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County of San Diego

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Clerk of the Superior Court
By A. Anzalone, Deputy Clerk

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

KANDACE BATTLE and RACHEL
CHRISTINA GOODWIN, individually and on
behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

CALIFORNIA CLINIC MANAGEMENT, LLC
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00039498-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiffs KANDACE BATTLE and RACHEL CHRISTINA GOODWIN, individually and on
2 behalf of all others similarly situated and the State of California under the Private Attorneys General
3 Act (“Plaintiffs”) bring this REPRESENTATIVE ACTION COMPLAINT against Defendants
4 CALIFORNIA CLINIC MANAGEMENT, LLC and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. The aggrieved employees in this PAGA action worked for Defendants California Clinic
8 Management, LLC.

9 2. Defendants underpaid the aggrieved employees’ wages by failing to include all forms
10 of remuneration, including quarterly bonuses and Covid related extra compensation, into the regular
11 rate of pay calculation for their hourly overtime, sick, and premium wages.

12 3. Defendants also failed to maintain compliant meal and rest period policies and
13 practices, resulting in a failure to pay all wages and premiums owed to the aggrieved employees at the
14 lawful rate.

15 4. Defendants’ employment policies and practices and payroll administration systems
16 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
17 employees.

18 **JURISDICTION & VENUE**

19 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
20 California Constitution as the causes of action are premised upon violations of California law.

21 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
22 the Superior Court.

23 7. This Court has jurisdiction over Defendants because, upon information and belief,
24 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
25 themselves to the California economy so as to render the exercise of jurisdiction over them by the
26 California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiffs

9. Plaintiff Battle is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2022 to May 2023. Plaintiff Battle worked as a Clinic Lead.

10. Plaintiff Goodwin is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2019 to July 2019 and from January 2021 to February 2022. Plaintiff Goodwin worked as a Front Office Associate and Optical Consultant.

11. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

12. Defendant California Clinic Management, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

17. Plaintiffs and aggrieved employees worked for Defendants and were compensated on an hourly basis as nonexempt employees.

18. In addition to earning hourly compensation, Defendants paid Plaintiffs and the aggrieved employees non-discretionary remuneration, including but not limited to, monthly and quarterly bonuses and extra Covid related extra compensation. However, Defendants failed to factor these multiple forms of remuneration into the statutory rates of pay for overtime, sick leave and premium wages.

19. For example, on Plaintiff Battle's October 21, 2022 wage statements, Plaintiff Battle earned a bonus in the same period that she was paid overtime. However, Defendants underpaid Plaintiff Battle's overtime wages because they failed to pay it at the regular rate of pay.

20. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees by not providing paid sick leave at the regular rate of compensation as required by Labor Code 246 *et seq.* Defendants underpaid sick pay by paying only the base hourly rate, exclusive of bonuses and other additional compensation.

21. For example, on Plaintiff Battle's October 21, 2022, wage statements, Plaintiff Battle earned a bonus in the same period that she used paid sick leave hours. However, Plaintiff Battle's

1 paid sick leave was paid at her base hourly rate, rather than the higher regular rate of pay from the
2 earned bonus in that period.

3 22. Additionally, Defendants did not consistently provide compliant meal and rest periods.
4 Plaintiffs and the aggrieved employees were deprived of their ability to take all meal and rest periods
5 to which they were entitled due to short staffing and the consistent flow of patients. Defendants,
6 through their supervisors, frequently instructed Plaintiffs and the aggrieved employees to skip their
7 meal and/or rest periods because of the clinic's patient workload and short staffing. This practice
8 resulted in Plaintiffs and the aggrieved employees suffering late, short, or interrupted meal and rest
9 periods with no corresponding premium payment. Defendants' records show meal period violations
10 with no corresponding meal period premium payment. On information and belief, Defendants also
11 had a policy and practice of not paying rest period premiums for missed rest periods.

