

Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
KABATECK LLP
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

James L. Simon (admitted *pro hac vice*)
james@bswages.com
THE LAW OFFICES OF SIMON & SIMON
5000 Rockside Road
Liberty Plaza – Suite 520
Independence, OH 44131
Telephone: (216) 525-8890

Michael L. Fradin (admitted *pro hac vice*)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: (847) 986-5889

Attorneys for Plaintiffs and the Putative Classes

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Sharon Oliveira; and Ingrid Leeman,
individually, and on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AMN Healthcare Language Services,
Inc., a Delaware corporation; and DOES
1 through 10, inclusive,

Defendants.

) Case No. 22-cv-00003-LL-WVG
)
) **CLASS ACTION**
)
) **FOURTH AMENDED**
) **COLLECTIVE AND CLASS**
) **ACTION COMPLAINT AND**
) **REPRESENTATIVE ACTION**
) **UNDER THE PRIVATE**
) **ATTORNEYS GENERAL ACT**
)
) Initial Complaint: 1/3/22
) First Amended Complaint: 3/9/22
) Second Amended Complaint: 6/27/22
) Third Amended Complaint: 8/2/22
)
) **DEMAND FOR JURY TRIAL**
)
)

1 Plaintiffs Sharon Oliveira (“Plaintiff Oliveira”) and Ingrid Leeman (“Plaintiff
2 Leeman,” collectively “Plaintiffs”), individually, and on behalf of themselves and all
3 others similarly situated, file this Fourth Amended Collective and Class Action
4 Complaint and Representative Action Under the Private Attorneys General Act (the
5 “PAGA,” and this complaint is hereinafter referred to as the “FAC”) against
6 Defendant AMN Healthcare Language Services, Inc. (hereafter “AMN”) and DOES
7 1 through 10 (collectively, “Defendants”)¹ and allege as follows:

8 **PRELIMINARY STATEMENT**

9 1. This FAC is brought as a collective action under the Fair Labor Standards
10 Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and a class action under the Fed. R. Civ. P. 23
11 (“Rule 23”). The claims in the FAC are brought under the following federal and state
12 statutes: (1) the FLSA; (2) Ohio Minimum Fair Wage Standards Act, O.R.C. 4111.01,
13 *et seq.* (“OMWFSA”); (3) California Labor Code §§ 201-203, 204, 210, 226, 226.7,
14 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and Industrial Welfare
15 Commission Order No. 4-2001 (“Wage Order No. 4”); and (5) California Business &
16 Profession § 17200, *et seq.* (the “UCL”). The claims are premised on AMN’s failure
17 to pay Plaintiffs and other similarly-situated employees all earned minimum and
18 overtime wages, failure to provide compliant meal-and-rest periods, failure to furnish
19 accurate wage statements, failure to reimburse employees for reasonable and
20

21 ¹ Plaintiffs initially filed an action against AMN Healthcare, Inc. and named said
22 defendant in the amended complaint, second amended complaint, and third amended
23 complaint. Based on Defendants’ representation that AMN Healthcare Language
24 Services, Inc. is the true and correct legal entity that employs Plaintiffs and the
25 members of the putative classes alleged in this FAC, Plaintiffs have agreed to remove
26 AMN Healthcare, Inc. as a named defendant in this FAC, subject to bringing it back
27 in as a named defendant and relating the claims against said defendant to the date the
28 complaint was initially filed, should discovery warrant. By Plaintiffs agreeing to
dismiss AMN Healthcare, Inc., Defendants shall not take the position that AMN
Healthcare, Inc. is a prevailing party and entitled to attorneys’ fee or costs.

1 necessary business expenses, failure to pay all earned wages due upon separation, and
2 violations of the UCL. As alleged in more detail below, the members of the FLSA
3 Collective Class consists of employees who worked for AMN from three years prior
4 to the date the initial complaint was filed to the present (the “FLSA Collective
5 Members”). The members of the Rule 23 Ohio Class consist of employees who
6 worked for AMN from three years prior to the date the initial complaint was filed to
7 the present (the “Rule 23 Ohio Class Members”) and the Rule 23 California Class
8 consists of employees who worked for AMN from four years prior to the date the
9 initial date the complaint was filed to the present (the “Rule 23 California Class
10 Members”).

