

AARON COLBY (State Bar No. 247339)
aaron@colbylegal.com
ZOE YUZNA (State Bar No. 268496)
zoe@colbylegal.com
COLBY LAW FIRM, PC
13263 Ventura Boulevard, Suite 203
Studio City, California 91604
Telephone: (818) 253-1599
Fax: (818) 475-1981

Attorneys for Plaintiff
JENNIFER GUZMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Assigned for All Purposes Judge Randall J. Sherman

JENNIFER GUZMAN, an individual,

Plaintiff,

vs.

NEWPORT HEART MEDICAL GROUP,
INC., a corporation; and DOES 1 through 20
inclusive,

Defendant.

Case No. 30-2022-01261989-CU-WT-CXC

PLAINTIFF’S COMPLAINT FOR:

- 1. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
- 2. HARASSMENT AND HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOVERNMENT CODE SECTION 12490(j)**
- 3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
- 4. DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(a)**
- 5. RETALIATION FOR HARASSMENT AND/OR DISCRIMINATION COMPLAINTS IN VIOLATION OF GOVERNMENT CODE SECTION 12940(h)**
- 6. FAILURE TO PREVENT HARASSMENT AND/OR DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(k)**

[CONTINUED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 7. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF GOVERNMENT CODE SECTION 12940(n)**
- 8. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(m)**
- 9. RETALIATION FOR USING PAID SICK LEAVE IN VIOLATION OF LABOR CODE SECTION 246.5(c)**
- 10. RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**
- 11. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE SECTIONS 1194, 1194.2, 1197, 1197.1**
- 12. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1198, 1199**
- 13. FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS IN VIOLATION OF LABOR CODE SECTION LABOR CODE SECTIONS 226.7 AND 512**
- 14. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7**
- 15. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226(a)**

[CONTINUED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**16. FAILURE TO PAY WAGES OWED
UPON SEPARATION OF
EMPLOYMENT IN VIOLATION OF
LABOR CODE SECTIONS 201 TO
203**

**17. FAILURE TO PAY OR REIMBURSE
NECESSARY EXPENSES IN
VIOLATION OF LABOR CODE
SECTION 2802**

**18. PRIVATE ATTORNEY’S GENERAL
ACT, LABOR CODE SECTION 2698
ET SEQ.**

JURY TRIAL DEMANDED

Plaintiff JENNIFER GUZMAN (“Plaintiff”) alleges and complains against Defendant NEWPORT HEART MEDICAL GROUP, INC. and DOES 1 through 20, inclusive (“Defendants”) as follows:

INTRODUCTION

1. This is an employment lawsuit alleging claims for wrongful termination, retaliation, discrimination, and harassment, along with wage-and-hour causes of action under the Labor Code.

2. Plaintiff worked for Defendants as a Clinical Medical Assistant without issue until Plaintiff missed work due to a COVID-19 exposure and then informed Defendants her sons tested positive for COVID-19.

3. Defendants permitted Plaintiff to go to work despite her sons’ COVID-19 diagnosis, but then Defendants treated Plaintiff like a pariah. Defendants publicly lashed out at Plaintiff when she lowered her mask for a moment to adjust her hair so she could wear her mask tighter. Then, Defendants publicly fired Plaintiff on-the-spot after Plaintiff asked Defendants why they had her come to work if they had such concerns about COVID-19.

4. Defendants did not give Plaintiff her final pay when they fired her, in blatant disregard of their obligations under the Labor Code. Prior to firing Plaintiff, Defendants similarly disregarded their obligations under the Labor Code throughout Plaintiff’s employment by failing to

1 pay Plaintiff for all work performed, failing to provide Plaintiff with uninterrupted meal and rest
2 breaks, and failing to pay for or reimburse Plaintiff for her work uniform (scrubs).

3 5. On these bases, Claimant seeks damages and penalties for wrongful termination,
4 retaliation, discrimination, and harassment; unpaid wages and interest thereon and penalties (for
5 failure to pay overtime wages; failure to authorize or permit all legally required and/or compliant
6 meal periods and/or to pay meal period premium wages; and failure to authorize or permit all legally
7 required and/or compliant rest periods and/or to pay rest period premium wages); compensation for
8 unreimbursed business expenses; statutory penalties for failure to provide accurate wage
9 statements; statutory waiting time penalties in the form of continuation wages for failure to timely
10 pay all wages due upon separation of employment; and reasonable attorney's fees pursuant to the
11 Government Code and the Labor Code, as well as costs and interest.

12 6. Additionally, pursuant to the Private Attorney's General Act, Labor Code section
13 2698 *et seq.* ("PAGA"), Plaintiff seeks civil penalties due to Plaintiff, other Aggrieved Employees
14 as defined herein, and the State of California for each of Defendants' employees for each pay period
15 during which the employee was subject to one or more of the Labor Code violations alleged herein.

16 **PARTIES | JURISDICTION | VENUE**

17 7. Plaintiff, at all times relevant hereto, is and has been a resident of the State of
18 California.

19 8. Defendant NEWPORT HEART MEDICAL GROUP, INC. is a corporation
20 organized and existing under the laws of California with its principal place of business located at
21 415 Old Newport Boulevard, Newport, California 92663 (the "worksite").

22 9. This Court has personal jurisdiction over Defendants because Defendants conduct
23 business in the State of California.

24 10. Under California Code of Civil Procedure section 395(a), venue is proper in this
25 County because Defendants reside in this County and/or Plaintiff's alleged injuries herein occurred
26 in this County.

27 11. The true names and capacities of the defendants named herein as Does 1 through 20,
28 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who

1 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
2 section 474. Plaintiff believes all of the Doe defendants are California residents. Plaintiff will
3 amend this Complaint to show such true names and capacities when they have been determined.
4 Defendant NEWPORT HEART MEDICAL GROUP, INC. and Doe Defendants are collectively
5 referred to as “Defendant,” “Defendants,” or “Defendant Employers.”

6 12. Plaintiff believes that at all times relevant herein, each defendant designated,
7 including Does 1 through 20, was the agent, managing agent, principal, owner, partner, joint
8 venturer, representative, manager, servant, employee, and/or co-conspirator of each of the other
9 defendants, and was at all times mentioned herein acting within the course and scope of said agency
10 and employment, and that all acts or omissions alleged herein were duly committed with the
11 ratification, knowledge, permission, encouragement, authorization, and consent of each defendant
12 designated herein.

13 13. Defendants, and each of them, acted in concert with one another to commit the
14 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in
15 the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government
16 Code section 12940(i). Defendants, and each of them, formed and executed a conspiracy or
17 common plan pursuant to which they would commit the unlawful acts alleged herein, with all
18 such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
19 actually causing Plaintiff harm.

20 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

21 14. Plaintiff exhausted administrative requirements for bringing her claims.

22 15. **PAGA.** On February 11, 2022, Plaintiff submitted a letter to the California Labor
23 & Workforce Development Agency (“LWDA”) via the California Department of Industrial
24 Relations’ “PAGA Filing” website, and Plaintiff mailed a copy of the letter to Defendant
25 NEWPORT HEART MEDICAL GROUP, INC. via USPS Certified Mail. The letter specifies the
26 Labor Code provisions Defendants violated, and includes the facts and theories supporting
27 Plaintiff’s claims.

28 ///

16. More than sixty-five (65) days have passed since Plaintiff notified Defendants of the violations, and the statutory time period for the LWDA to investigate and/or respond (and for the employer to respond) has concluded.

17. **FEHA.** On May 3, 2022, Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”) setting forth the allegations and claims herein. Plaintiff obtained an immediate Right to Sue from the DFEH the same day.

FACTUAL ALLEGATIONS

18. **Plaintiff's Employment.** On or about August 23, 2021, Defendants hired Plaintiff as a Clinical Medical Assistant to work at their medical facility at the worksite.

19. **Plaintiff's Job Duties.** Throughout Plaintiff's employment, Plaintiff's job duties included direct patient care, answering phone calls, medication refills, and performing vitals on patients. Plaintiff's performance of these duties was exemplary.

20. **Plaintiff's Supervisors.** Throughout Plaintiff's employment, Plaintiff reported to Michelle Crane (Clinical Assistant Manager) and Susan Waataja-Foster (Business Manager).

21. **Plaintiff's Pay.** Throughout Plaintiff's employment, Defendants classified Plaintiff as a "non-exempt" employee, paying Plaintiff \$19 per hour.

22. **Plaintiff's Schedule.** Throughout Plaintiff's employment, Plaintiff's work schedule was typically Monday through Friday, 8 a.m. to 5 p.m.

23. **Regular Rate.** Defendants provided Plaintiff a holiday bonus payment but failed to calculate the holiday bonus into the regular rate of pay for overtime purposes.

24. **Lack of COVID-19 Safety And Other Policies.** Upon hire, Plaintiff did not receive an employee handbook or any set of employment policies, nor did Plaintiff receive any policy on face coverings required for the workplace during the COVID-19 pandemic.

25. **Rounding Time.** Throughout Plaintiff's employment, Defendants failed to pay Plaintiff for all time Plaintiff worked insofar as Defendants rounded Plaintiff's actual clock in and out and meal break start and end times. Exhibit A (paystub showing time paid in 15-minute increments).

///

1 26. **Combining Meal and Rest Breaks.** Throughout Plaintiff's employment,
2 Defendants required Plaintiff to take statutory rest breaks together with Plaintiff's statutory meal
3 break, effectively combining the three breaks into a single break.

4 27. **Expenses Not Reimbursed.** As a condition of Plaintiff's employment, Defendants
5 required Plaintiff to purchase scrubs – i.e., a work uniform – without paying for or reimbursing
6 Plaintiff for the actual cost of the scrubs.

