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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

MICHELLE TOWNSEND, an individual,
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

MAXIM HEALTHCARE STAFFING
SERVICES, INC., a Maryland Corporation;
AMERGIS HEALTHCARE STAFFING,
INC., a Maryland Corporation;

Defendants.

Case No. 22-CV-005450

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter Borkon
Department 15

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM,
REGULAR AND/OR OVERTIME
WAGES;**
- (2) **FAILURE TO PROVIDE MEAL
PERIODS;**
- (3) **FAILURE TO PROVIDE REST
PERIODS;**
- (4) **FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE
STATEMENTS;**
- (5) **FAILURE TO REIMBURSE BUSINESS
EXPENSES;**
- (6) **FAILURE TO PAY ALL WAGES
DUE UPON TERMINATION;**
- (7) **VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL"), Bus. & Prof. Code § 17200
et seq.**
- (8) **VIOLATION OF PRIVATE ATTORNEY
GENERAL ACT (PAGA)
Labor Code § 2699, et seq.**

DEMAND FOR JURY TRIAL

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1 Plaintiff MICHELLE TOWNSEND (“Plaintiff”), by and through her attorneys of record,
2 brings this Class and Representative Action Complaint against Defendant MAXIM
3 HEALTHCARE STAFFING SERVICES, INC. (previously incorrectly identified as MAXIM
4 HEALTHCARE SERVICES, INC. and now known as AMERGIS HEALTHCARE SERVICES,
5 INC.) (“Defendants”). Plaintiff hereby alleges, on information and belief, except for information
6 based on personal knowledge, which allegations are likely to have evidentiary support after further
7 investigation and discovery, as follows:

8 **NATURE OF THE ACTION**

9 1. This is a class and representative action for wage and labor violations arising out of
10 Defendants’ failure to pay wages for all time worked, failure to provide timely and uninterrupted
11 meal and rest periods, failure to reimburse necessarily incurred business expenses, and for
12 derivative claims.

13 2. As more fully set forth below, Defendants misclassified as exempt its current and/or
14 former salaried Recruiters in California, and as a result failed to pay them wages for all hours
15 worked, including overtime, in violation of California Labor Code §§ 510 and the applicable
16 Industrial Wage Order; failed to provide lawful meal and rest periods; failed to reimburse incurred
17 necessary business expenses; failed to furnish timely and accurate wage statements; failed to pay all
18 wages due upon termination; and, is in violation of California’s Unfair Competition Law (“UCL”).

19 3. Plaintiff seeks to represent all those similarly situated who are or were residents of
20 the State of California.

21 **JURISDICTION AND VENUE**

22 4. This Court has jurisdiction over this action because this is a civil action where the
23 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
24 Court. The acts and omissions complained of in this action took place in the State of California.

25 5. Venue is proper in this judicial district, because upon information and belief,
26 Plaintiff resides and has been employed by Defendants within this judicial district. Further,
27 Defendants conduct substantial business and commit Labor Code violations in Alameda County,
28 California, and Defendants are within the jurisdiction of this Court for service of process purposes.

1 The unlawful acts alleged have a direct effect on Plaintiff and other employees within the State of
2 California and Alameda County and to employees in Defendants' locations within the state of
3 California. Defendants employ numerous employees in Alameda County and surrounding counties.

4 **PARTIES**

5 6. Plaintiff MICHELLE TOWNSEND is currently a resident of Hayward, California.
6 Plaintiff was employed by Defendant as a Recruiter - Level 2 in Oakland, California, and later
7 worked remotely in Hayward, California, from approximately August 2018 to March 2021.

8 7. Plaintiff is informed and believes, and on that basis alleges, that MAXIM
9 HEALTHCARE STAFFING SERVICES, INC., (previously incorrectly identified as MAXIM
10 HEALTHCARE SERVICES, INC. and now known as AMERGIS HEALTHCARE SERVICES,
11 INC.) is a Maryland Corporation which, through hundreds of office locations nationwide, provides
12 home healthcare, companion and behavioral care, healthcare staffing, and workforce solutions. See
13 <https://www.maximhealthcare.com/about-us>. Plaintiff is informed and believes, and on that basis
14 alleges, that Defendants MAXIM HEALTHCARE STAFFING SERVICES, INC. and now known
15 as AMERGIS HEALTHCARE SERVICES, INC. were at all relevant times alleged herein,
16 Maryland corporations authorized to and conducting business in California, including but not
17 limited to Alameda County.

18 8. Plaintiff is currently unaware of the true names and capacities, whether individual,
19 corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 1
20 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff will
21 seek leave to amend this complaint to allege the true names and capacities of said fictitiously
22 named defendants when their true names and capacities have been ascertained. Plaintiff is informed
23 and believes and thereon alleges that each of the fictitiously named defendants is legally
24 responsible in some manner for the events and occurrences alleged herein, and for the damages
25 suffered by the Class.

26 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
28 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are

1 legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the
2 employer and/or joint employer of Plaintiff and the class members.

3 10. Plaintiff is informed and believe and thereon allege that all defendants, including the
4 fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, partners
5 and/or joint ventures and/or employees of all other defendants, and that all acts alleged herein
6 occurred within the course and scope of said agency, employment, partnership, and joint venture,
7 conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent,
8 authorization and ratification of their co-defendants.

9 **FACTS**

10 11. From August 2018 to March 2021, Plaintiff was employed by Defendants as a
11 Recruiter - Level 2. Plaintiff was classified as an exempt employee.

12 12. Throughout Plaintiff's employment with Defendants, Plaintiff worked more than
13 forty (40) hours per week, and more than eight (8) hours per day.

14 13. As an exempt employee, Plaintiff worked an average of 55 to 60 hours per week due
15 to Defendant's requirement to be "on-call" during evenings and weekends, however, Plaintiff was
16 not paid correct overtime compensation for such additional work.

17 14. While misclassified as an exempt employee, Plaintiff had no authority to make
18 decisions concerning hiring or firing employees, rates of pay, placement fees, job performance,
19 disciplinary matters, or specific job duties and was required to perform non-exempt job duties
20 lacking managerial or discretionary character at least 50 percent of her working hours.

21 15. Plaintiff's job duties consisted of assisting in the placement process for nurses by
22 sourcing potential nursing candidates, scheduling their training, and collecting all documents from
23 new hires; communicating with all teachers, advisors, and other staff about each case within their
24 district; answering the phone; collecting timesheets, ensuring they were complete, and that all
25 timesheets were received; and "on-call coordination," which required answering phone calls, text
26 messages, and emails outside of business hours to facilitate last minute scheduling changes.