12 23. On information and belief, to the extent Defendants paid these meal and rest period
13 premiums, such amounts were underpaid due to the Defendants' policy and practice of excluding
14 forms of non-discretionary income from the regular rate of compensation as discussed above.

15 24. Because of the aforementioned violations, Defendants failed to provide accurate
16 itemized wage statements that included the accurate gross or net wages. Defendants paid overtime,
17 premiums, and sick leave at inaccurate hourly wage rates (*i.e.*, the base rate instead of the regular rate
18 of pay/compensation) which violated the wage statement requirement to include the correct hourly
19 rate in effect each pay period along with the correct number of hours.

20 25. These violations create derivative liability for failure to pay all wages owed each
21 payday or upon separation of employment.

22 26. As a result of the foregoing violations, Defendants also failed to timely pay all wages
23 as they were due to Plaintiffs and the aggrieved employees while they were employees and also failed
24 to timely pay all wages due to Plaintiffs and the aggrieved employees at their separation of
25 employment.

26 27. Through this action, Plaintiffs seek to enforce the rights of the State of California,
27 through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants' Labor Code
28 violations.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **Violation of Labor Code §§ 2698 *et seq.***

4 **(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)**

5 28. All outside paragraphs of this Complaint are incorporated into this section.

6 29. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

9 a. All current and former non-exempt employees who worked for Defendants in
10 California at any time from one year prior to the postmark date of the initial
11 PAGA notice through date of trial.

12 30. Plaintiffs reserve the right to amend, supplement, or add to this description of the
13 aggrieved employees, according to proof.

14 31. The State of California, via the Labor and Workforce Development Agency
15 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
16 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
17 files suit is always the real party in interest.”])

18 32. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
19 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Section 2699.3.”

24 33. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.”

3 34. Any allegations regarding violations of the IWC Wage Orders are enforceable as
4 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
5 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 35. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
7 penalties under the PAGA.

8 36. On or about **May 27, 2022**, Plaintiff Goodwin paid the requisite PAGA filing fee and
9 provided written notice (by online electronic filing with the LWDA and by certified mail to
10 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
11 the alleged violations.

12 37. A true and correct copy of Plaintiff Goodwin’s written PAGA notice, entitled “Notice
13 of Labor Code Violations and PAGA Penalties” is attached hereto as Exhibit 1 and incorporated by
14 reference as though fully set forth herein (the “Goodwin PAGA Notice”).

15 38. On or about **July 7, 2023**, Plaintiff Battle paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

19 39. A true and correct copy of Plaintiff Battle’s written PAGA notice, entitled “Notice of
20 Labor Code Violations” is attached hereto as Exhibit 2 and incorporated by reference as though fully
21 set forth herein (the “Battle PAGA Notice”).

22 40. To date, neither Plaintiffs nor Plaintiffs’ counsel have received a response to the
23 Goodwin PAGA Notice or Battle PAGA Notice from the LWDA.

24 41. Within 33 calendar days of the postmark date of the notices sent by Plaintiffs,
25 respectively, neither Plaintiffs nor Plaintiffs’ counsel received written notice by certified mail from
26 any defendant providing a description of any actions taken to cure the alleged violations.

27 42. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these
28 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate

the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

43. As set forth in the Goodwin PAGA Notice and Battle PAGA Notice attached as Exhibits 1 and 2, respectively, and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties, including, in general Labor Code §§ 206, 206.5, 216, 225.5, and 558.1, and as set forth below and in Exhibits 1 and 2:

- a. ***Unpaid Minimum and Straight Time Wages.*** Violation of and penalties pursuant to Labor Code §§ 221, 223, 1182.12, 1194, 1194.2, 1197, 1197.1
- b. ***Unpaid Overtime.*** Violation of and penalties pursuant to Labor Code §§ 510, 558, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of and penalties pursuant to Labor Code §§ 233, 234, 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of and penalties pursuant to Labor Code §§ 226.7, 512, 558, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of and penalties pursuant to Labor Code §§ 226.7, 516, 558, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of and penalties pursuant to Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of and penalties pursuant to Labor Code §§ 201, 202, 203, 227.3, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of and penalties pursuant to Labor Code §§ 226, 226.3, 226.6.
- i. ***Failure to Maintain Accurate Records.*** Violation of and penalties pursuant to Labor Code §§ 1174, 1174.5; IWC Wage Orders.
- j. ***Failure to Indemnify for Necessary Expenditures.*** Violation of and penalties pursuant to Labor Code §§ 2800, 2802.