7 28. **Plaintiff Is Exposed To COVID-19 And Takes Sick Leave.** On or about
8 December 28, 2021, Plaintiff was exposed to COVID-19 and began to experience sore throat
9 symptoms. Plaintiff notified Susan Waataja-Foster and Michelle Crane about the symptoms and
10 COVID-19 exposure. Plaintiff began to feel better and received negative COVID-19 tests, allowing
11 Plaintiff to return to work on January 10, 2022. Defendants did not provide Plaintiff with any
12 written or unwritten COVID-19 exposure or return to work policies during this time.

13 29. **Plaintiff's Young Sons Test Positive For COVID-19.** Plaintiff's young sons
14 subsequently tested positive for COVID-19.

15 30. **Wrongful Termination, Retaliation.** In the morning on January 12, 2022, Plaintiff
16 texted Michelle Crane about her sons' positive COVID-19 test results. In response, Defendants did
17 not instruct Plaintiff to quarantine; instead, Michelle Crane told Plaintiff to wear an N95 mask at
18 work. Exhibit B. This was the first time Defendants instructed Plaintiff to wear a face covering.

19 31. Shortly thereafter, Plaintiff arrived at work wearing a N95 mask as instructed.

20 32. Later that morning, while sitting at her desk and facing away from her co-workers,
21 Plaintiff pulled down one side of her mask to adjust her hair so the mask would fit tighter.

22 33. At that moment, Susan Waataja-Foster walked behind Plaintiff and became agitated.
23 Susan Waataja-Foster yelled at Plaintiff to put her mask on, and Plaintiff responded she would and
24 explained she was adjusting her hair to fit the mask tighter. Susan Waataja-Foster became
25 aggressive and yelled to put the mask on. Plaintiff was stunned and embarrassed.

26 34. After Susan Waataja-Foster walked away from Plaintiff, while in an exam room,
27 Carolyn Arteaga (former employee) asked Plaintiff why Susan Waataja-Foster yelled at her.
28 Plaintiff told Carolyn Arteaga she felt singled out. Michelle Crane overheard Plaintiff's comment

1 and immediately told Susan Waataja-Foster. When Plaintiff left the exam room, Susan Waataja-
2 Foster saw her and demanded that Plaintiff come to her office.

3 35. When Plaintiff arrived in Susan Waataja-Foster's office, Susan Waataja-Foster was
4 visibly upset. Susan Waataja-Foster yelled at Plaintiff that she "was not picking on" Plaintiff and
5 that Plaintiff "was exposed to COVID" and Susan Waataja-Foster "couldn't afford to have any
6 employees out sick." In response, Plaintiff asked Susan Waataja-Foster why she had Plaintiff come
7 to work if she had such concerns.

8 36. In reaction, Susan Waataja-Foster became even more upset. Susan Waataja-Foster
9 screamed at Plaintiff to "*go home*" and then yelled out her office door that staff needed coverage
10 because Plaintiff was being sent home. Plaintiff started to finish her tasks before leaving but then
11 Susan Waataja-Foster followed Plaintiff shouting "*go home, Jennifer!*" Plaintiff was so shaken that
12 she froze and asked if she was being escorted out to which Susan Waataja-Foster screamed, "***go***
13 ***home and don't come back, Jennifer!***" See Exhibit C (text message exchange with co-workers on
14 January 12, 2022).

15 37. Within a week, co-worker Nanci Prado (Medical Assistant) sent a witness statement
16 confirming these events. Exhibit D.

17 38. Plaintiff's COVID-19 disclosures were contributing factors and/or substantial
18 motivating reasons for Defendants' on-the-spot decision to terminate Plaintiff's employment.

19 39. Within 30 minutes *after* Defendants terminated Plaintiff on January 12, 2022,
20 Defendants implemented a COVID-19 quarantine and face covering policy. Michelle Crane
21 printed-out and distributed the policy to all employees. Exhibit E. Defendants did not have any
22 such policy before terminating Plaintiff and had never counseled Plaintiff about any COVID-19
23 policies or protocols.

24 40. On January 14, 2022, Plaintiff emailed Susan Waataja-Foster about the January 12,
25 2022 events and to confirm her termination. Exhibit F. She did not receive a response.

26 41. **Off-The-Clock Work.** Throughout Plaintiff's employment, Defendants failed to
27 pay Plaintiff for all time worked. The off-the-clock work included, among other things according
28 to proof: ***illegally "rounding" employee time at the beginning and/or end of the shift and/or the***

1 ***beginning and/or end of meal breaks***¹; working during breaks, such as carrying on with work
2 during a meal or rest break; reviewing or responding to emails or texts from a mobile device or after
3 hours; and post-shift work completing tasks.

4 42. **Meal Break Violations.** Throughout Plaintiff's employment Defendants failed to
5 provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by
6 law, according to proof. For instance, among other things, according to proof: Defendants rounded
7 Plaintiff's clock in and out times for the start and end of meal breaks; and meal breaks were not
8 timely.

9 43. Defendants' company-wide understaffing arising from labor budget policies and
10 subsequent failure to provide adequate break coverage prevented Plaintiff from taking compliant
11 meal breaks. As a result of these practices and/or policies, Plaintiff was "on-call" and required to
12 continue to perform duties without being able to take a timely, compliant meal break. Thus, Plaintiff
13 had to work through part or all of Plaintiff's meal breaks, had meal breaks interrupted, and/or wait
14 extended breaks of time before taking meal breaks.

15 44. Defendants did not maintain a facially non-compliant meal break policy providing
16 Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law.
17 Plaintiff worked more than six (6) hours without being relieved of Plaintiff's duties to take a meal
18 break. Defendants regularly required Plaintiff to continue working and failed to provide meal break
19 coverage for her, thereby preventing Plaintiff from taking timely, uninterrupted meal breaks to
20 which Plaintiff was entitled. Defendants did not provide Plaintiff with second 30-minute meal
21 breaks on days that she worked in excess of 10 hours.

22 45. Defendants required Plaintiff to always record meal breaks, even when meal breaks
23 were never taken, or were late, short, and/or interrupted. As a result, 30-minute meal breaks were
24 deducted from Plaintiff's time records for hours Plaintiff actually spent working. This is a form of
25 off-the-clock work that Plaintiff performed.

26 ///

27
28

¹ *Donohue v. Amn Servs.* (Cal. 2021) 11 Cal. 5th 58.

1 46. Defendants have engaged in a company-wide practice and/or policy to not pay meal
2 break premiums owed when compliant meal breaks are not provided. If and when Defendants did
3 attempt to pay meal break premiums owed when compliant meal breaks were not provided,
4 Defendants paid at less than the legally required rate of pay. Defendants, therefore, failed to provide
5 Plaintiff compliant meal breaks and failed to pay the full meal break premiums due.

6 47. **Rest Break Violations.** Throughout Plaintiff's employment, Defendants failed to
7 authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked
8 or a major fraction thereof, according to proof. For instance, among other things according to proof:
9 *Defendants illegally combined Plaintiff's rest and meal breaks*²; Plaintiff did not get rest breaks
10 at all; and Plaintiff's rest breaks were not timely.

11 48. Defendants' labor budget policies and resultant understaffing prevented Plaintiff
12 from being relieved of all duties to take compliant rest breaks. Defendants had no policy of
13 scheduling rest breaks for employees, which further impeded and prevented Plaintiff from taking
14 rest breaks. As a result of Defendants' understaffing and failure to schedule rest breaks, Plaintiff
15 worked shifts in excess of 3.5 hours, in excess of six (6) hours, and in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest breaks to which Plaintiff was entitled.

17 49. Defendants did not maintain a facially non-compliant rest break policy permitting
18 and authorizing employees to take a second rest break for shifts from six (6) to 10 hours in length.
19 To the extent there is a policy, Defendants' written rest break policy only authorizes employees to
20 take a 10-minute rest break for every four (4) hours worked. As such, Defendants' written rest
21 break policy does not permit and authorize Plaintiff to take second and third rest breaks for shifts
22 six (6) to 10 hours in length or shifts 10 to 14 hours in length, respectively. Defendants' non-
23 compliant rest break policy/practices impeded and prevented Plaintiff from taking rest breaks.
24 Plaintiff regularly worked shifts in excess of six (6) hours and did not receive the two (2)
25 uninterrupted rest breaks. Plaintiff's rest breaks were regularly interrupted by work demands due
26 to the lack of break coverage.

27
28

² See *Rodriguez v. E.M.E., Inc.* (Cal. Ct. App. 2016) 246 Cal. App. 4th 1027.

50. Defendants have engaged in a company-wide practice and/or policy to not pay rest break premiums owed when compliant rest breaks are not provided. If and when Defendants did attempt to pay rest break premiums owed when compliant rest breaks were not provided, Defendants paid at less than the legally required rate of pay. Defendants, therefore, failed to provide Plaintiff compliant rest breaks and failed to pay the full rest break premiums due.

51. **Overtime Work.** Throughout Plaintiff's employment, Defendants failed to pay Plaintiff for all time worked at the proper overtime rate of pay insofar as Defendants did not include bonus payments in the regular rate of pay. In addition, Defendants failed to pay Plaintiff for all off-the-clock work performed at the overtime rate.

52. **Unreimbursed Expenses.** Throughout Plaintiff's employment, Defendants failed to fully reimburse Plaintiff's reasonable business expenses incurred, according to proof, including uniform replacement and/or maintenance costs.

53. **Wage Statements.** Throughout Plaintiff's employment, Defendants knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: (a) accurate totals of the hours worked; (b) number of hours worked at each hourly rate; (c) net wages earned; and (d) gross wages earned.