27 16. During the relevant time period, Plaintiff worked an average of 15 to 20 hours of
28 uncompensated overtime per week while misclassified as an exempt employee. Plaintiff was not

1 compensated correctly for the time she was required to be “on-call” during evenings and weekends.

2 17. Plaintiff and other class members were not paid for this time, even though: (1) no
3 practical administrative difficulty of recording the additional time exists or existed for Defendants
4 during the relevant time period; and (2) it is or was feasible for Defendants to determine or estimate
5 the average time each employee spends “on call” as all class members at issue in this action are
6 required by the same policies to be “on call” part of their work duties. *See also Troester v.*
7 *Starbucks Corp.*, (2018) 5 Cal.5th 829.

8 18. Additionally, as an exempt employee, Plaintiff and other class members’ meal and
9 rest breaks were not tracked and/or recorded, and at times were not provided in compliance with
10 California law. Because they were misclassified as exempt employees, Plaintiff and class members
11 did not receive meal or rest break premium penalty payments.

12 19. As a result of Defendant’s failure to pay Plaintiff and other class members for all
13 hours worked and all wages and premiums owed, including overtime, Plaintiff and other class
14 members’ wage statements were inaccurate, in violation of Labor Code § 226(a).

15 20. Additionally, during the relevant time period, Plaintiff and other class members were
16 required to use their personal cellphones while they were “on-call” prior to the Covid-19 pandemic.
17 Plaintiff and class members have not been reimbursed for all cellphone expenses.

18 21. Plaintiff and other class members incurred necessary expenditures and losses in
19 direct consequence of the discharge of their employment duties and their obedience to the directions
20 of Defendants. Expenses include, but are not limited to, mobile phone charges. Defendants failed to
21 reimburse Plaintiff and other class members for those expenses, in violation of Labor Code § 2802.

22 22. Upon information and belief, the above-mentioned unlawful employment practices
23 by Defendant were applied the same to all Recruiters in all of Defendants’ locations in the State of
24 California.

25 23. Defendants’ conduct, as alleged here, has caused Plaintiff and class members
26 damages including, but not limited to, loss of wages and compensation. Defendants are liable to
27 Plaintiff and the class for failing to pay meal and rest break premiums, failing to pay all straight-
28 time and/or overtime wages owed for each pay period, failing to provide timely and accurate wage

1 statements, failing to pay all wages due upon termination, failure to reimburse necessarily incurred
2 business expenses, and unfair competition.

3 24. Plaintiff is a member of, and seeks to be representatives for, the class of similarly
4 situated employees who all have been exposed to, have suffered, and/or were permitted to work
5 under Defendants' unlawful employment practices as alleged herein.

6 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

7 25. Plaintiff brings this action on behalf of herself and on behalf of all others similarly
8 situated as members of the Class they seek to represent. The class period is from November 3, 2020
9 until February 14, 2025 ("Class Period.") The Class is defined as:

10 *Recruiters who are employed by, or formerly were employed by, Defendants in*
11 *California between November 3, 2020 and February 14, 2025 ("Class Period").*

12 26. Plaintiff further seeks to represent the following subclasses:

13 **The Minimum and/or Regular Wages Subclass**

14 "All Recruiters employed by Defendants in California during the Class Period, and who
15 worked at least one shift less than eight hours in a workday and/or worked less than 40
16 hours during the workweek."

17 **The Overtime Wages Subclass**

18 "All Recruiters employed by Defendants in California during the Class Period, and who
19 worked at least one shift longer than eight hours in a workday and/or worked more than 40
20 hours during the workweek."

21 **The Meal Break Subclass**

22 "All Recruiters employed by Defendants in California during the Class Period, and who
23 worked at least one shift longer than five hours in a workday."

24 **The Rest Break Subclass**

25 "All Recruiters employed by Defendants in California during the Class Period and who
26 worked at least one shift longer than three and a half hours in a workday."

27 **The Itemized Wage Statement Subclass**

28 "All Recruiters employed by Defendants in California during the Class Period, and who
have received at least one wage statement from Defendant."

The Expense Reimbursement Subclass

"All Recruiters employed by Defendants in California during the Class Period, and who
incurred business expenses."

The Waiting Time Penalties Subclass

"All members of the Class, the Regular Wages Subclass, Overtime Wages Subclass, Meal

1 Break Subclass, and the Rest Break Subclass who separated employment with Defendants
2 at any point during the past three (3) years prior to the filing of this action.”

3 **The UCL Subclass**

4 “All Recruiters employed by Defendants in California during the Class Period, regarding
5 whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or
6 practices prohibited by B&PC §17200, et seq. as specifically described herein.”

7 27. Plaintiff reserves the right to amend or otherwise alter the class definition, or to
8 propose or eliminate subclasses, in response to facts learned through discovery, legal arguments
9 advanced by Defendants or otherwise.

10 28. This action has been brought and may be properly maintained as a class action
11 pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

12 29. **Numerosity of the Class:** Pursuant to Code of Civil Procedure § 382, members of
13 the Class are so numerous that their individual joinder is impracticable. Plaintiff estimates that
14 there are several hundred current and former non-exempt employees of Defendants employed in
15 California during the class period. The precise number of Class members and their addresses are
16 known to Plaintiff or will be known to Plaintiff through discovery. Class members may be notified
17 of the pendency of this action by mail, electronic mail, the Internet, or published notice.

18 30. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant
19 to Code of Civil Procedure § 382, common questions of law and fact and common answers exist as
20 to all members of the Class. These questions predominate over any questions affecting only
21 individual Class members. These common legal and factual questions and answers include:

- 22 a. Whether Plaintiff and the members of the class were misclassified as exempt employees
23 and not paid all wages owed to them, including regular and overtime wages;
- 24 b. Whether Plaintiff and members of the class were not paid for time worked when spent
25 “on call;”
- 26 c. Whether Defendants violated Labor Code § 226.7 and/or 512, applicable California
27 Industrial Welfare Commission Order, and engaged in a pattern or practice of failing to
28 provide timely, off-duty thirty (30) minute meal periods to Plaintiff and members of the
class;