44. Plaintiffs seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants

pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiffs pray for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. For Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- j. For such other relief the Court deems just and proper.

Dated: March 10, 2025

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Attorneys for Plaintiff Kandace Battle

Dated: March 10, 2025

Wilshire Law Firm

/s/ Benjamin H. Haber

Benjamin H. Haber
Daniel J. Kramer
Chase M. Stern
Attorneys for Plaintiff Rachel Christina Goodwin

EXHIBIT 1

Notice of Labor Code Violations and PAGA Penalties

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May 27, 2022

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

California Clinic Management, LLC dba Acuity Eye Group
100 E. California Blvd.
Pasadena, CA 91105
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6372 2039 84

Tom Chang
Agent for Service of Process for:
California Clinic Management, LLC dba Acuity Eye Group
100 E. California Blvd.
Pasadena, CA 91105
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6372 2039 91

Re: ***Rachel Christina Goodwin v. California Clinic Management, LLC dba Acuity Eye Group***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Rachel Christina Goodwin ("Plaintiff") to pursue a Labor Code Private Attorneys General Act ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer, California Clinic Management, LLC dba Acuity Eye Group ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of herself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California, including Riverside, County. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Plaintiff Rachel Christina Goodwin is a resident of Riverside County, California who worked for Defendant in Riverside County, California as an hourly-paid, non-exempt employee from approximately May 2019 to approximately February 2022. Defendant typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff mostly worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Plaintiff's employment, Defendant failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendant terminated her employment, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendant required Plaintiff and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to perform work during legally required meal periods and after clocking out for the workday. Some

of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

Throughout the statutory period, Defendant wrongfully failed to include non-discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or shift differentials in the calculation of Plaintiff's and the other Aggrieved Employees' regular rate of pay used to calculate their overtime rate for the payment of overtime wages. Plaintiff and the other Aggrieved Employees Members earned non-discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or shift differentials and overtime wages in the same pay periods where they worked overtime hours. Accordingly, Defendant failed to compensate Plaintiff and the Aggrieved Employees for all overtime compensation they were owed.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal periods. Plaintiff and the Aggrieved Employees routinely worked through meal periods "off-the-clock," and Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. Defendant also regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendant also never informed Plaintiff of her right to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours in a

workday. Accordingly, Defendant's policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendant have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period.

Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

///

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and

the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number,

(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, work supplies, work attire, and use of personal cell phones. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendant, but Defendant failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and the Aggrieved Employees for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

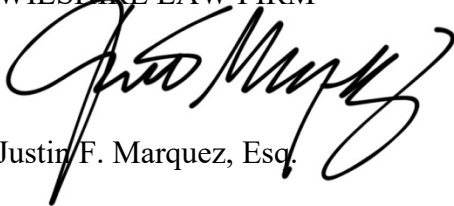
1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 2802 by failing to indemnify for necessary expenditures.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM



Justin F. Marquez, Esq.



