5 d. California Labor Code § 1199: “Every employer or other person acting either individually or as
6 an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by
7 a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days,
8 or by both, who does any of the following: (a) Requires or causes any employee to work for
9 longer hours than those fixed, or under conditions of labor prohibited by an order of the
10 commission... [or] (c) Violates or refuses or neglects to comply with any provision of this
11 chapter or any order of the commission.”

12 47. By refusing to compensate Plaintiff and Class Members for overtime wages earned,
13 Defendant violated the California Labor Code cited herein.

14 48. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
15 Plaintiff and Class Members have sustained damages, including loss of earnings for hours of overtime
16 worked on behalf of Defendants in an amount to be established at trial. As a further direct and proximate
17 result of Defendant’s unlawful conduct, as set forth herein, Plaintiff and Class Members are entitled to
18 recover interest on the overtime wages earned but not paid, at a rate of 10% per year, as well as attorney’s
19 fees and costs (California Labor Code § 218.5 and 1194), and the assessment of any other statutory
20 penalties provided by the California Labor Code.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Adequate Meal Breaks**

23 **Violation of Cal. Lab. Code § 226.7**

24 49. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
25 length herein.

26 50. Plaintiff and Class Members regularly work in excess of five (5) hours per day without
27 afforded a meal period of not less than 30 minutes as required by California Labor Code § 226.7.

28 51. California Labor Code § 512 provides that an employer may not employ an employee for

1 a work period of more than five (5) hours per day without providing the employee with a meal period
2 of not less than 30 minutes.

3 52. Furthermore, California Labor Code § 226.7 provides:

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

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

16 53. As a consequence of Defendants' conduct in not providing for adequate meal periods,
17 Class Members are entitled to one additional hour of pay at their regular rate as a penalty under
18 California Labor Code § 226.7 for each day in which the proper meal period was not provided. In
19 addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees, and costs
20 pursuant to California Labor Code § 218.5.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Adequate Rest Breaks**

23 **Violation of Cal. Lab. Code § 226.7**

24 54. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
25 length herein.

26 55. Plaintiff and Class Members regularly work in excess of four (4) hours per day without
27 being afforded a rest period of not less than 10 minutes as required by California Labor Code § 226.7.

28 56. California Labor Code § 226.7 mandates that no employer shall require any employee to

1 work during any meal or rest period.

2 57. California Labor Code § 226.7 provides that:

- 3 a. An employer shall not require an employee to work during a meal or rest or
4 recovery period mandated pursuant to an applicable statute, or applicable
5 regulation, standard, or order of the Industrial Welfare Commission, the
6 Occupational Safety and Health Standards Board, or the Division of Occupational
7 Safety and Health.
- 8 b. If an employer fails to provide an employee a meal or rest or recovery period in
9 accordance with a state law, including, but not limited to, an applicable statute or
10 applicable regulation, standard, or order of the Industrial Welfare Commission,
11 the Occupational Safety and Health Standards Board, or the Division of
12 Occupational Safety and Health, the employer shall pay the employee one
13 additional hour of pay at the employee's regular rate of compensation for each
14 workday that the meal or rest or recovery period is not provided.

15 58. As a consequence of Defendants' conduct in not providing for adequate rest periods,
16 Class Members are entitled to one additional hour of pay at their regular rate as a penalty under
17 California Labor Code § 226.7 for each day in which the proper rest period was not provided. In addition,
18 Plaintiff and Class Members are entitled to interests, penalties, attorney's fees, and costs pursuant to
19 California Labor Code § 218.5.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Itemized Wage Statements**

22 **Violation of Cal. Lab. Code § 226**

23 59. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
24 lengthen herein.

25 60. Section 226 of the California Labor Code requires Defendants to provide itemized wage
26 statements at the time of payment of wages, which include but are not limited to the following: the
27 correct wages earned, the correct total hours worked by the employee, the correct net wages earned, the
28 inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect

1 during the pay period and the corresponding correct number of hours worked at each hourly rate by the
2 employee.

3 61. Defendants did not provide itemized wage statements to Plaintiff and Class Members
4 which detailed the correct overtime wages earned, the correct overtime hours worked, and the correct
5 applicable overtime hourly rate, among other failings, at the time of payment of wages, in violation of
6 California Labor Code § 226.

7 62. Plaintiff and putative Class Members have been injured by Defendants' failure to provide
8 all of the requisite information on its itemized wage statements in that such failure masks possible and
9 actual underpayments to Defendants' employees and makes it difficult for Defendants' employees to
10 verify that they have in fact been paid the proper amounts owed for all hours worked. This conduct was
11 done knowingly and intentionally, as Defendants are aware of California law and that it was not paying
12 its employees for all overtime hours worked with the design to harm Plaintiff and the putative Class
13 Members.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Pay Waiting Time Penalties**

16 **Violation of Cal. Lab. Code § 203**

17 63. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
18 length herein.