11 2. In addition, California Labor Code § 2698, *et seq.* (also known as the
12 PAGA) creates specified remedies that are triggered when an employer violates any
13 provision of the California Labor Code specified in § 2699.5. On May 26, 2022,
14 Plaintiff Leeman gave notice of these alleged violations to the California Labor and
15 Workforce Development Agency (“LWDA”) and to the agent for service of process
16 for AMN Healthcare Inc. (the “PAGA Notice,” a true and correct copy of which is
17 attached hereto as **Exhibit A**). On July 27, 2022, Plaintiff Leeman amended the
18 original PAGA Notice to include AMN Healthcare Language Services, Inc. as an
19 additional corporate defendant (a true and correct copy of which is attached hereto as
20 **Exhibit B**). Plaintiffs did not receive a response from the LWDA and AMN failed to
21 cure or remedy the alleged violations of the California Labor Codes identified in the
22 Second Amended Complaint (“SAC”), the Third Amended Complaint (“TAC”), this
23 FAC and the PAGA Notice within the requisite statutory period. As a result, and as
24 permitted by the Court (*see* Doc. 28), Plaintiffs amended the SAC to add a claim under
25 the PAGA as mandated by § 2699.3(a)(2)(C).

26 3. Plaintiffs, the FLSA Collective Members and the Rule 23 Class Members
27 are current and former employees of AMN. Plaintiffs brings this action on behalf of
28

1 themselves and all similarly-situated current and former Interpreters (also referred to
2 as the “Covered Positions”) of AMN.²

3 4. The FLSA Collective Members are all current and former Interpreters, or
4 other similarly titled employees, who were employed by AMN in the United States
5 starting three years before the initial complaint was filed, up to the present.³ The
6 proposed class representatives for the FLSA Collective Class are both Plaintiffs.

7 5. The Rule 23 Ohio Class Members are all current and former Interpreters,
8 or other similarly titled employees, who were employed by AMN within the state of
9 Ohio starting three years before the initial complaint was filed, up to the present.
10 Plaintiff Oliveira is the proposed class representative for the Rule 23 Ohio Class.

11 6. The Rule 23 California Class Members are all current and former
12 Interpreters, or other similarly titled employees, who were employed by AMN within
13 the state of California starting four years before the initial complaint was filed, up to
14 the present. Plaintiff Leeman is the proposed class representative for the Rule 23
15 California Class.

16 7. Under the FLSA, OMWFSA and California law, employers must pay all
17 non-exempt employees an overtime wage premium of pay one and one-half times their
18 regular rates of pay for all time they spend working over 40 hours in a workweek.
19 AMN failed to pay Plaintiffs, the FLSA Collective Members and the Rule 23 Class
20 Members one and one-half times their regular rate of pay for all time they spent
21 working over 40 hours in a workweek. Plaintiffs therefore bring this FAC as an FLSA

22 ² For purposes of this FAC, “Interpreters” is exclusively a job title used for the purpose
23 of classifying the putative class of similarly situated individuals, is not necessarily the
24 job title of Plaintiffs and the putative classes, and has no bearing or relation to any
25 specialization, skill, educating, training, or other qualification that might otherwise be
associated with such a job title.

26 ³ As defined throughout this FAC, the term FLSA Collective Members does not
27 include employees in Puerto Rico and is intended to include only employees in the 50
28 states.

1 Collective Class under 29 U.S.C. § 216(b) for AMN’s violation of the FLSA and as a
2 Rule 23 Ohio Class and Rule 23 California Class for AMN’s violation of Ohio and
3 California law as detailed further below.

4 8. In addition to the minimum protections of the FLSA, California law
5 requires employers to pay non-exempt employees an overtime wage premium of pay
6 one and one-half times their regular rate of pay for all time they spend working over
7 8 hours in a day.