- 1 d. Whether Defendants engaged in a pattern or practice of failing to properly compensate
2 Plaintiff and the members of the class for missed, untimely or on-duty meal periods as
3 required by California law;
- 4 e. Whether Defendants engaged in a pattern or practice of failing to properly compensate
5 Plaintiff and the members of the class for failing to provide ten (10) minute,
6 uninterrupted rest periods as contemplated by California law for work periods in excess
7 of three and one-half (3 ½) hours;
- 8 f. Whether Defendants had a policy or practice of not paying meal or rest period
9 premiums;
- 10 g. Whether Plaintiff and the members of the class were not provided with accurate wage
11 statements as required by Labor Code section 226;
- 12 h. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
13 statements to Plaintiff and members of the class that failed to include payment for all
14 hours worked;
- 15 i. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
16 statements to Plaintiff and members of the class that failed to accurately state the total
17 hours worked, to the detriment of Plaintiff and the members of the class;
- 18 j. Whether Defendants violated Labor Code §2802, by failing to reimburse Plaintiff and
19 the members of the class incurred necessary business expenses, including for using their
20 personal cell phones;
- 21 k. Whether Defendants violated Labor Code §§ 201-203 by failing to pay all wages due
22 upon termination to all Class Members who were terminated or voluntarily quit;
- 23 l. Whether Defendants engaged in unfair practices and violated California Business &
24 Professions Code section 17200 by failing to pay Plaintiff and the members of the class
25 for all time worked, failing to reimburse necessarily incurred business expenses, and
26 failing to provide meal and rest periods nor pay premiums; and
- 27 m. The nature and extent of class-wide injury and the measure of damages or restitution.
- 28 31. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class

1 she seeks to represent because Plaintiff, as an exempt Recruiter employee of Defendants, was
2 exposed and subjected to the same unlawful business practices as other employees employed by
3 Defendants during the class period. Plaintiff and the members of the class they seek to represent
4 sustained the same types of damages and losses.

5 32. **Adequacy:** Plaintiff is an adequate representative of the class she seeks to represent
6 because her interests do not conflict with the interests of the members of the class Plaintiff seeks to
7 represent. Plaintiff has retained counsel competent and experienced in complex class action
8 litigation and Plaintiff intends to prosecute this action vigorously. The interests of the members of
9 the class will be fairly and adequately protected by Plaintiff and her counsel.

10 33. **Superiority and Substantial Benefit:** The class action is superior to other available
11 means for the fair and efficient adjudication of Plaintiff's and the Class members' claims. The
12 damages suffered by each individual Class member may be limited. Damages of such magnitude
13 are small given the burden and expense of individual prosecution of the complex and extensive
14 litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the
15 Class members to redress the wrongs done to them on an individual basis. Even if members of the
16 Class themselves could afford such individual litigation, the court system could not. Individualized
17 litigation increases the delay and expense to all parties and the court system due to the complex
18 legal and factual issues of the case. By contrast, the class action device presents far fewer
19 management difficulties and provides the benefits of single adjudication, economy of scale, and
20 comprehensive supervision by a single court.

21 34. The Class should also be certified because:

- 22 a. The prosecution of separate actions by individual members of the Class would create a
23 risk of inconsistent or varying adjudications with respect to individual Class members
24 which would establish incompatible standards of conduct for Defendants;
- 25 b. The prosecution of separate actions by individual members of the Class would create a
26 risk of adjudication with respect to them, which would, as a practical matter, be
27 dispositive of the interests of the other Class members not parties to the adjudications,
28 or substantially impair or impede their ability to protect their interests; and

1 c. Defendants have acted or refused to act on grounds generally applicable to the Class,
2 and/or the general public, thereby making appropriate final and injunctive relief with
3 respect to the Class as a whole.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM, REGULAR AND/OR OVERTIME WAGES**
6 **(Violation of Labor Code §§ 218, 218.5, 218.6, 510, 1194, 1198, and the applicable Wage**
7 **Order)**
8 **(Against all defendants)**

9 35. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
10 herein.

11 36. The California Labor Code establishes the fundamental right of all employees in
12 the State of California to be paid wages in a timely fashion for their work.

13 37. The applicable Industrial Wage Order provides that an employer may not pay
14 employees less than the applicable minimum wage for all hours worked.

15 38. Pursuant to the applicable Industrial Wage Order, Defendants are required to pay
16 Plaintiff, and the members of the Class, for all hours worked, meaning the time which an
17 employee is subject to the control of the employer.

18 39. At all relevant times during the class period, Defendants failed to pay Plaintiff and
19 other members of the class wages for all hours worked, in that Plaintiff and the class were
20 misclassified as exempt employees and not paid overtime wages, including for time spent “on call.”
21 As a result, Plaintiff and other class members worked hours they were not paid for, including
22 overtime in the instances Plaintiff and other class members worked over eight hours in a day and/or
23 40 hours a week. Plaintiff and the Class Members therefore seek unpaid wages and penalties.

24 40. Labor Code § 510 and the applicable Wage Order provide that employees in
25 California shall not be employed more than eight hours in any workday or forty hours in a
26 workweek unless they receive additional compensation beyond their regular wages in amounts
27 specified by law. Specifically, Labor Code § 510(a) requires that: Any work in excess of eight
28 hours in one workday and any work in excess of 40 hours in any one workweek shall be
compensated at the rate of no less than one and one-half times the regular rate of pay for an
employee.

1 41. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
2 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code
3 §1198 makes employment of an employee for longer hours than the IWC set or under conditions
4 the IWC prohibits unlawful.

5 42. During the class period, Plaintiff and other class members have worked more than
6 eight hours in a workday, and/or more than forty hours in a workweek.

7 43. During the class period, Defendants have failed to pay Plaintiff and other class
8 members the overtime compensation premium for those unpaid hours they have worked in excess
9 of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the
10 applicable Wage Order.

11 44. In committing the violations of state law as herein alleged, Defendants have
12 knowingly and willfully refused to perform its obligations to compensate Plaintiff and members of
13 the class for all wages earned and all hours worked. As a direct result, Plaintiff and other members
14 of the class have suffered and continue to suffer, substantial losses related to the use and
15 enjoyment of such compensation, wages and lost interest on such monies and expenses and
16 attorney's fees in seeking to compel Defendants to fully perform their obligation under state law,
17 all to their respective damage in amounts according to proof at trial and within the jurisdiction of
18 this Court.

19 45. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of
20 the unpaid wages resulting from Defendants' minimum, regular and/or overtime wage violations
21 including interest thereon, reasonable attorney's fees and costs of suit, and liquidated damages to
22 the fullest extent permissible pursuant to Labor Code § 218, 218.5, 218.6, and 1194(a).

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PROVIDE MEAL PERIODS**
25 **(Violation of Labor Code §§ 512, 226.7, and the Applicable Wage Order)**
26 **(Against all defendants)**

26 46. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
27 herein.

28 47. California Labor Code § 226.7(b) provides, "An employer shall not require an

1 employee to work during a meal or rest period mandated pursuant to an applicable order of the
2 Industrial Welfare Commission”.