54. **Final Pay.** Defendants failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: (a) minimum wages; (b) overtime wages; (c) meal and rest period premium wages; and (d) all wages owed for the final day of work, as alleged herein.

FIRST CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

55. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

///

///

///

///

1 56. The elements of a claim for wrongful discharge in violation of public policy are (1)
2 an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the
3 termination was substantially motivated by a violation of public policy, and (4) the termination
4 caused the plaintiff harm. *See Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167 (1980); *see Yau v.*
5 *Allen*, 229 Cal.App.4th 144, 154 (2014).

6 57. Plaintiff is informed and believes that any one of the alleged violations of California
7 statutes and public policy listed herein was a substantial motivating reason for Plaintiff's
8 termination of employment, including:

9 58. **California Labor Code section 6409.6(f) (COVID-19 retaliation)** ("An employer
10 shall not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to
11 quarantine or isolate.");

12 59. **California Labor Code section 246.5(c) (sick leave retaliation)** ("An employer
13 shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge,
14 demote, suspend, or in any manner discriminate against an employee for using accrued sick days,
15 attempting to exercise the right to use accrued sick days, filing a complaint with the department or
16 alleging a violation of this article");

17 60. **California Labor Code section 1102.5(b) (illegal conduct retaliation)** ("An
18 employer ... shall not retaliate against an employee ... because the employer believes that the
19 employee disclosed or may disclose information ... to a person with authority over the employee
20 or another employee who has the authority to investigate, discover, or correct the violation or
21 noncompliance ... if the employee has reasonable cause to believe that the information discloses a
22 violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal
23 rule or regulation, regardless of whether disclosing the information is part of the employee's job
24 duties.");

25 61. **California Government Code section 12940(j)(1) (illegal harassment)** ("It shall
26 be an unlawful employment practice . . . [f]or an employer . . . or any other person, because of race,
27 religious creed, color, national origin, ancestry, physical disability, mental disability, medical
28 condition, marital status, sex, age, or sexual orientation. . . to harass an employee.");

1 62. **California Government Code section 12940(a) (illegal discrimination)** (“It shall
2 be an unlawful employment practice . . . [f]or an employer, because of the race, religious creed,
3 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
4 information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation,
5 or veteran or military status of any person, to refuse to hire or employ the person or to refuse to
6 select the person for a training program leading to employment, or to bar or to discharge the person
7 from employment or from a training program leading to employment, or to discriminate against the
8 person in compensation or in terms, conditions, or privileges of employment.”);

9 63. **California Government Code section 12940(h) (illegal retaliation for**
10 **harassment/discrimination complaint)** (“It shall be an unlawful employment practice . . . [f]or an
11 employer . . . to discharge, expel, or otherwise discriminate against any person because the person
12 has opposed any practices forbidden under this part or because the person has filed a complaint,
13 testified, or assisted in any proceeding under this part.”);

14 64. **California Government Code section 12940(k) (failure to prevent**
15 **harassment/discrimination)** (“It shall be an unlawful employment practice . . . [f]or an employer
16 . . . to fail to take all reasonable steps necessary to prevent discrimination and harassment from
17 occurring.”);

18 65. **California Government Code section 12940(n) (failure to engage in the**
19 **interactive process)** (“It shall be an unlawful employment practice . . . [f]or an employer . . . to fail
20 to engage in a timely, good faith, interactive process with the employee . . . to determine effective
21 reasonable accommodations, if any, in response to a request for reasonable accommodation by an
22 employee . . . with a known physical or mental disability or known medical condition.”); *see also*
23 *Cal. Code of Regs., tit. 2, section 11069;*

24 66. **California Government Code section 12940(m)(1) (failure to provide**
25 **reasonable accommodation)** (“It shall be an unlawful employment practice . . . [f]or an employer
26 . . . to fail to make reasonable accommodation for the known physical or mental disability of an . . .
27 employee.”); *see also Cal. Code of Regs., tit. 2, section 11068; and*

28 ///

1 67. **California Government Code section 12940(m)(2) (retaliation for reasonable**
2 **accommodation request)** (“It shall be an unlawful employment practice . . . [f]or an employer ...
3 ... to, in addition to the employee protections provided pursuant [California Government Code
4 section 12940(h)], retaliate or otherwise discriminate against a person for requesting
5 accommodation under this subdivision, regardless of whether the request was granted.”); *see also*
6 Cal. Code of Regs., tit. 2, section 11068.

7 68. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was
8 harmed, and the termination of employment was a substantial factor in causing Plaintiff’s harm.

9 69. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has
10 lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will
11 suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial
12 in excess of the jurisdictional minimum of this Court.

13 70. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was
14 and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated, and
15 aggravated. As a result of the acts of Defendants, Plaintiff suffered harm to Plaintiff’s reputation
16 and claims general damages for such mental and physical distress and aggravation in a sum in
17 excess of the jurisdictional minimum of this Court.

18 71. The actions alleged herein were taken by managing agents and/or officers of
19 Defendants and/or ratified by managing agents and/or officers of Defendants, including but not
20 limited to Michelle Crane (Clinical Assistant Manager) and Susan Waataja-Foster (Business
21 Manager). In so doing, said managing agents and/or officers of Defendants acted with oppression,
22 fraud, and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff
23 is entitled to an award of punitive damages.

24 ///

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

**HARASSMENT AND HOSTILE WORK ENVIRONMENT
IN VIOLATION OF GOVERNMENT CODE SECTION 12940(j)**

72. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

73. At all times mentioned herein, California Government Code section 12940 *et seq.*, was in full force and effect and was binding on Defendants, as Defendants regularly employ five (5) or more persons.

74. California Government Code section 12940(j)(1) makes it unlawful for “an employer . . . or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. . . to harass an employee.”

75. California Government Code section 12940(j)(3) provides for individual liability on the part of the supervisor for such harassment: “An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”

76. California laws also provides for strict liability on the part of the employer for such harassment by a supervisor. *See Myers v. Trendwest Resorts, Inc.*, 148 Cal. App. 4th 1403, 1419 (2007).

77. The operative regulations promulgated by California’s Department of Fair Employment and Housing, specifically defines “harassment” to include “(A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act.” Cal. Code of Regs., tit. 2, section 11019(b).

78. Plaintiff was subjected to hostile work environment harassment based on her associational and/or perceived disability as alleged herein.

///

///

///

1 79. As a proximate result of the aforesaid acts, Plaintiff has lost, and will continue to
2 lose, substantial earnings, promotional opportunities, fringe benefits and has suffered and/or will
3 suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial
4 in excess of the jurisdictional minimum of this court.

5 80. As a proximate result of the aforesaid acts, Plaintiff has become mentally upset,
6 distressed, embarrassed, humiliated, and aggravated in a sum in excess of the jurisdictional
7 minimum of this court.

8 81. The actions alleged herein were taken by managing agents and/or officers of
9 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
10 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
11 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are
12 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
13 damages.

14 82. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced
15 to hire attorneys to prosecute Plaintiff's claims herein, and has incurred and is expected to continue
16 to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys'
17 fees and costs under California Government Code section 12965(b).

18 **THIRD CAUSE OF ACTION**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

20 83. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

21 84. The elements of a claim for intentional infliction of emotional distress are (1)
22 extreme and outrageous conduct by Defendants; (2) an intention to cause or a reckless disregard of
23 the probability of causing emotional distress; severe emotional suffering; and (3) an actual and
24 proximate causation of the emotional distress.

25 85. Plaintiff is informed and believes that the actions of Defendants as alleged herein
26 amount to extreme and outrageous conduct with an intention to cause or a reckless disregard of the
27 probability of causing Plaintiff emotional distress and severe emotional suffering, and as a direct
28

1 and proximate result of the aforesaid acts of Defendants, Plaintiff suffered from emotional distress
2 and severe emotional suffering.

3 86. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was
4 and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated, and
5 aggravated. As a result of the acts of Defendants, Plaintiff suffered harm to Plaintiff's reputation
6 and claims general damages for such mental and physical distress and aggravation in a sum in
7 excess of the jurisdictional minimum of this Court.

8 87. The actions alleged herein were taken by managing agents and/or officers of
9 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
10 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
11 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are
12 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
13 damages.

14 **FOURTH CAUSE OF ACTION**

15 **DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(a)**

16 88. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

17 89. At all times mentioned herein, California Government Code section 12940 *et seq.*,
18 was in full force and effect and was binding on Defendants, as Defendants regularly employ five
19 (5) or more persons.

20 90. California Government Code section 12940(a) makes it unlawful for "an employer,
21 because of the race, religious creed, color, national origin, ancestry, physical disability, mental
22 disability, medical condition, genetic information, marital status, sex, gender, gender identity,
23 gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to
24 hire or employ the person or to refuse to select the person for a training program leading to
25 employment, or to bar or to discharge the person from employment or from a training program
26 leading to employment, or to discriminate against the person in compensation or in terms,
27 conditions, or privileges of employment."

28 ///

91. Plaintiff's associational and/or perceived disability was a substantial motivating factor for Defendants' decision to terminate Plaintiff's employment as alleged herein.

92. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

93. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated, and aggravated. As a result of the aforesaid acts of Defendants, Plaintiff suffered harm to Plaintiff's reputation and claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

94. The actions alleged herein were taken by managing agents and/or officers of Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

95. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to hire attorneys to prosecute the claims herein, and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and costs under California Government Code section 12965(b).