19 64. California Labor Code § 201 requires an employer who discharges an employee to pay
20 all compensation due and owing to that employee immediately upon discharge.

21 65. California Labor Code § 203 provides that if an employer willfully fails to pay
22 compensation promptly upon separation from employment, as required by either section 201 or 202,
23 then the employer is liable for waiting time penalties in the form of continued compensation for up to
24 thirty (30) workdays.

25 66. Defendants willfully failed and refused to timely pay overtime compensation to putative
26 Class Members whose employment terminated. Therefore, Defendants are liable to these putative Class
27 Members for waiting time penalties, together with costs, under California Labor Code § 203.

28 67. As a result of Defendants' unlawful conduct, Plaintiff and putative Class Members have

suffered damages, as they were not paid all wages due. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records.

68. As a result of these violations, Plaintiff and Class Members have been damaged in an amount at the time of trial, an amount which at this time is less than \$5,000,000 but still in excess of the minimum jurisdiction of this Court.

SIXTH CAUSE OF ACTION

Violation of the Unfair Competition Law

Bus. and Prof. Code § 17200

69. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at length herein.

70. Defendants' aforementioned conduct in failing to pay the Plaintiff and Class Members all wages due, as well as the violations described, constitutes unfair and deceptive practices in violation of the UCL.

71. Specifically, Defendants' conduct violates the deceptive, unfair, and unlawful prong of the UCL.

72. Violations of the California Labor Code are unlawful acts which are independently actionable under the UCL. *See Farmers Ins. Exchange v. Superior Court*, 2 Cal. 4th 377, 383, 826 P.2d 730 (Cal. 1992).

73. Plaintiff brings this claim on behalf of Class Members pursuant to the UCL, which prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice." On behalf of Class Members, Plaintiff seeks compensation for the loss of their property and the personal financial impacts they have suffered as a result of Defendants' unfair business practices. Defendants' conduct, as described above, has been and continues to be deleterious to the Class Members, and Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5.

74. By failing to pay overtime compensation, in violation of California Labor Code §§ 510, 1194, 1198, and 1199, Defendants engaged in unlawful, unfair, unconscionable, or fraudulent business acts or practices in violation of the UCL.

75. The acts complained of herein, and each of them, constitute unlawful, unfair, unconscionable, or fraudulent business acts or practices in violation of California Business & Professions Code § 17200, et seq. Defendants' acts and practices described herein offend established public policies, including, but not limited to those set forth in the California Labor Code, and involve business practices that are immoral, unethical, oppressive, or unscrupulous.

76. The unfair business practices set forth above have and continue to injure the Class and the general public and cause injury and the loss of money, as described further within. These violations have unjustly enriched the Defendants at the expense of Class Members. As a result, Class Members are entitled to restitution.

APPLICABLE CIVIL PENALTIES

77. Plaintiff seeks an award for the failure to ensure that all Workers received the appropriate overtime premium pay for all overtime hours worked in excess of 40 per week or eight per day in violation of California Labor Code § 510, 554, 1194, and 1198.

78. California Labor Code § 2699(f) provides for civil penalties for Labor Code violations for which no civil penalty is specifically provided.

79. Plaintiff seeks an award for the failure of overtime pay violations under California Labor Code §§ 510 and 558 a statutory civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations (per employee per pay period in which that employee is underpaid) in addition to an amount sufficient to recover the balance of unpaid wages. The statute orders an additional penalty of one hundred dollars for subsequent violations for each underpaid employee for each pay period in which the employee was underpaid, in addition to an amount sufficient to recover the balance of unpaid wages.

80. Plaintiff seeks an award for violations of California Labor Code § 226.8, § 226.8(b) imposes a civil penalty of a minimum of \$5,000 and not more than \$15,000 per violation.

81. Plaintiff seeks an award for violations of California Labor Code §§ 201-204, California Labor Code § 210 imposes a civil penalty in addition to any other penalty provided by law of one hundred dollars (\$100) per aggrieved employee for the first violation and two hundred dollars (\$200) per aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld for

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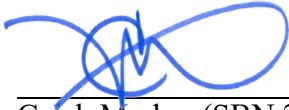
DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, by and through her Attorneys, and hereby demands a trial by jury on all issues triable by jury.

Respectfully submitted,

ZIMMERMAN REED LLP

Dated: December 30, 2021

By: 
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Attorneys for Plaintiff and aggrieved employees

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[Exhibit A] – LWDA Notice Letter

October 26, 2021

Via Electronic Submission

REPLY TO LOS ANGELES

Labor and Workforce Development Agency
320 W. Fourth Street, Suite 450
Los Angeles, CA 90013

Via Certified Mail with Return Receipt Requested

VA San Diego Healthcare System
3350 La Jolla Village Dr.
San Diego, CA 92161

***RE: Notice of Violations of the California Labor Code Pursuant to the
Private Attorneys General Act, Labor Code § 2698 et seq***

To Whom It May Concern:

Please be advised that Zimmerman Reed LLP represents Alma Cortez (“Employee”), an employee of VA San Diego Healthcare System (“Company”). Employee intends to file claims for violations of Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* against Company.