WILSHIRE LAW FIRM, PLC

3055 WILSHIRE BLVD., 12TH FLOOR

LOS ANGELES, CA 90010

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
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Pitney Bowes

Tom Chang

Agent for Service of Process for:

California Clinic Management, LLC

dba Acuity Eye Group

100 E. California Blvd.

Pasadena, CA 91105

221 806



WILSHIRE LAW FIRM, PLC
3055 WILSHIRE BLVD., 12TH FLOOR
LOS ANGELES, CA 90010

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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE



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Pitney Bowes

California Clinic Management, LLC
dba Acuity Eye Group
100 E. California Blvd.
Pasadena, CA 91105

221806

EXHIBIT 2

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
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San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

July 7, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

California Clinic Management LLC
228 N. Santa Anita Ave. Ste. 402
Arcadia, California 91006

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **KANDACE BATTLE** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

CALIFORNIA CLINIC MANAGEMENT LLC (d/b/a ACCUITY EYE GROUP)

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Clinic Lead from about February 2022 to May 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff and the aggrieved employees earned multiple forms of non-discretionary remuneration outside of their base hourly rate, including quarterly bonuses for securing certain patient signups as well as Covid related extra compensation. However, when Plaintiff and the aggrieved employees simultaneously earned extra remuneration, like quarterly bonuses, and overtime wages in the same pay period, Defendants based the overtime rate only on the Plaintiff’s base hourly rate, rather than the lawful regular rate of pay. An illustrative example of Defendants’ unlawful overtime calculation is below:

California Clinic Management LLC							
Kandace Rose Battle					Earnings Statement		
Employee ID	102255	Fed Taxable Income	250.00	Check Date	October 21, 2022	Voucher Number	1286
Location	12494-601202	Fed Filing Status	H	Period Beginning	October 2, 2022	Net Pay	147.54
Hourly	\$19.00	State Filing Status	H-2	Period Ending	October 15, 2022	Total Hours Worked	0.00
Earnings	Rate	Hours	Amount	YTD	Deductions	Amount	YTD
Bonus		0.00	250.00	250.00	Mileage		-186.88
CA Meal Pr				152.00			-186.88
CCP				399.00	Direct Deposits	Type Account	Amount
FUNERAL				456.00	NAVY FEDERAL CREDIT UNION	C ***2580	147.54
Holiday				456.00	Total Direct Deposits		147.54
Overtime				559.79			
Personal				152.00	Available Plan Year		
Regular				21,438.46	Time Off	to Use	Used
Sick				627.00	CCP	19.00	12.00
Vacation				741.00	SICK	1.01	9.00
Gross Earnings		0.00	250.00	25,231.25	Vacation	2.93	7.00

Plaintiff’s wage statement showing her earned bonus of \$250 in the pay period 10/2/2022 to 10/15/2022.

California Clinic Management LLC						Earnings Statement	
Kandace Rose Battle							
Employee ID	102255	Fed Taxable Income	1,531.03	Check Date	October 21, 2022	Voucher Number	1287
Location	12494-601202	Fed Filing Status	H	Period Beginning	October 2, 2022	Net Pay	1,354.39
Hourly	\$19.00	State Filing Status	H-2	Period Ending	October 15, 2022	Total Hours Worked	64.36
Earnings	Rate	Hours	Amount	YTD	Deductions	Amount	YTD
Bonus				250.00	Mileage		-186.88
CA Meal Pr				152.00			-186.88
CCP				399.00	Direct Deposits	Type Account	Amount
FUNERAL				456.00	NAVY FEDERAL CREDIT UNION	C ***2580	1,354.39
Holiday				456.00	Total Direct Deposits		1,354.39
Overtime	28.50	0.44	12.55	559.79			
Personal				152.00	Available Plan Year		
Regular	19.00	63.92	1,214.48	21,438.46	Time Off	to Use	Used
Sick	19.00	9.00	171.00	627.00	CCP	19.00	12.00
Vacation	19.00	7.00	133.00	741.00	SICK	1.01	9.00
Gross Earnings		80.36	1,531.03	25,231.25	Vacation	2.93	7.00

Plaintiff's wage statement showing her earned overtime wages in the same pay period as the above bonus, however, Plaintiff's overtime rate is only 1.5x her base hourly rate of \$19 instead of at the higher regular rate of pay.