FIFTH CAUSE OF ACTION

**RETALIATION FOR HARASSMENT AND/OR DISCRIMINATION COMPLAINTS IN
VIOLATION OF GOVERNMENT CODE SECTION 12940(h)**

96. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

97. At all times mentioned herein, California Government Code section 12940 *et seq.*, was in full force and effect and was binding on Defendants, as Defendants regularly employ five (5) or more persons.

1 98. California Government Code section 12940(h) makes it unlawful for an “employer
2 ... to discharge, expel, or otherwise discriminate against any person because the person has opposed
3 any practices forbidden under this part or because the person has filed a complaint, testified, or
4 assisted in any proceeding under this part.”

5 99. During Plaintiff’s employment with Defendants, Plaintiff engaged in protected
6 activities and conduct as alleged herein.

7 100. Defendants took adverse actions against Plaintiff alleged herein, at least in
8 substantial part, in retaliation for Plaintiff’s protected activities set forth herein.

9 101. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has
10 lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will
11 suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial
12 in excess of the jurisdictional minimum of this Court.

13 102. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was
14 and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated, and
15 aggravated. As a result of the acts of Defendants, Plaintiff suffered harm to Plaintiff’s reputation
16 and claims general damages for such mental and physical distress and aggravation in a sum in
17 excess of the jurisdictional minimum of this Court.

18 103. The actions alleged herein were taken by managing agents and/or officers of
19 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
20 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
21 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are
22 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
23 damages.

24 104. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced
25 to hire attorneys to prosecute the claims herein, and has incurred and is expected to continue to
26 incur attorneys’ fees and costs in connection therewith. Plaintiff is entitled to recover attorneys’
27 fees and costs under California Government Code section 12965(b).

28 ///

SIXTH CAUSE OF ACTION

**FAILURE TO PREVENT HARASSMENT AND/OR DISCRIMINATION IN VIOLATION
OF GOVERNMENT CODE SECTION 12940(k)**

105. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

106. At all times mentioned herein, California Government Code section 12940 *et seq.*, was in full force and effect and was binding on Defendants, as Defendants regularly employ five (5) or more persons.

107. California Government Code section 12940(k) makes it illegal "For an employer...to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

108. Defendants failed to take all reasonable steps necessary to prevent the discrimination that Plaintiff suffered, as alleged herein, and other conduct according to proof.

109. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

110. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff was and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated, and aggravated. As a result of the aforesaid acts of Defendants, Plaintiff suffered harm to Plaintiff's reputation and claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

111. The actions alleged herein were taken by managing agents and/or officers of Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

112. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to hire attorneys to prosecute the claims herein, and has incurred and is expected to continue to

1 incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys'
2 fees and costs under California Government Code section 12965(b).

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF**
5 **GOVERNMENT CODE SECTION 12940(n)**

6 113. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

7 114. At all times mentioned herein, California Government Code section 12940 *et seq.*,
8 was in full force and effect and was binding on Defendants, as Defendants regularly employ five
9 (5) or more persons.

10 115. California Government Code section 12940(n) makes it illegal for an "employer or
11 other entity to fail to engage in a timely, good faith, interactive process with the employee ...
12 to determine effective reasonable accommodations, if any, in response to a request for reasonable
13 accommodation by an employee ...with a known physical or mental disability or known medical
14 condition." *See also* Cal. Code of Regs., tit. 2, section 11069.

15 116. At all times relevant herein, Defendants were aware of Plaintiff's disability
16 (perceived and/or associational) and how it affected Plaintiff's major life activity of working.

17 117. Plaintiff was willing to participate in an interactive process to determine whether
18 reasonable accommodations; however, Defendants failed to participate in a timely good-faith
19 interactive process with Plaintiff to determine whether reasonable accommodations could be made,
20 as alleged herein.

21 118. As a direct and proximate result of this illegal behavior by Defendants, Plaintiff has
22 suffered the loss of Plaintiff's, loss of compensation, loss of job benefits, humiliation, mental
23 anguish, and severe emotional and physical distress, in an amount to be proven at trial.

24 119. The actions alleged herein were taken by managing agents and/or officers of
25 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
26 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
27 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are

28 ///

1 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
2 damages.

3 120. Government Code section 12965(b) permits the court to award reasonable attorneys'
4 fees to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur
5 attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable
6 attorneys' fees.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF** 9 **GOVERNMENT CODE SECTION 12940(m)**

10 121. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

11 122. At all times mentioned herein, California Government Code section 12940 *et seq.*
12 was in full force and effect and was binding on Defendants, as Defendants regularly employ five
13 (5) or more persons.

14 123. California Government Code section 12940(m)(1) makes it illegal for an "employer
15 ... to fail to make reasonable accommodation for the known physical or mental disability of an ...
16 employee." *See also* Cal. Code of Regs., tit. 2, section 11068.

17 124. At all times relevant herein, Defendants were aware of Plaintiff's disability
18 (perceived and/or associational) and how it affected Plaintiff's major life activity of working.

19 125. Plaintiff would have been able to perform Plaintiff's essential job duties with
20 reasonable accommodations. However, Defendants failed to provide Plaintiff with reasonable
21 accommodations, as alleged herein.

22 126. As a direct and proximate result of this illegal behavior by Defendants, Plaintiff has
23 suffered the loss of Plaintiff's, loss of compensation, loss of job benefits, humiliation, mental
24 anguish, and severe emotional and physical distress, in an amount to be proven at trial.

25 127. The actions alleged herein were taken by managing agents and/or officers of
26 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
27 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
28 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are

1 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
2 damages.

3 128. Government Code section 12965(b) permits the court to award reasonable attorneys'
4 fees to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur
5 attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable
6 attorneys' fees.

7 **NINTH CAUSE OF ACTION**

8 **RETALIATION FOR USING PAID SICK LEAVE IN VIOLATION OF**
9 **LABOR CODE SECTION 246.5(c)**

10 129. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

11 130. California Labor Code section 246.6(c)(1) states that an "employer shall not deny
12 an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend,
13 or in any manner discriminate against an employee for using accrued sick days, attempting to
14 exercise the right to use accrued sick days, filing a complaint with the department or alleging a
15 violation of this article, cooperating in an investigation or prosecution of an alleged violation of this
16 article, or opposing any policy or practice or act that is prohibited by this article."

17 131. California Labor Code section 246.6(c)(1) states there "shall be a rebuttable
18 presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick
19 days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against
20 an employee within 30 days of any of the following: ... (C) Opposition by the employee to a policy,
21 practice, or act that is prohibited by this article."

22 132. Plaintiff is informed and believes that Plaintiff's protected conduct related to paid
23 sick leave as alleged herein was a contributing factor in Defendants' decision to terminate Plaintiff's
24 employment, and Plaintiff alleges that Defendants' conduct was a substantial factor in causing
25 Plaintiff's harm as alleged herein.

26 133. As a proximate result of the aforesaid acts, Plaintiff has lost, and will continue to
27 lose, substantial earnings, promotional opportunities, fringe benefits and has suffered and/or will
28 suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial.

134. As a proximate result of the aforesaid acts, Plaintiff has become mentally upset, distressed, embarrassed, humiliated, and aggravated in a sum to be proven at the time of trial.

135. Pursuant to California Labor Code sections 200, 218, and 218.5, Plaintiff is entitled to recover the full amount of Plaintiff's unpaid wages, penalties, reasonable attorneys' fees, and costs of suit.

136. The actions alleged herein were taken by managing agents and/or officers of Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

TENTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5

137. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

138. California Labor Code section 1102.5(a) states that an "employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

139. California Labor Code section 1102.5(b) states that an "employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, to a government or law enforcement agency, or because the employer believes that the employee disclosed or may disclose information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance

1 . . . if the employee has reasonable cause to believe that the information discloses a violation of
2 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
3 regulation, regardless of whether disclosing the information is part of the employee's job duties."

4 140. California Labor Code section 1102.5(c) states that an "employer, or any person
5 acting on behalf of the employer, shall not retaliate against an employee for refusing to participate
6 in an activity that would result in a violation of state or federal statute, or a violation of or
7 noncompliance with a local, state, or federal rule or regulation."

8 141. California Labor Code section 1102.5(d) states that an "employer, or any person
9 acting on behalf of the employer, shall not retaliate against an employee for having exercised his or
10 her rights under subdivision (a), (b), or (c) in any former employment."

11 142. California Labor Code section 1102.6 states that "[i]n a civil action or administrative
12 proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance
13 of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged
14 prohibited action against the employee, the employer shall have the burden of proof to demonstrate
15 by clear and convincing evidence that the alleged action would have occurred for legitimate,
16 independent reasons even if the employee had not engaged in activities protected by Section
17 1102.5."

18 143. California Labor Code section 1102.8(a) states that "[a]n employer shall
19 prominently display in lettering larger than size 14 point type a list of employees' rights and
20 responsibilities under the whistleblower laws, including the telephone number of the whistleblower
21 hotline described in Section 1102.7."

22 144. Plaintiff is informed and believes that Plaintiff's protected conduct as alleged herein
23 was a contributing factor in Defendants' decision to terminate Plaintiff's employment, and Plaintiff
24 alleges that Defendants' conduct was a substantial factor in causing Plaintiff's harm as alleged
25 herein.

26 145. Plaintiff reasonably believed and continues to believe that each of Plaintiff's
27 complaints related to illegal actions taken by Defendants.

28 ///

1 146. As a proximate result of the aforesaid acts, Plaintiff has lost, and will continue to
2 lose, substantial earnings, promotional opportunities, fringe benefits and has suffered and/or will
3 suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial.

4 147. As a proximate result of the aforesaid acts, Plaintiff has become mentally upset,
5 distressed, embarrassed, humiliated, and aggravated in a sum to be proven at the time of trial.