3 48. The applicable wage order provides, in pertinent part: “[n]o employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than 30
5 minutes, except that when a work period of not more than six (6) hours will complete the day’s
6 work the meal period may be waived by mutual consent of the employer and the employee.”

7 49. Labor Code § 512(a) provides, in pertinent part: “[a]n employer may not employ an
8 employee for a work period of more than five hours per day without providing the employee with a
9 meal period of not less than 30 minutes, except that if the total work period per day of the employee
10 is no more than six hours, the meal period may be waived by mutual consent of both the employer
11 and employee. An employer may not employ an employee for a work period of more than 10 hours
12 per day without providing the employee with a second meal period of not less than 30 minutes,
13 except that if the total hours worked is no more than 12 hours, the second meal period may be
14 waived by mutual consent of the employer and the employee only if the first meal period was not
15 waived.”

16 50. As alleged herein, Defendants failed to authorize and permit timely and
17 uninterrupted meal periods during the Class period. Plaintiff and members of the class were
18 classified as exempt employees and subject to not being provided timely and uninterrupted meal
19 breaks at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.
20 Additionally, Plaintiff were not paid premiums when their meal periods were interrupted, missed
21 and/or untimely.

22 51. In addition, Defendants failed to authorize and permit timely second meal periods
23 during the Class period on shifts that exceeded 10 hours. Plaintiff and members of the class were
24 routinely required to work without a timely second meal break at the direction of Defendants and/or
25 with Defendants’ knowledge and acquiescence. Plaintiff did not waive her second meal break.

26 52. By its actions in requiring its employees to work through meal periods and/or its
27 failure to relieve the employees of their duties for their off-duty meal periods, Defendants have
28 violated California Labor Code §§ 226.7, 512 and the applicable wage order, and are liable to

1 Plaintiff and the class.

2 53. As a result of the unlawful acts of Defendants, Plaintiff and the class have been
3 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
4 226.7(c), 512 and the applicable wage order, in the amount of one additional hour of pay at the
5 employee's regular rate of compensation for each workday in which Defendants failed to provide
6 its employees with timely statutory off-duty meal periods.

7 54. Plaintiff, and the other members of the class, are entitled to seek and recover
8 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO PROVIDE REST PERIODS**
11 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
12 **(Against all defendants)**

13 55. Plaintiff re-allege and incorporate all preceding paragraphs as if fully set forth
14 herein.

15 56. California Labor Code § 226.7(b) provides, "An employer shall not require an
16 employee to work during a meal or rest period mandated pursuant to an applicable order of the
17 Industrial Welfare Commission".

18 57. The applicable Industrial Wage Order provides, in pertinent part: "[e]very employer
19 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
20 the middle of each work period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
22 thereof. However, a rest period need not be authorized for employees whose total daily work time is
23 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
24 worked for which there shall be no deduction from wages".

25 58. The applicable Industrial Wage Order further provides: "[i]f an employer fails to
26 provide an employee with a rest period in accordance with the applicable provisions of this order,
27 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
28 compensation for each workday that the rest period is not provided".

59. As alleged herein, Defendants failed to authorize and permit rest breaks during the

1 Class period. Plaintiff and members of the class were at times required to work through rest periods
2 at the direction of Defendants and/or with Defendants' knowledge and acquiescence. Further, class
3 members could work 10 hours and were not offered a third rest break as required under California
4 law. Plaintiff and class members were not paid rest period premiums.

5 60. By its actions in requiring its employees during the class period to work through rest
6 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendants
7 violated the applicable Industrial Wage Order and California Labor Code § 226.7 and are liable to
8 Plaintiff and the class.

9 61. Defendants' unlawful conduct alleged herein occurred in the course of employment
10 of Plaintiff and all others similarly situated and such conduct has continued through the filing of
11 this complaint.

12 62. As a direct and proximate result of Defendants' unlawful actions, Plaintiff and the
13 class have been deprived of timely rest periods and/or were not paid for rest periods taken during
14 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one
15 additional hour of pay at the employee's regular rate of compensation for each workday in which
16 Defendants failed to provide employees with timely and/or paid rest periods.

17 63. Plaintiff, and the other members of the class, are entitled to seek and recover
18 reasonable attorneys' fees and costs pursuant to Labor Code § 226.7.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
21 **(Violation of Labor Code §226)**
22 **(Against all defendants)**

23 64. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
24 herein.

25 65. California Labor Code § 226(a) provides: "[e]very employer shall, semimonthly or
26 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
27 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
28 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

1 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
2 that all deductions made on written orders of the employee may be aggregated and shown as one
3 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
4 the name of the employee and only the last four digits of his or her social security number, [...], (8)
5 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
6 effect during the pay period and the corresponding number of hours worked at each hourly rate by
7 the employee...”.

8 66. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
9 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
10 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
11 accurate itemized statements to the employee causing the employee to suffer injury.

12 67. Plaintiff is informed, believes and thereon alleges that at all times relevant,
13 Defendants knowingly and intentionally failed to furnish and continues to knowingly and
14 intentionally fail to furnish Plaintiff and the members of the class with timely and accurate itemized
15 statements showing the gross wages earned by each of them, as required by Labor Code § 226(a), in
16 that the wages including premiums owed to Plaintiff and the members of the class were not
17 included in gross wages earned by Plaintiff and the members of the class.

18 68. Further, wages owed to Plaintiff and the members of the class for time they worked
19 above 8 hours in a day and 40 hours in a week were not included in gross wages earned by Plaintiff
20 and the members of the class.

21 69. Defendants’ failure to provide Plaintiff and members of the class with accurate
22 itemized wage statements during the class period has caused Plaintiff and the members of the class
23 to incur economic damages in that they were not aware that they were owed and not paid
24 compensation for all hours worked. In addition, as exempt employees Defendants did not record the
25 hours class members worked which masked its underpayment of wages.

26 70. As a result of Defendants’ issuance of inaccurate itemized wage statements to
27 Plaintiff and the members of the class in violation of Labor Code § 226(a), Plaintiff and the
28 members of the class are each entitled to recover penalties pursuant to Labor Code § 226(e).

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FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES
(Violation of Labor Code § 2802, *et seq.*)
(Against all defendants)

71. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.
72. California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures.
73. At all relevant times during the class period, Plaintiff and the members of the class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, all compensation for use of their personal cell phones.
74. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and the members of the class for necessary business-related expenses and costs. Defendants' conduct violates California Labor Code Section 2802.
75. Plaintiff and the members of the class are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest, pursuant to California Labor Code section 2802.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
(Violation of Labor Code §§ 201-203)
(Against all defendants)

76. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.
77. California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior 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.
78. During the Class period, Defendants willfully failed to pay Plaintiff and the members of the class who are no longer employed by Defendants all their earned wages, including wages for

1 all hours worked, either at the time of discharge or within seventy-two hours of their leaving
2 Defendant's employ in violation of California Labor Code §§ 201, 202, and 203.