Due to Defendants' failure to correctly calculate the regular rate of pay for overtime, Plaintiff and the aggrieved employees were underpaid overtime wages in each and every pay period that the employees simultaneously earned bonuses or other supplemental remuneration and overtime wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees by not providing paid sick leave at the regular rate of compensation as required by Labor Code sections 248.6 and 248.7. When Plaintiff and the aggrieved employees utilized their paid sick leave, Defendants underpaid sick pay by paying only the base hourly rate, exclusive of bonuses and other supplemental remuneration. An illustrative example of Defendants’ unlawful sick pay calculation is below:

California Clinic Management LLC									
Kandace Rose Battle					Earnings Statement				
Employee ID	102255	Fed Taxable Income	1,531.03	Check Date	October 21, 2022	Voucher Number	1287		
Location	12494-601202	Fed Filing Status	H	Period Beginning	October 2, 2022	Net Pay	1,354.39		
Hourly	\$19.00	State Filing Status	H-2	Period Ending	October 15, 2022	Total Hours Worked	64.36		
Earnings	Rate	Hours	Amount	YTD	Deductions	Amount	YTD		
Bonus				250.00	Mileage		-186.88		
CA Meal Pr				152.00			-186.88		
CCP				399.00	Direct Deposits	Type Account	Amount		
FUNERAL				456.00	NAVY FEDERAL CREDIT UNION	C ***2580	1,354.39		
Holiday				456.00	Total Direct Deposits		1,354.39		
Overtime	28.50	0.44	12.55	559.79	Available Plan Year				
Personal				152.00	Time Off	to Use	Used		
Regular	19.00	63.92	1,214.48	21,438.46	CCP	19.00	12.00		
Sick	19.00	9.00	171.00	627.00	SICK	1.01	9.00		
Vacation	19.00	7.00	133.00	741.00	Vacation	2.93	7.00		
Gross Earnings		80.36	1,531.03	25,231.25					

Plaintiff’s wage statement from the same pay period (10/2/2022- 10/15/2022) as the overtime example above, showing sick leave paid at her base hourly rate, rather than the higher regular rate of pay from the earned bonus that period.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to employee job responsibilities, short staffing, and the constant flow of patients, Plaintiff and the aggrieved employees often missed their meal periods or experienced late, short or interrupted ones, which are evident on the face of records maintained by Defendants without a corresponding meal period premium payment. However, to the extent Defendants paid Plaintiff and the aggrieved employees meal premiums for these late, short, missed and/or interrupted meal periods, those premiums were underpaid. Defendants unlawfully maintained a policy and practice of paying overtime, sick leave, and premiums only at the aggrieved employees' base hourly rate, rather than the higher regular rate of pay inclusive of earned bonus remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to employee job responsibilities, short staffing, and the constant flow of patients, Plaintiff and the aggrieved employees often missed their rest periods. In fact, Defendants, through their supervisors, frequently instructed Plaintiff to skip her rest period because of the clinic's patient workload. Plaintiff believes and alleges that Defendants had a policy and practice of depriving the aggrieved employees paid premiums for these noncompliant rest periods. However, to the extent Defendants paid Plaintiff and the aggrieved employees any rest premiums for these late, short, missed and/or interrupted rest periods, those premiums were underpaid. Defendants unlawfully maintained a policy and practice of paying overtime, sick leave, and premiums only at the aggrieved employees' base hourly rate, rather than the higher regular rate of pay inclusive of earned bonus remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to include all forms on non-discretionary income, including bonuses, into overtime, sick leave, and premium wage rates. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing

employees upon separation of employment. Specifically, Defendants failed to include all forms on non-discretionary income, including bonuses, into overtime, sick leave, and premium wage rates during employment, and thus Defendants underpaid these amounts upon separation as well. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda

and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro".

Nicholas J. Ferraro

REJ

Cc Plaintiff Kandace Battle

Sitarra Mohammad, HR Representative, Defendants
smohammad@acuityeyegroup.com