6 148. California Labor Code section 1102.5(f) states that in “addition to other penalties,
7 an employer that is a corporation or limited liability company is liable for a civil penalty not
8 exceeding ten thousand dollars (\$10,000) for each violation of this section.”

9 149. California Labor Code section 1102.5(j) states that the “court is authorized to award
10 reasonable attorney’s fees to a plaintiff who brings a successful action for a violation of these
11 provisions.” Plaintiff will continue to incur attorneys’ fees in the pursuit of this action. As such,
12 Plaintiff is entitled to an award of reasonable attorneys’ fees.

13 150. California Labor Code section 1103 states that “[a]n employer or any other person
14 or entity that violates this chapter is guilty of a misdemeanor punishable, in the case of an individual,
15 by imprisonment in the county jail not to exceed one year or a fine not to exceed one thousand
16 dollars (\$1,000) or both that fine and imprisonment, or, in the case of a corporation, by a fine not
17 to exceed five thousand dollars (\$5,000).”

18 151. The actions alleged herein were taken by managing agents and/or officers of
19 Defendants, including but not limited to Michelle Crane (Clinical Assistant Manager) and Susan
20 Waataja-Foster (Business Manager) and/or ratified by managing agents and/or officers of
21 Defendants. In so doing, Defendants acted with oppression, fraud, and malice, as those terms are
22 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
23 damages.

24 ///

25 ///

26 ///

27 ///

28 ///

ELEVENTH CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF
LABOR CODE SECTIONS 204, 1194, AND 1197 AND WAGE ORDER**

152. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

153. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

154. California Labor Code section 204(a) states that wages "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."

155. California Labor Code section 1194(a) states (in relevant part): "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."

156. California Labor Code section 1197 states (in relevant part): "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

157. The applicable California Industrial Wage Order states: "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

158. Defendants violated the foregoing statutes and regulations as alleged herein.

159. Pursuant to California Labor Code section 218.5, 1194, 1194.2, 1197.1, 1197.2, Plaintiff is entitled to recover the full amount of Plaintiff's unpaid wages, liquidated damages, waiting time penalties, reasonable attorneys' fees, and costs of suit. Plaintiff is entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF**
3 **LABOR CODE SECTIONS 510, 1194, 1198, AND 1199 AND WAGE ORDER**

4 160. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

5 161. At all relevant times, Plaintiff was subject to the provisions of the California
6 Industrial Welfare Commission's Wage Orders and California Labor Code.

7 162. The applicable Industrial Welfare Commission Wage Order provides that: "(A)
8 Daily Overtime – General Provisions. (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or 17 years of age who are not required by
10 law to attend school and are not otherwise prohibited by law from engaging in the subject work.
11 Such employees shall not be employed more than eight (8) hours in any workday or more than 40
12 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's
13 regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor
14 constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6)
15 days in any workweek is permissible provided the employee is compensated for such overtime at
16 not less than: (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
17 worked In excess of eight (8) hours up to and including twelve (12) hours in any workday, and for
18 the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.; and
19 (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any
20 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day
21 of work in a workweek. (c) The overtime rate of compensation required to be paid to a nonexempt
22 full-time salaried employee shall be computed by using the employee's regular hourly salary as one
23 fortieth (1/40) of the employee's weekly salary.

24 163. California Labor Code section 510 provides that: (a) Eight hours of labor constitutes
25 a day's work. Any work in excess of eight hours in one workday and any work in excess of 40
26 hours in any one workweek and the first eight hours worked on the seventh day of work in any one
27 workweek shall be compensated at the rate of no less than one and one-half times the regular rate
28 of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the

1 rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess
2 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
3 twice the regular rate of pay of an employee.

4 164. California Labor Code section 1194 provides in relevant part: (a) Notwithstanding
5 any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage
6 or the legal overtime compensation applicable to the employee is entitled to recover in a civil action
7 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
8 interest thereon, reasonable attorney's, and costs of suit.

9 165. California Labor Code section 218.5 provides in relevant part: In any action brought
10 for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions,
11 the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the
12 action requests attorney's fees and costs upon the initiation of the action.

13 166. At all relevant times, throughout Plaintiff's employment, Plaintiff regularly and with
14 Defendants' knowledge worked more than eight (8) hours in working day.

15 167. Defendants did not pay 1 ½ times the legal minimum hourly wage rate for all the
16 hours worked over eight (8) hours in a work day and/or 40 hours in a work week, and Defendants
17 did not pay two times the legal minimum hourly rate for all the hours worked over twelve (12) hours
18 in a work day as alleged herein.

19 168. During the relevant time period, Defendants intentionally and willfully failed to pay
20 for all hours Defendants suffered and/or permitted Plaintiff to work, including for overtime hours.

21 169. Plaintiff alleges that wages are due to Plaintiff for all hours worked during which
22 Plaintiff was not paid proper overtime wages pursuant California Labor Code sections 510 and 1194
23 and all applicable laws, rules, orders, requirements, and regulations.

24 170. Plaintiff demands all applicable reimbursements, interest and penalties for lost
25 overtime wages.

26 171. Plaintiff further demands reasonable attorneys' fees and costs of suit pursuant to
27 California Labor Code sections 218.5, 1194, and any other applicable statute or regulation.

28 ///

THIRTEENTH CAUSE OF ACTION

**FAILURE TO AUTHORIZE AND PERMIT MEAL PERIODS IN VIOLATION OF
LABOR CODE SECTIONS 226.7 AND 512 AND WAGE ORDER**

172. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

173. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

174. California Labor Code section 512(a) states (in relevant part): "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

175. The applicable Industrial Welfare Commission Wage Order provides that: No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

176. California Labor Code section 226.7(b) provides: If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

///

///

///

///

///

///

///

177. During the relevant time period, Defendants worked Plaintiff more than five hours per day without an off-duty, timely, and/or uninterrupted 30-minute meal period as required by California Labor Code section 512 and the applicable Industrial Welfare Commission Wage Order. During the relevant time period, Plaintiff worked more than six (6) hours in a workday and did not waive Plaintiff's right to Plaintiff's meal period by mutual consent. Defendants' policy and practice was not to compensate Plaintiff with the full amount of pay due and owing as required by California Labor Code section 226.7, and the applicable Industrial Welfare Commission order (i.e., one hour of pay per day per lunch period at the employee's regular rate of compensation).

178. Plaintiff demands all applicable reimbursements, interest, and penalties for Plaintiff's lost wages.

179. Plaintiff demands reasonable attorneys' fees and costs of suit pursuant to California Labor Code sections 218.5, 1194, and any other applicable statute or regulation.

FOURTEENTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7 AND WAGE ORDER

180. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

181. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

182. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

183. The applicable Industrial Welfare Commission Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours."

184. Defendants' conduct violates applicable Wage Orders and California Labor Code section 226.7. During the relevant time period, Defendants required Plaintiff to work four (4) or

1 more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
2 period worked. During the relevant time period, Defendants willfully required Plaintiff to work
3 during rest periods and failed to pay Plaintiff the full rest period premium for work performed
4 during rest periods. During the relevant time period, Defendants failed to pay Plaintiff the full rest
5 period premium due pursuant to California Labor Code section 226.7.

6 185. Pursuant to the applicable Industrial Welfare Commission Wage Order and
7 California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one
8 additional hour of pay at the employee's regularly hourly rate of compensation for each work day
9 that the rest period was not provided.

10 **FIFTEENTH CAUSE OF ACTION**

11 **FAILURE TO FURNISH COMPLIANT WAGE STATEMENTS IN VIOLATION OF**
12 **LABOR CODE SECTION 226(a)**

13 186. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

14 187. At all relevant times, Plaintiff was subject to the provisions of the California
15 Industrial Welfare Commission's Wage Orders and California Labor Code.

16 188. California Labor Code section 226(a) provides that every employer shall furnish
17 each of their employees an accurate itemized statement in writing showing (1) gross wages earned,
18 (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
20 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
21 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
22 of the employee and their or their social security number, (8) the name and address of the legal
23 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
24 the corresponding number of hours worked at each hourly rate by the employee.

25 189. California Labor Code section 226(e)(1) provides that "[a]n employee suffering
26 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
27 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
28 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation

1 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),
2 and is entitled to an award of costs and reasonable attorney's fees."

3 190. California Labor Code section 226.3 provides that "Any employer who violates
4 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
5 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
6 per employee for each violation in a subsequent citation, for which the employer fails to provide
7 the employee a wage deduction statement or fails to keep the records required in subdivision (a) of
8 Section 226. The civil penalties provided for in this section are in addition to any other penalty
9 provided by law."

10 191. Plaintiff has suffered injury and damage to Plaintiff's statutory-protected rights as
11 Defendants intentionally and willfully failed to provide Plaintiff with complete and accurate wage
12 statements as alleged herein. The deficiencies include, but are not limited to the failure to include:
13 total hours worked by the employee; the inclusive dates of the period for which the employee is
14 paid; the name of the employee and their social security number; the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 192. Plaintiff is entitled to recover from Defendants the greater of Plaintiff's actual
18 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or
19 pursuant to California Labor Code section 226(e), an aggregate penalty not exceeding four thousand
20 dollars per employee, and an award of costs and reasonable attorney's fees.

21 **SIXTEENTH CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT IN**
23 **VIOLATION OF LABOR CODE SECTIONS 201 TO 203**

24 193. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

25 194. At all relevant times, Plaintiff was subject to the provisions of the California
26 Industrial Welfare Commission's Wage Orders and California Labor Code.

27 ///

28 ///

1 195. California Labor Code sections 201 and 203 provide that if an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.