3 79. Therefore, Plaintiff and the members of the class are entitled to waiting time
4 penalties for each day that has passed that they have not received all wages owed to them, up to 30
5 days.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
8 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**
9 **(Against all defendants)**

10 80. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
11 herein.

12 81. Section 17200 of the California Business and Professions Code (the "UCL")
13 prohibits any unlawful, unfair, or fraudulent business practices.

14 82. Through its action alleged herein, Defendants have engaged in unfair competition
15 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful,
16 unfair, and/or fraudulent business practices under the UCL.

17 83. Defendants' unlawful conduct under the UCL includes, but is not limited to,
18 violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not
19 limited to, failure to pay members of the class wages and compensation they earned through labor
20 provided, and failing to otherwise compensate members of the class as alleged herein. Defendants'
21 fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or
22 misleading information about the time the members of the class worked and the amount of wages
23 or compensation due, failing to provide meal and rest breaks, and failing to reimburse necessarily
24 incurred expenses.

25 84. Plaintiff have standing to assert this claim because they have suffered injury in fact
26 and have lost money as a result of Defendants' conduct.

27 85. Plaintiff and the members of the class seek restitutionary disgorgement from
28 Defendant of monies owed for all hours worked and for unpaid meal and rest period premiums.

86. Plaintiff has assumed the responsibility of enforcement of the laws and public

1 policies specified here by suing on behalf of herself and other similarly situated class members
2 previously or presently working for Defendants in California. Plaintiff's success in this action will
3 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
4 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
5 Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

6 **EIGHTH CAUSE OF ACTION**
7 **VIOLATION OF PRIVATE ATTORNEY GENERAL ACT (PAGA) CLAIM**
8 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**
9 **(Against all defendants)**

10 87. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
11 herein.

12 88. Labor Code §§ 2698 and 2699 (The California Private Attorney General Act of
13 2004, or "PAGA"), expressly establish that any provision of the California Labor Code which
14 provides for a civil penalty to be assessed and collected by The Labor and Workforce Development
15 Agency ("LWDA"), or any of its departments, divisions, commissions, boards, agencies or
16 employees for a violation of the California Labor Code, may be recovered through a civil action
17 brought by an aggrieved employee on behalf of himself or herself, and other current or former
18 employees.

19 89. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
20 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
21 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
22 a civil penalty.

23 90. Plaintiff is an "aggrieved employee" as defined by Labor Code § 2699, because she
24 is an employee of Defendant, and one or more of the Labor Code violations was committed against
25 her.

26 91. Plaintiff asserts all of her claims in this Complaint against Defendant on behalf of
27 herself, and all other members of the Class and/or on behalf of all aggrieved employees, as well as
28 the general public, in her capacity as "private attorney general", and seek all statutory penalties
available under the Labor Code.

92. By reason of the above and pursuant to Labor Code § 2699, Plaintiff Townsend on behalf of herself, and all other members of the Class and/or on behalf of all aggrieved employees, as well as the general public, are entitled to payment of a penalty of \$100 per pay period for each employee for the initial violation, and \$200 per pay period for each employee for each subsequent violation, plus interest.

93. In addition, Plaintiff Townsend, on behalf of herself, and all other members of the Class and/or behalf of all aggrieved employees, as well as the general public, seek and are entitled to have 75% of all recovered penalties and interest allocated to the LWDA and 25% to the Plaintiff Class. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees, expenses and costs pursuant to Labor Code § 2699, and any other applicable statutes.

94. Plaintiff complied with the notice requirements of Labor Code § 2699.3(a)(1) prior to commencing this action. A copy of the letter submitted to the California LWDA on November 3, 2021, via online filing, and copied to Defendants' Agent for Service of Process in California on the same date, via certified mail, in accordance with section 2699.3(a)(1), is attached hereto, as **Exhibit A**, and by reference incorporated herein. An amended letter was submitted to the LWDA on March 20, 2025, attached hereto as **Exhibit B**.

95. As of today's date, the LWDA has not responded to either of Plaintiff's notices.

96. Plaintiff and the Plaintiff Class are also entitled to reasonable attorneys' fees and costs, pursuant to California Labor Code § 2699(g)(1).

PRAYER

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment against Defendants as to the appropriate causes of action as follows:

ON THE FIRST CAUSE OF ACTION

1. For all minimum, straight-time and/or overtime wages owed to Plaintiff and each Class Member for all hours worked;
2. For other compensatory damages and/or statutory damages and statutory penalties resulting from improper compensation according to proof;
3. For statutory attorney fees according to proof;

4. For statutory interest according to proof; and
5. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

ON THE SECOND CAUSE OF ACTION

1. For one hour of wages due to Plaintiff and each Class member for each work period of more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
2. For waiting time penalties according to proof;
3. For statutory costs according to proof; and
4. For statutory interest according to proof.

ON THE THIRD CAUSE OF ACTION

1. For one hour of wages due to Plaintiff and each Class member for each work period of more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten (10) minute rest period for each four (4) hours or major fraction thereof worked;
2. For waiting penalties according to proof;
3. For statutory costs according to proof; and
4. For statutory interest according to proof.

ON THE FOURTH CAUSE OF ACTION

1. For statutory compensation for any harm caused;
2. For compensatory damages and interest thereon for actual harm caused; and
3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and costs.

ON THE FIFTH CAUSE OF ACTION

1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
2. For statutory interest according to proof; and
3. For reasonable attorney's fees and costs pursuant to the Labor Code.

ON THE SIXTH CAUSE OF ACTION

1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for all wages not timely paid upon termination;
2. For penalty enhancement for willful conduct;

3. For statutory interest according to proof; and
4. For reasonable attorney's fees and costs pursuant to the Labor Code.

ON THE SEVENTH CAUSE OF ACTION

1. For the equitable, injunctive and declaratory relief;
2. For liquidated damages pursuant to Labor Code § 1194.1; and
3. For restitutionary disgorgement pursuant to the UCL.

ON THE EIGHTH CAUSE OF ACTION

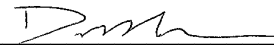
1. For penalties for each violation of the Private Attorney General Act ("PAGA");
2. Pre-Judgment and Post-Judgment interest, as provided by law; and
3. For reasonable attorneys' fees and costs;

ON ALL CAUSES OF ACTION

1. An order that this action may proceed and be maintained as a class action;
2. Reasonable attorney's fees;
3. General, special and consequential damages, to the extent allowed by law;
4. Costs of suit;
5. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5;
6. Prejudgment interest at the maximum legal rate; and
7. Such other relief as the Court may deem just and proper.