Employee’s claims include numerous violations of the California Labor Code, including those under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. Please consider this communication as notice of the claims detailed below pursuant to PAGA. PAGA requires that new claim notices, responses, and certain court documents be filed with the Labor and Workforce Development Agency (LWDA) prior to filing suit.

Claim Background

Employee worked for VA San Diego Healthcare System as a Nursing Assistant from November 2018 to December 2020. During that time, Employee worked more 8 hours in a 24-hour period and was not paid overtime wages in violation of California Labor Code § 1194(a) and §2699(a). In the event, Employee is subject to an Alternative Workweek Schedule authorized under California Labor Code § 511, Employee and the other employees did not vote to implement such a schedule and were required to work different hours other than those outlined under the Alternative Workweek Schedule. As a result, Employee seeks to recover unpaid wages, damages, interest, penalties, and attorneys’ fees as permitted by the Labor Code.

Notice of Labor Code Violations

Employee seeks the maximum civil penalties available under the following sections of the Labor Code:

§ 1194

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

§204

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

§210

- (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.
 - (3) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

§ 221

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.

§ 225.5

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

- **§ 226**

- (a) 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, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

- **§ 226.2**

- This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means 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.
- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

- (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
 - (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
 - (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.
- (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.

Non-Spoilation Notice

Please be advised that Company is under a legal duty to maintain, preserve, retain, protect, and not destroy any and all documents and data, both electronic and hard copy, which may be relevant to Employee's claims as set forth herein. The failure to preserve and retain the electronic data and evidence outlined in this notice may constitute spoliation of evidence which may subject you to legal claims for damages and/or evidentiary and monetary sanctions. For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, all text files (including word-processing documents), presentation files (such as PowerPoint), financial data, spreadsheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications, telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence, SMS messages, any other electronic communications, including, but not limited to Google Apps, Google Mail, Confide, WhatsApp, and Telegram. Specifically, you are instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to the Employee's claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence.

To meet this burden, you are instructed by way of example and not limitation, to:

- Preserve all data storage backup files (i.e., not overwrite any previously existing backups);
- Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the facts involved in the claims against the Defendant as set forth herein;
- Refrain from operating, removing or altering, fixed or external drives and media attached to any workstations or laptops, voice mail systems, and cell phones, copy machines that are reasonably thought to have data related to the claims, including but not limited to the workstations and/or laptops used by any employee or contractor;
- Preserve and retain all data from servers and networking equipment logging network access activity and system authentication;
- Preserve and retain all electronic data in any format, media, or location relating to the claims, including data on hard drives, hard disks, floppy disks, zip drives, CD-ROMs, CD-RWs, DVDs, backup tapes, PDAs, cell phones, smart phones, memory cards/sticks, or digital copiers or facsimile machines;
- Prevent employees from deleting or overwriting any electronic data related to the Employees claims including data stored on social-media websites and services such as Facebook, Instagram, Snapchat detailing purchases made with payments from Defendant; and
- Take such other security measures, including, but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to the Employee s claims.

In addition, you are required to instruct all current and former employees and contractors to preserve the following for all electronic devices in their possession including but not limited to a cell phone, smartphone, tablet, iPad, laptop, and GPS:

- Maintain and preserve the actual electronic device(s) that were used and/or owned during the time they worked for Defendant;
- Maintain their cell phone and/or data usage records during the time they worked for Defendant; and
- Preserve all calls, voicemails, text messages, emails, instant messages, social-media messages, social- media posts, internet searches, GPS data, and other electronic communication or data during the time they worked for Defendant.

You are instructed not to alter, delete, destroy or discharge any of your electronic devices and/or the above-requested data until we have had an opportunity to have them inspected by an expert. To facilitate the retrieval of said data, be advised that a forensic accounting firm may be retained to forensically acquire the hard drives and other media that may contain electronic data related to the action. Please be advised that failure to preserve evidence may be considered spoliation of evidence and could result in penalties assigned by the Court.

October 26, 2021

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Conclusion

Employee is entitled to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code. They intend to bring an action against VA San Diego Healthcare System pursuant to the Private Attorneys General Act ("PAGA") and other state laws to recover wages, damages, restitution, interest, penalties, and attorneys' fees and costs. If permitted, Employee will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a series of loops and a final flourish.

Caleb Marker

Partner | 877.500.8780 | caleb.marker@zimmreed.com