4 196. California Labor Code section 203 provides that if an employer willfully fails to
5 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
6 continue as a penalty from the due date thereof at the same rate until paid or until an action is
7 commenced; but the wages shall not continue for more than thirty (30) days.

8 197. As alleged herein, Defendants intentionally and willfully failed to pay Plaintiff all
9 wages, earned and unpaid, immediately upon discharge. Defendants' failure in this regard
10 violates California Labor Code sections 201 and 203.

11 198. On information and belief, Plaintiff alleges that Defendants' failure to pay Plaintiff
12 all wages earned upon Plaintiff's discharge in accordance with Labor Code section 201 was willful.
13 At all times relevant, Defendants had the ability to pay all earned and unpaid wages in accordance
14 with Labor Code section 201 but intentionally chose not to comply.

15 199. Pursuant to Labor Code sections 203 and 218.5, Plaintiff is entitled to recover the
16 full amount of Plaintiff's unpaid wages, waiting time penalties, reasonable attorneys' fees, and costs
17 of suit. Plaintiff is entitled to recover interest on all due and unpaid wages and waiting time
18 penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

19 **SEVENTEENTH CAUSE OF ACTION**

20 **FAILURE TO PAY OR REIMBURSE NECESSARY EXPENDITURES IN VIOLATION**
21 **OF LABOR CODE SECTION 2802 AND WAGE ORDER**

22 200. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

23 201. At all relevant times, Plaintiff was subject to the provisions of the California
24 Industrial Welfare Commission's Wage Orders and California Labor Code.

25 202. California Labor Code section 2802 states: "An employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties."

28 ///

203. California Labor Code section 2802(c) states that, “[f]or the purposes of this section, the terms ‘necessary expenditure or losses’ shall include all reasonable costs, including but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

204. Defendants violated the foregoing statutes and regulations as alleged herein.

205. Plaintiff seeks reimbursement for the excess costs of these expenses as alleged herein. Plaintiff seeks damages for all necessary expenditures and losses, including attorney's fees and costs pursuant to Labor Code section 2802(c).

EIGHTEENTH CAUSE OF ACTION

**PAGA REPRESENTATIVE ACTION FOR PENALTIES PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

206. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

207. Under the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698-2699.5, private parties may recover civil penalties for violations of the Labor Code. These penalties are in addition to any other relief available under the Labor Code. As set forth above, Defendants has committed numerous violations of the Labor Code against Plaintiff, including but not limited to:

- Labor Code sections 201, 201.5, 202, 203. Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- Labor Code section 204. Failure to pay all earned wages within the time prescribed in Labor Code sections 204(a) and 204(b).
- Labor Code section 206. Failure to pay all undisputedly owed wages.
- Labor Code section 210. Failure to pay wages as required by Labor Code sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and/or 1197.5.
- Labor Code section 221. Failure to not collect and receive owed wages.
- Labor Code section 226. Failure to provide timely and accurate wage statements.
- Labor Code section 226.3. Failure to comply with Labor Code section 226(a).

///

///

- Labor Code section 226.7. Failure to provide proper rest periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the mandated rest periods.
- Labor Code sections 226.7 and 512. Failure to provide proper meal periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the mandated meal periods.
- Labor Code sections 510 and 1194. Failure to pay overtime and double time compensation.
- Labor Code sections 510, 1194, 1194.2, and 1197. Failure to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
- Labor Code section 558. Violation of a section of the chapter of the Labor Code starting with Labor Code section 500, *et seq.*, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.
- Labor Code section 558.1. Violation any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, and violating Labor Code sections 203, 226, 226.7, 1193.1, and/or 1194.
- Labor Code section 1174. Failure to maintain compliant employee and payroll records.
- Labor Code section 1197.1. Failure to pay minimum wage.
- Labor Code section 1199. Violation of the provisions of an order of the Industrial Welfare Commission.
- Labor Code section 1198. Violation of the following sections of orders of the Industrial Welfare Commission for conditions of labor prohibited by such:
 - Wage Order 1-2001 (or other applicable Wage Order), Section 3, requiring an employer to pay overtime and double time compensation.
 - Wage Order 1-2001 (or other applicable Wage Order), Section 4, requiring an employer to pay minimum wages, including overtime and double time compensation at the minimum wage rate.

- 1 ○ Wage Order 1-2001 (or other applicable Wage Order), Section 7, requiring
- 2 an employer to maintain accurate information with respect to each
- 3 employee; provide employees with thorough and accurate itemized wage
- 4 statements; and, provide clocks within a reasonable distance from
- 5 employees' work areas.
- 6 ○ Wage Order 1-2001 (or other applicable Wage Order), Section 11,
- 7 requiring an employer to provide its employees with adequate meal periods
- 8 and an additional hour of pay at the regular rate of compensation in lieu of
- 9 the mandated rest periods.
- 10 ○ Wage Order 1-2001 (or other applicable Wage Order), Section 12,
- 11 requiring an employer to provide its employees with adequate rest periods
- 12 and an additional hour of pay at the regular rate of compensation in lieu of
- 13 the mandated rest periods.

- 14 • Labor Code section 2802. Failure to reimburse necessary business expenses.

15 208. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
16 section 2699(c), and a proper representative to bring a civil action on behalf of him/herself and
17 other current and former employees of Defendants pursuant to the procedures specified in
18 California Labor Code section 2699.3, because Plaintiff is employed by Defendants and the alleged
19 violations of the California Labor Code were committed against Plaintiff.

20 209. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice on
21 February 11, 2022, by online filing to the California Labor and Workforce Development Agency
22 (“LWDA”) and by certified mail to Defendants of the specific provisions of the California Labor
23 Code and IWC Wage Orders alleged to have been violated, including the facts and theories to
24 support the alleged violations. More than 65 days have passed since Plaintiff provided written
25 notice to the LWDA. The LWDA has not provided notice that it intends to investigate Plaintiff’s
26 claims.

27 210. Pursuant to California Labor Code section 2699.3, Plaintiff served Defendants with
28 the aforementioned LWDA notice via certified mail on February 11, 2022. More than 33 days have

1 passed since that date. Defendants has not provided Plaintiff with notice that it cured any of
2 the violations alleged therein.

3 211. Per the tolling provision in Labor Code section 2699.3(g), the period of liability
4 under Plaintiff's PAGA claim extends one year and sixty-five days before the filing of this
5 complaint (the "PAGA Liability Period").

6 212. Accordingly, Plaintiff has complied with all of the requirements set forth in
7 California Labor Code section 2699.3 to commence a representative action under PAGA.

8 213. Pursuant to PAGA, Plaintiff seeks civil penalties due to Plaintiff, other aggrieved
9 employees, and the State of California according to proof, pursuant to the California Labor Code,
10 including California Labor Code sections 2699(a) and 2699(f), which provides for \$100 for each
11 initial violation and \$200 for each subsequent violation per employee pay period. In addition,
12 pursuant to PAGA, Plaintiff seeks to recover civil penalties, including but not limited to penalties
13 under Labor Code sections 210, 225.5, 226.3, 558, 1174.5, 1197.1, and 1199 from Defendants in a
14 representative action for the violations set forth above. Plaintiff is entitled to an award of reasonable
15 attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

16 **JURY TRIAL DEMANDED**

17 Plaintiff demands a jury as to all causes of action.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 20 a. For general economic damages according to proof;
- 21 b. For general non-economic damages according to proof;
- 22 c. For special damages according to proof;
- 23 d. For punitive damages where allowed by law;
- 24 e. For prejudgment interest pursuant to California Labor Code section 218.6,
- 25 California Civil Code section 3287 and/or California Civil Code section 3288
- 26 and/or any other provision of law providing for prejudgment interest;
- 27 f. For attorneys' fees where allowed by law;
- 28 g. For costs of suit incurred herein; and

1 h. For such other and further relief as the Court deems just and proper.
2

3 DATED: May 6, 2022

COLBY LAW FIRM, PC

4 
5

6 By: _____

AARON COLBY

ZOE YUZNA

7 Attorneys for Plaintiff

JENNIFER GUZMAN
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

SEQ 001262
Company Code
RP / DJZ 99940007
Newport Heart Medical Group Inc
415 Old Newport
Newport Beach, CA 92663

Loc/Dept
01/

Number
625652071 of 1

Earnings Statement



Period Starting: 11/11/2021
Period Ending: 11/24/2021
Pay Date: 11/30/2021

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-8438

Tax Override:
Federal:
State:
Local:

Jennifer Guzman Serrano

Earnings	rate	hours/units	this period	year to date
Regular	19.0000	64.75	1230.25	8863.50
Overtime	28.5000	0.25	7.13	106.90
Sick			0.00	456.00
Holiday	19.0000	8.00	152.00	304.00

Gross Pay \$1,389.38 \$9,730.40

Other Benefits and Information	this period	year to date
Total Hours Worked	65.00	470.25

Important Notes
Basis of pay: Hourly

Statutory Deductions	this period	year to date
Federal Income	0.00	0.00
Social Security	-86.14	603.28
Medicare	-20.15	141.09
California State Income	-29.19	231.69
California State DI	-16.68	116.77

Net Pay \$1,237.22

EXHIBIT B

9:01



Michelle Crane Manag >

been validated in accordance with the FDA's Guidance Document Policy for Diagnostics Testing Complexity Testing under CLIA. This test is only authorized for the duration of time the declaration of the emergency use of in vitro diagnostic tests for detection of SARS-CoV-2 virus under section 564(b)(1) of the Act, 21 U.S.C. 360bbb-3(b)(1), unless the authorization is terminated or

so you'll be in today?