DATED: May 8, 2025

THE MARKHAM LAW FIRM

By: 
David R. Markham, Lisa Brevard
*Attorneys for Plaintiff and all others
similarly situated*

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for herself and the members of the class on all claims so triable.

DATED: May 8, 2025

THE MARKHAM LAW FIRM

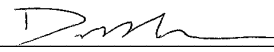
By: 
David R. Markham, Lisa Brevard
*Attorneys for Plaintiff and all others
similarly situated*

Exhibit A

THE MARKHAM LAW FIRM

- 8910 University Center Lane, Suite 400 • San Diego, California 92122 •
- Phone: (619) 399-3995 • Fax: (619) 615-2067 •
- Email: *contact@markham-law.com*

November 3, 2021

Via Online Filing:

<https://dir.tfaforms.net/260>

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

Re: Wage/Hour Claims of Michelle Townsend (“Employee”) against Maxim Healthcare Services, Inc., (“Employer” or “Maxim”)

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency
 (“LWDA”)

From: Michelle Townsend, who was subjected to the wage and hour practices set forth below

The Employee submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a) and alleges as follows:

Ms. Michelle Townsend is a resident of the State of California. During the applicable time period, Ms. Townsend was employed in California by Maxim Healthcare Services, Inc. Ms. Townsend began working for Maxim in or about August 2018 as a Recruiter - Level 2 and her employment ended sometime in March 2021. She was classified as an exempt employee. As an exempt employee, she worked an average of 55 to 60 hours per week due to Maxim’s requirement to be “on-call” during evenings and weekends, but she was not paid any overtime compensation for such additional work.

While misclassified as an exempt employee, Ms. Townsend had no authority to make decisions concerning hiring or firing employees, rates of pay, placement fees, job performance, disciplinary matters, or specific job duties and was required to perform non-exempt job duties lacking managerial or discretionary character at least 50 percent of her working hours.

Ms. Townsend’s job duties consisted of assisting in the placement process for nurses by sourcing potential nursing candidates, scheduling their training, and collecting all documents from new

hires; communicating with all teachers, advisors, and other staff about each case within their district; answering the phone; collecting timesheets, ensuring they were complete, and that all timesheets were received; and “on-call coordination,” which required answering phone calls, text messages, and emails outside of business hours to facilitate last minute scheduling changes.

Maxim Healthcare, Inc. employs numerous employees in the State of California and is headquartered in Columbia, Maryland. During the relevant time period, the Employer utilized consistent policies and procedures regarding Ms. Townsend, and others similarly situated employees, in violation of the sections of the Labor Code specified below, and the applicable Wage Order. The following is a summary of the violations. .

Violation of California Labor Code § 510, and 1198

Labor Code establishes fundamental right of all employees in California to be paid wages for their work in a timely fashion. Under section 510(a) and 1198 of the California Labor Code, and an applicable Wage Order, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek.

During the relevant time period, Ms. Townsend worked an average of 15 to 20 hours of uncompensated overtime per week while misclassified as an exempt employee. Ms. Townsend was not compensated for the time she was required to be “on-call.” Maxim failed to pay Ms. Townsend for all hours worked, including 1.5–times her hourly rate for her work performed over 8 hours in a day, and/or 40 hours in a week.

Maxim willfully, and on a systematic and company–wide basis, maintained and implemented a non–compliant practice and/or policy for the payment of straight wages and overtime. Specifically, Maxim misclassified Ms. Townsend and all other aggrieved employees and failed to pay all straight time and overtime wages owed to them at the correct rate of pay.

Ms. Townsend and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558, 218.5, 218.6, 1194, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 226 and 1174

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, “gross wages earned,” (§226(a)(1)), “net wages earned” (§226(a)(5)), “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...” (§226(a)(9)) and “the inclusive dates of the period for which the employee is paid. (§226(a)(6).)

Labor Code Section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any 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).

During the relevant time period, Maxim knowingly and intentionally provided Ms. Townsend and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. By virtue of misclassifying aggrieved employees as exempt, Maxim knowingly and intentionally omitted required information from the wage statements of Ms. Townsend and the aggrieved employees. For instance, the wage statements issued to Ms. Townsend and other aggrieved employees failed to itemize the number of regular and overtime hours worked during the pay period, and the rate of pay for regular and overtime wages, among other required information.

Labor Code section 1174(d) provides that [e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants..." Labor Code Section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Maxim willfully failed to maintain accurate payroll records for Ms. Townsend and other aggrieved employees by improperly classifying them as exempt employees, incorrect regular and overtime rates of pay, and failing to correctly list the gross wages and net wages.

Because Maxim failed to list the correct classification status, regular and overtime rates of pay, gross wages earned, and net wages on wage statements, Ms. Townsend and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Townsend and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment.

Ms. Townsend and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204

California Labor Code section 204 requires all wages earned by any person in any employment between the 1st and 15th days, inclusive, 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, and all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee are due and payable between the 1st and 10th day of the following month. California Labor Code section 204 also requires 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, California 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 calendar days following the close of the payroll period.

During the relevant time period, Maxim failed to pay Ms. Townsend and other aggrieved employees all wages due to them within the time period specified by section 204—specifically, regular and overtime wages not paid as a result of failing to properly classify them as non-exempt employees.

Ms. Townsend and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201-203

In addition, pursuant to Labor Code sections 201-203, aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Maxim's failure to pay all wages due upon separation of employment. Here, because Maxim failed to pay her regular and overtime wages for all hours worked, Ms. Townsend alleges that the Maxim has violated Labor Code sections 201-203, and the former employees of Maxim are entitled to waiting time penalties.

Violation of California Labor Code § 2802

Lastly, during the applicable statutory period, Ms. Townsend and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Maxim. Expenses include, but are not limited to, mobile phone charges, as Ms. Townsend was required to use her personal cellphone during the time she was "on-call" prior to the Covid-19 pandemic. This violates California Labor Code section 2802, which provides that the "[E]mployer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

Ms. Townsend, as an aggrieved employee and on behalf of herself and all other current or former misclassified Maxim Healthcare Services, Inc., recruiter employees, seeks all penalties or

remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3(a/c)(2)(A). Please advise within sixty (60) calendar days of the filing/postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the filing/postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employees may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

The Markham Law Firm and United Employees Law Group represent Ms. Townsend in this matter.