Wed, Jan 12, 7:51 AM

Michelle I'll be in at 8:40 I stayed back to watch my boys, they woke up feeling bad.

ok

They both came back positive for COVID on Monday. 🙁

Does that mean you aren't coming in?

No I'm coming in, exiting freeway now. I'm just informing since they're both sick and I'm having them call me at work if anything worsens.

Ok

Make sure u wear N95

Ok

Delivered



iMessage

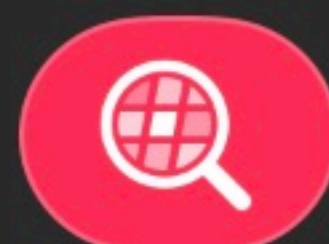


EXHIBIT C

9:07



< 111



Beth >



Wed, Jan 12, 9:59 AM

Are you ok?

I love you!! I'll call you when I'm off



You heard when she said "don't come back Jennifer" right?

Yes! What the actual fuck?! What happened?!

That was so fucking unprofessional!

It really was and it was embarrassing, she was following me around yelling at me to go home.

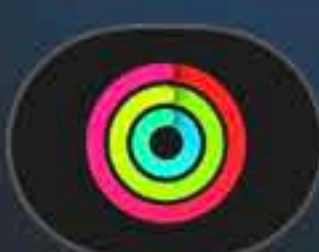
WOW! I didn't know that, What a fucking bully!

& the way she yelled to not come back was very uncalled for

That is probably the most unprofessional thing I have ever
seen! So ridiculous, uncalled for!



iMessage



& the way she yelled to not come back was very uncalled for

That is probably the most unprofessional thing I have ever seen! So ridiculously uncalled for!

Yes I feel so distressed 😞



I'm sorry you all had to experience that

That's something that should be done in private

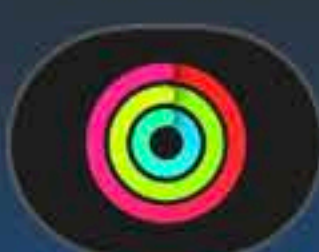
Absolutely!

NO! I'M sorry YOU had to experience that. No one should be treated like that!

It's okay it was time. I was fed up with them as well.



iMessage





Gloria >



Wed, Jan 12, 4:13 PM

Dude, I'm sorry about what happened. I've just heard! Your going to be missed 😭
They don't know what their letting go, I wish you the best luck on everything. It was so meeting you.

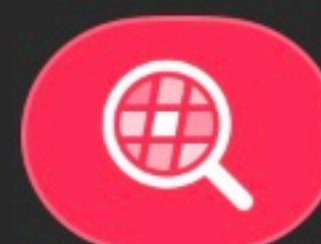
Thank you Gloria for your kind words, it means a lot. Unfortunately it was a very uncomfortable situation how Susan fired me. But hey what can I do. I wish you the best in everything and you take care of that princess 😊❤️

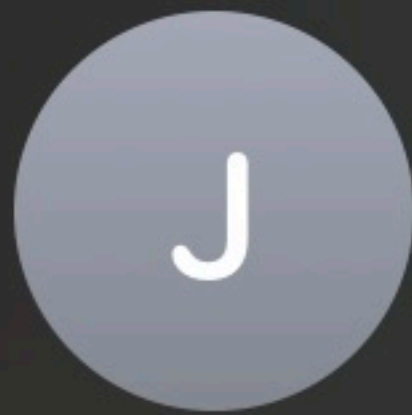
I bet, 😞 se pasan la verdad! Thank you, I will! I'll send you a picture once she is born! 😊

Yes please! 🙏



Text Message





Jason >

Wed, Jan 12, 6:52 PM

Hey i heard what happened today. Hope youre ok. Definitely didnt deserve that but I think the workplace wasnt good for you anyways. Gonna miss working with you. Definitely not going to be as fun now.

Wed, Jan 12, 7:52 PM

Hey Jason, thank you for your kind words. Yes it's unfortunate, I've never felt so harassed and humiliated in my entire life. I will miss you all

Wed, Jan 12, 9:17 PM

Pretty bull shit. Just take the time to get healthier again and spend some time with family to get your mental health back in check

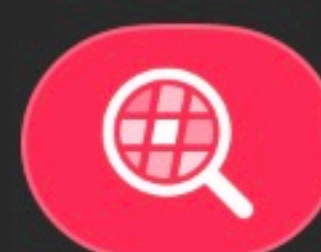
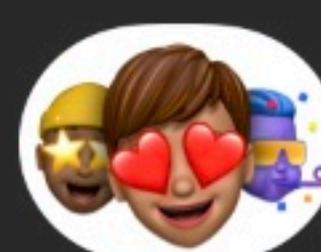
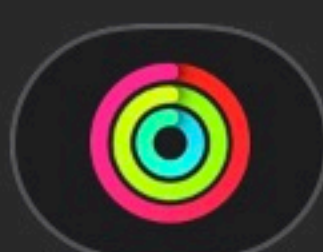
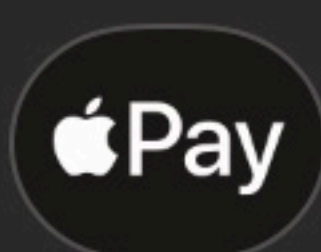
Youre a good worker. Dont let them get in your head

Thu, Jan 13, 8:06 PM

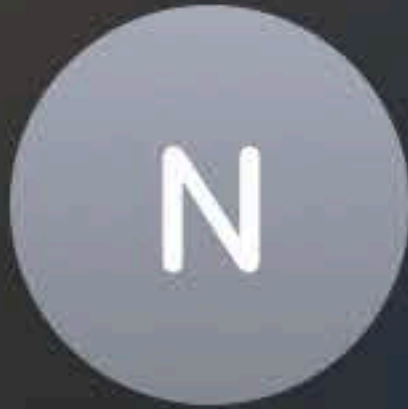
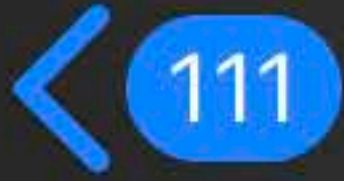
Thank you again Jason, I wish you the best in your career. Don't forget about me!



Text Message



9:04



Nancy NH >



Wed, Jan 12, 10:07 AM

You heard when she said "don't come back Jennifer" right?

Yes

Like did u get fired ?

That's why I'm thinking

I'm sure I did.

OMG she should've at least told you in her office

yeah I know. Oh well

Have you heard anything?

No tbh

Have u texted Susan?

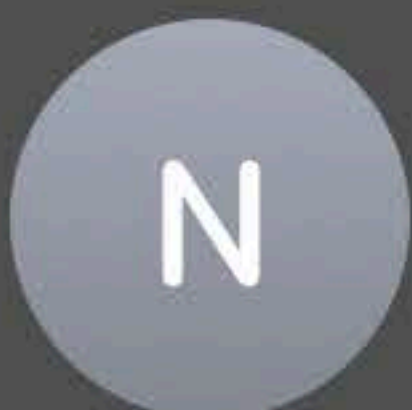
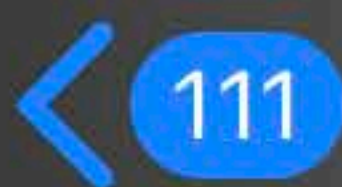
No not yet but I will

I asked Jason S if they let u go he said I guess so smh right after u left of course Liz Lilly & heather started talking about the situation 🙄



iMessage





Nancy NH >



License/Certification:

- BLS Certification (Preferred)
- Certified Medical Assistant (Preferred)
- CPR Certification (Required)

Work Location:

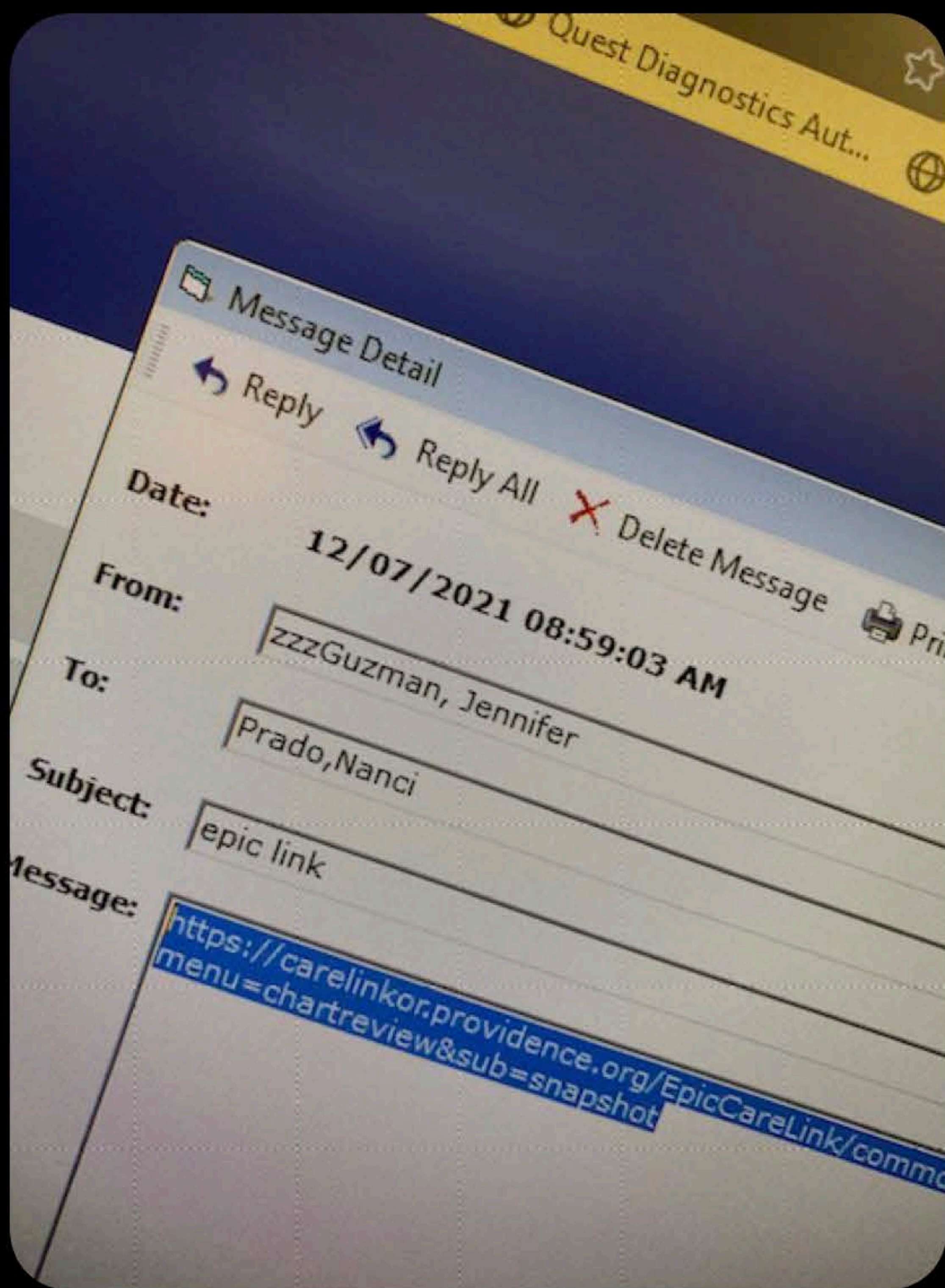
- One location

Work Remotely:

- No

Susan Foster

Business Manager



& they already put the zzz so no one will use ur name



iMessage



9:15



< 111



Tania >

Wed, Jan 12, 7:33 PM

Why did you leave?

I didn't leave Tania I was fired.

Oh what was the reason?

No reason was given to me

What the fuck?!

She just yelled at me to go home and then said "don't come back Jennifer" that's literally all she said

Oh my God

She is so damn unprofessional

You deserve way better

I'm actually happy for you

So you can start fresh where they treat you well

Thu, Jan 13, 9:59 AM

Hey Tania can you send me Susan's email please



Text Message

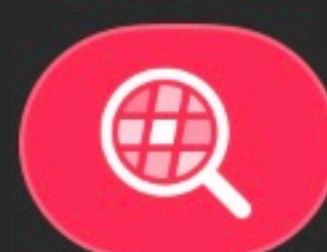
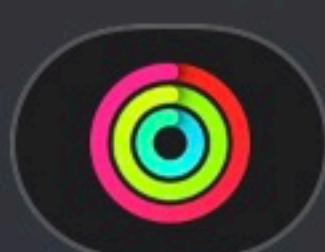


EXHIBIT D

----- Forwarded Message -----

From: Nanci Prado <[\[REDACTED\]@\[REDACTED\].com](#)>

To: Jennifer Guzman <[\[REDACTED\]@\[REDACTED\].com](#)>

Sent: Wednesday, January 19, 2022, 08:02:49 AM PST

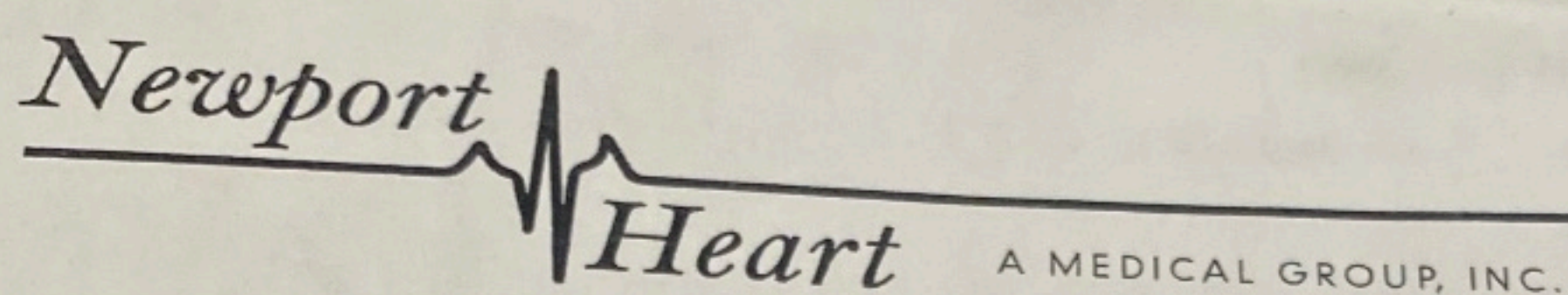
Subject: Statement

On the morning of 1/12/22 around 9:30am I witnessed as Jennifer was adjusting her hair to properly fit her mask. Susan our business manager walked by and saw Jennifer and aggressively told Jennifer to put her mask up. Jennifer then responded to Susan informing her that she would do so as soon as she was done adjusting her hair. Susan then responded back with anger "NO GO TO THE RESTROOM IF YOU ARE GOING TO DO YOUR HAIR & PUT YOUR MASK BACK ON." Jennifer had 1 string on her head from her N95, her mask was not fully off her face. She then got up from her desk to room her patient. A few moments after I saw Jennifer coming back to her desk and Susan right behind her. Jennifer kindly asked her if she was being escorted out and that's when Susan yelled at Jennifer in front of everyone to go home and not to come back. There were no explanations of what had occurred.

If your have any further questions please free to contact me via email.

Sent from my iPhone

EXHIBIT E



415 Old Newport Boulevard • Suite 200 • Newport Beach • California 92663
Phone: (949) 548-9611 • Fax: (949) 548-9958
www.newportheart.com

Richard J. Haskell, M.D., F.A.C.C.
Desmond D. Levin, M.D., F.A.C.C.
Bonnie J. Gainer, M.D., F.A.C.C.
Neala J. Hunter, M.D., F.A.C.C.
Jeffrey Bruss, M.D., F.A.C.C.
Carey L. O'Bryan IV, M.D., F.A.C.C.
Michael Panutich, M.D., F.A.C.C.
Jorge M. Castellanos, M.D., M.P.P., F.A.C.C.
Arturo Dominguez III, M.D., F.A.C.C.
Christine Millare, PA-C
Breanne Wickamp, PA-C

Newport Heart Mask Policy

As of January 2022, in accordance with CDC guidelines, if an employee tests positive for COVID 19 they must quarantine for five days. The employee may return to work after five days of isolation as long as their symptoms have improved and they do not have a fever. Upon returning to work the employee must wear an N95 mask at all times for an additional five days. They are not allowed to use the break room to eat or common areas without a mask.

If an employee is exposed to COVID 19 by someone in their household yet, has no symptoms, they are allowed to continue to work, but must wear an N95 mask for the following 10 days. If they develop any symptoms they must inform management immediately. Again, the employee should avoid using common areas without a mask.

Nanci Prado
Employee Name

[Signature]
Employee Signature

11/12/21
Date

EXHIBIT F

----- Forwarded Message -----

From: Jennifer Guzman <[REDACTED].com>

To: [Susan](#) [REDACTED].com>

Sent: Friday, January 14, 2022, 09:45:59 AM PST

Subject: Confirmation Email

Susan,

I am writing this email to get confirmation that you fired me the morning of 1/12/22 after you verbally stated "do not come back Jennifer" I would also like to use this moment to express the lack of professionalism on your part as management. As soon as I stated that both my children were positive for COVID you and Michelle, both treated me as if I were infectious. Even after coming back negative for Covid twice. You and Michelle both forced me to wear an N95 mask, while everyone else had an option to wear regular masks. I understand the precautions that have to be taken, But at this point I felt more singled out and attacked. And it all started when I briefly pulled off one string off my N95 mask to fix my hair. Mind you my mask was not fully off, and I was well aware of my surroundings. I made sure I was facing the wall the entire time. Then you proceeded to yell at me to put my mask on, I then told you I would do so as soon as I put my hair up. You seemed to get more upset when I responded so you demanded I went to the restroom if I needed to fix my hair. Which is understandable but the form in which both you and Michelle say things is very intimidating. So moving forward you were told by Michelle that she overheard me stating that I felt "I was being picked on" to a coworker. To my surprise called me into your office while I was in the middle of prepping a patient for Dr. Gainer. I informed you of this and you proceeded to ignore me and continue walking to your office. It was clear that you were very upset. As soon as I walked to your office you started yelling at me for expressing to a coworker how I felt. You then brought up that I was exposed to COVID and you can't afford to have staff out sick. That was the reason you were enforcing mask policy with me, I then asked you if you felt I was a danger or exposure to the workplace why did you have me working. You told me I didn't have to be there and demanded I go home following what you said, I wanted to finish what I had started before leaving for what I thought was just for the day. I started cleaning an exam room and you stood at the door watching me and nearly screaming for me to go home. After the 3rd time of hearing, you tell me to "go home Jennifer" I walked towards my desk to gather my belongings, and to my surprise you continued to follow me around in such an intimidating way. When I asked you if you were also planning on escorting me out, you yelled out in front of everyone in the workplace "Go home and don't come back Jennifer". This all has been such a stressful situation, you made me feel very uncomfortable and humiliated me in front of everyone. I strongly believe the way things were handled that morning were crucial and unfair. I am writing you via email as it would have been nearly impossible to speak to you. Again, I need written confirmation of my termination on 1/12/22 around 10am. Thank you for your time.

Jennifer Guzman