Very truly yours,

THE MARKHAM LAW FIRM



David Markham
Maggie Realin
Lisa Brevard

cc: (via Certified Mail)

Corporation Service Company
Which Will Do Business in California as CSC –
Lawyers Incorporating Service
*Agent for Service of Process for Maxim
Healthcare Services, Inc.*
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

Maxim Healthcare Services, Inc.
Attn: Legal Department
7227 Lee Deforest Drive
Columbia, MD 21046-3236

Cc: (via Electronic Mail)
Walter L. Haines

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Co. Which
will do Business in CA as
CSC Lawyers Incorporating Service.
2710 Gateway Oaks Dr., Suite 130N
Sacramento, CA 95833



9590 9402 6911 1104 7002 13

2. Article Number (Transfer from service label)

7021 0950 0002 3110 3752

PS Form 3811, July 2020 PSN 7530-02-000-91

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

U.S. Postal Service™

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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$7.53

Total Postage and Fees

\$ Agent for SOP - Maxion

Sent To CSC Lawyers Incorporating Service.

Street and Apt. No., or PO Box No. 2710 Gateway Oaks Dr. Ste 130N

City, State, ZIP+4® Sacramento, CA 95833

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Maxim Healthcare Servs. Inc.
Attn: Legal Dept.
7227 Lee Deforest Dr.
Columbia, MD 21046



9590 9402 6911 1104 7002 20

2. Article Number (Transfer from service label)

7021 0950 0002 3110 3769

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION

A. Signature

X

B. Received by (Print)

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

Mail Restricted Delivery

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$7.53

Total Postage and Fees

Sent To Maxim Healthcare Legal Dept.

Street and Apt. No., or PO Box No. 7227 Lee Deforest Dr.

City, State, ZIP+4® Columbia MD 21046

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Exhibit B

THE MARKHAM LAW FIRM

• 888 Prospect Street, Suite 200 • La Jolla, California 92037 •
• Phone: (619) 399-3995 • Fax: (619) 323-1684 •
• Email: *contact@markham-law.com*

March 20, 2025

Via Online Filing:

<https://dir.tfaforms.net/260>

Labor and Workforce Development Agency

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, California 94612

Re: Wage/Hour Claims of Michelle Townsend (“Employee”) against Maxim Healthcare Staffing Services, Inc. (previously incorrectly identified as Maxim Healthcare Services, Inc.), now known as Amergis Healthcare Services, Inc. (“Employer” or “Maxim”)

AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency (“LWDA”)

From: Michelle Townsend, who was subjected to the wage and hour practices set forth below

The Employee submits this Amended Notice, supplementing the PAGA letter previously submitted on November 3, 2021, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a) and alleges as follows:

Ms. Michelle Townsend is a resident of the State of California. During the applicable time period, Ms. Townsend was employed in California by Maxim Healthcare Staffing Services, Inc. Ms. Townsend began working for Maxim in or about August 2018 as a Recruiter - Level 2 and her employment ended sometime in March 2021. She was classified as an exempt employee. As an exempt employee, she worked an average of 55 to 60 hours per week due to Maxim’s requirement to be “on-call” during evenings and weekends, but she was not paid any overtime compensation for such additional work.

While misclassified as an exempt employee, Ms. Townsend had no authority to make decisions concerning hiring or firing employees, rates of pay, placement fees, job performance, disciplinary matters, or specific job duties and was required to perform non-exempt job duties lacking managerial or discretionary character at least 50 percent of her working hours.

Ms. Townsend's job duties consisted of assisting in the placement process for nurses by sourcing potential nursing candidates, scheduling their training, and collecting all documents from new hires; communicating with all teachers, advisors, and other staff about each case within their district; answering the phone; collecting timesheets, ensuring they were complete, and that all timesheets were received; and "on-call coordination," which required answering phone calls, text messages, and emails outside of business hours to facilitate last minute scheduling changes.

Maxim employs numerous employees in the State of California and is headquartered in Columbia, Maryland. During the relevant time period, the Employer utilized consistent policies and procedures regarding Ms. Townsend, and others similarly situated employees, in violation of the sections of the Labor Code specified below, and the applicable Wage Order. The following is a summary of the violations.

Violation of California Labor Code § 510, and 1198

Labor Code establishes fundamental right of all employees in California to be paid wages for their work in a timely fashion. Under section 510(a) and 1198 of the California Labor Code, and an applicable Wage Order, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek.

During the relevant time period, Ms. Townsend worked an average of 15 to 20 hours of uncompensated overtime per week while misclassified as an exempt employee. Ms. Townsend was not compensated for the time she was required to be "on-call." Maxim failed to pay Ms. Townsend for all hours worked, including 1.5-times her hourly rate for her work performed over 8 hours in a day, and/or 40 hours in a week.

Maxim willfully, and on a systematic and company-wide basis, maintained and implemented a non-compliant practice and/or policy for the payment of straight wages and overtime. Specifically, Maxim misclassified Ms. Townsend and all other aggrieved employees and failed to pay all minimum, straight time and overtime wages owed to them at the correct rate of pay.

Ms. Townsend and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 218.5, 218.6, 1194, and/or 2699(a), (f)-(g).

Violation of California Labor Codes § 226.7 and 512

California Labor Code section 512 provides no employer shall employ any person for a work period of more than five (5) hours without a duty-free meal period of not less than 30 minutes. Under IWC Wage Orders, California Code of Regulations, and California Labor Code section 226.7, if an employer fails to provide an employee a duty-free meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the meal period is not provided.

During the applicable time period, Ms. Townsend and other aggrieved employees were misclassified as exempt employees and at times denied duty-free meal periods. Because classified as exempt employees, meal periods were not recorded, raising a presumption that meal periods were not provided. Further, Ms. Townsend and other aggrieved employees were not provided the second meal breaks on shifts longer than 10 hours. Ms. Townsend and other aggrieved employees were not paid premiums for missed or non-compliant meal breaks.

Similarly, under applicable IWC Wage Orders and California Code of Regulations require employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. The Wage Orders and Regulations also state if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period was not provided. These remedies are codified under California Labor Code section 226.7.

Additionally, Maxim at times failed to permit Plaintiff and aggrieved employees with duty-free rest periods during the applicable time period. As exempt employees, Ms. Townsend and aggrieved employees were not paid rest period premiums.

Ms. Townsend and other aggrieved employees are entitled to seek and recover reasonable attorneys' fees and costs and penalties pursuant to California Labor Code sections 512, 226.7, and 558.

Violation of California Labor Code § 226 and 1174

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (§226(a)(1)), "net wages earned" (§226(a)(5)), "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." (§226(a)(9)) and "the inclusive dates of the period for which the employee is paid. (§226(a)(6).)

Labor Code Section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any 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).

During the relevant time period, Maxim knowingly and intentionally provided Ms. Townsend and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. By virtue of misclassifying aggrieved employees as exempt, Maxim knowingly and intentionally omitted required information from the wage statements of Ms. Townsend and the aggrieved employees. For instance, the wage statements issued to Ms. Townsend and other aggrieved employees failed to itemize the number of regular and overtime hours worked during the pay period, and the rate of pay for regular and overtime wages, among other required information.

Labor Code section 1174(d) provides that [e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants..." Labor Code Section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Maxim willfully failed to maintain accurate payroll records for Ms. Townsend and other aggrieved employees by improperly classifying them as exempt employees, incorrect regular and overtime rates of pay, and failing to correctly list the gross wages and net wages.

Because Maxim failed to list the correct classification status, regular and overtime rates of pay, gross wages earned, and net wages on wage statements, Ms. Townsend and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Townsend and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment.

Ms. Townsend and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204

California Labor Code section 204 requires all wages earned by any person in any employment between the 1st and 15th days, inclusive, 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, and all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee are due and payable between the 1st and 10th day of the following month. California Labor Code section 204 also requires 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, California 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 calendar days following the close of the payroll period.

During the relevant time period, Maxim failed to pay Ms. Townsend and other aggrieved employees all wages due to them within the time period specified by section 204—specifically, regular and overtime wages not paid as a result of failing to properly classify them as non-exempt employees.

Ms. Townsend and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201-203

In addition, pursuant to Labor Code sections 201-203, aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Maxim's failure to pay all wages due upon separation of employment. Here, because Maxim failed to pay her regular and overtime wages for all hours worked, as well as premium payments owed, Ms. Townsend alleges that the Maxim has violated Labor Code sections 201-203, and the former employees of Maxim are entitled to waiting time penalties.

Violation of California Labor Code § 2802

Lastly, during the applicable statutory period, Ms. Townsend and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Maxim. Expenses include, but are not limited to, mobile phone charges, as Ms. Townsend was required to use her personal cellphone during the time she was "on-call" prior to the Covid-19 pandemic. This violates California Labor Code section 2802, which provides that the "[E]mployer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

Ms. Townsend, as an aggrieved employee and on behalf of herself and all other current or former misclassified Maxim recruiter employees, seeks all penalties or remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3(a/c)(2)(A). Please advise within sixty (60) calendar days of the filing/postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the filing/postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employees may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

The Markham Law Firm, Cohelan Khoury & Singer, and United Employees Law Group represent Ms. Townsend in this matter.

Very truly yours,

THE MARKHAM LAW FIRM



David Markham
Lisa Brevard

cc: (via Certified Mail)

Corporation Service Company
Which Will Do Business in California as CSC –
Lawyers Incorporating Service
*Agent for Service of Process for Maxim
Healthcare Staffing Services, Inc.*
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

Maxim Healthcare Staffing Services, Inc.
Attn: Legal Department
7227 Lee Deforest Drive
Columbia, MD 21046-3236

Amergis Healthcare Services, Inc.
Attn: Legal Department
7227 Lee Deforest Drive
Columbia, MD 21046-3236

Cc: (via Electronic Mail)
Walter L. Haines
Michael D. Singer
Isam C. Khoury
Maggie K. Realin

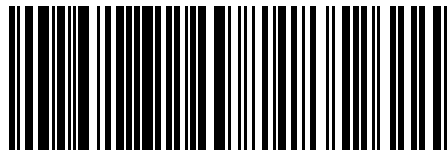
The Markham Law Firm
888 Prospect Street Suite 200
La Jolla CA 92037

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Amergis Healthcare Services, Inc.
Attn: Legal Department
7227 Lee Deforest Drive
Columbia MD 21046-3236
USA



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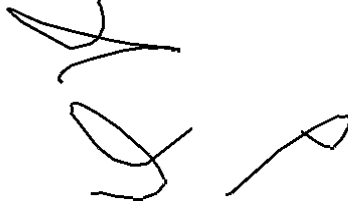
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Date Produced: 03/31/2025

LETTERSTREAM:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 4298 0415 7247 76. Our records indicate that this item was delivered on 03/24/2025 at 11:37 a.m. in COLUMBIA, MD 21046. The scanned image of the recipient information is provided below.

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Address of Recipient :

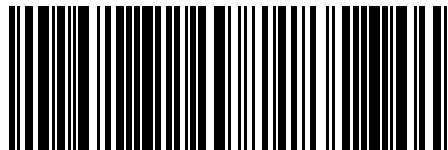


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The Markham Law Firm
888 Prospect Street Suite 200
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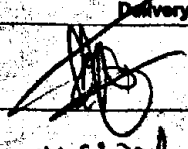
Agent for Service of Process for Maxim Healthcare Staffing Services, Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833-3505
USA

Date Produced: 03/31/2025

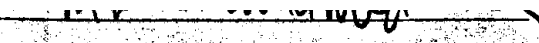
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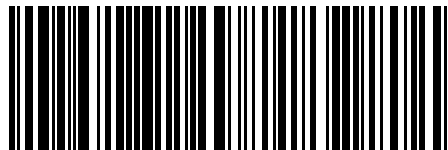
The Markham Law Firm
888 Prospect Street Suite 200
La Jolla CA 92037



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Maxim Healthcare Staffing Services, Inc.
Attn: Legal Department
7227 Lee Deforest Drive
Columbia MD 21046-3236
USA

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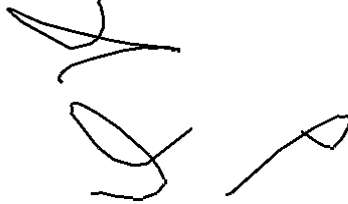
9214 8901 4298 0415 7248 06

Date Produced: 03/31/2025

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I am a resident of the State of California, employed in the county of San Diego. I am over the age of 18 years and not a party to the above-titled action. My business address is 888 Prospect Street, Suite 200, La Jolla, CA 92037.

• **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

Defense counsel for Maxim Healthcare Services, Inc.:

Michael S. Kun, Esq.
mkun@ebglaw.com
Kevin Sullivan, Esq.
KSullivan@ebglaw.com
1925 Century Park East, Suite 500
Los Angeles, CA 90067-2506
Telephone: (310) 556-8861/Facsimile: (310) 553-2165

[X] BY ELECTRONIC SERVICE VIA ONE LEGAL. I caused a true and correct copy of the document(s) to be served through the court's e-filing vendor One Legal addressed to the party(ies) shown herein appearing on the above-entitled case.

Executed on **May 8, 2025** at San Diego, California.

Noor Haleem