8 9. Under the FLSA and OMWFSa “[r]est periods of short duration, running
9 from 5 minutes to about 20 minutes. . . must be counted as hours worked.” *See* 29
10 C.F.R. 785.18; *see also Maui v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th
11 Cir. 2021). AMN violated the FLSA and OMWFSa by routinely failing to pay
12 Plaintiffs, the FLSA Collective Members and Rule 23 Ohio Class Members for rest
13 breaks shorter than 20 minutes.

14 10. The wage requirements of the FLSA and OMFWsa “will not be met
15 where the employee ‘kicks-back’ directly or indirectly to the employer or to another
16 person for the employer’s benefit the whole or part of the wage delivered to the
17 employee.” *See* 29 C.F.R. 531.35. “For example, if it is a requirement of the employer
18 that the employee must provide tools of the trade which will be used in or are
19 specifically required for the performance of the employer’s particular work, there
20 would be a violation of the Act in any workweek when the cost of such tools purchased
21 by the employee cuts into the minimum or overtime wages required to be paid him
22 under the Act.” *Id.* AMN violated the FLSA and OMFWsa by requiring Plaintiffs,
23 the FLSA Collective Members and the Rule 23 Ohio Class Members to provide the
24 internet services necessary to complete their Interpreter job duties for AMN while
25 failing to reimburse Plaintiffs, the FLSA Collective Members and Rule 23 Ohio Class
26 Members for the costs of same.

27 11. Under California law and Wage Order No. 4, AMN is required to pay
28

1 Plaintiff Leeman and Rule 23 California Class Members an hourly wage for each and
2 every hour worked. *See* Cal. Lab. Code §§ 200, 204, 1194, and 1198. Plaintiff Leeman
3 and Rule 23 California Class Members regularly and consistently worked before and
4 after their shifts, and during their meal periods, for which they were not paid an hourly
5 wage in violation of California Law.

6 12. Under California law and Wage Order No. 4, “[a]ny work in excess of
7 [8] hours in one workday and any work in excess of 40 hours in any one workweek
8 and the first [8] hours worked on the seventh day of work in any one workweek shall
9 be compensated at the rate of no less than one and one-half times the regular rate of
10 pay for an employee.” *See* Cal. Lab. Code § 510(a). Further, “[a]ny work in excess of
11 12 hours in one day shall be compensated at the rate of no less than twice the regular
12 rate of pay for an employee. In addition, any work in excess of eight hours on any
13 seventh day of a workweek shall be compensated at the rate of no less than twice the
14 regular rate of pay of an employee.” *Id.* Plaintiff Leeman and Rule 23 California Class
15 Members regularly and consistently worked more than 8 hours in a day and more than
16 40 hours in a week for which they were not paid one and one-half times or double
17 their regular rate of pay.

18 13. Under California law and Wage Order No. 4, AMN is required to provide
19 Plaintiff Leeman and Rule 23 California Class Members compliant meal periods. *See*
20 Cal. Lab. Code §§ 226.6, 512; *see also* Wage Order No. 4, § 11. California law also
21 requires AMN to pay Plaintiff Leeman and Rule 23 California Class Members
22 premium wages (at their regular rate of pay) when AMN fails to provide them
23 compliant meal periods. AMN violated California law by failing to provide Plaintiff
24 Leeman and Rule 23 California Class Members off-duty, uninterrupted 30-minute
25 meal breaks, free from employer control, for every 5 hours worked. Plaintiff Leeman
26 and Rule 23 California Class Members regularly and consistently worked over 5 and
27 10 hours a day and were unable to take a first meal period or second meal period when
28

1 they worked more than 10 hours in a day. On other occasions, Plaintiff Leeman's and
2 Rule 23 California Class Members' meal periods were cut short of 30 minutes,
3 interrupted, or taken late. On other occasions, Plaintiff Leeman and California Class
4 Members worked through their meal periods, but were neither paid an hourly wage
5 for the time worked (as alleged above), nor were they paid a premium wage.

6 14. Under California law and Wage Order No. 4, AMN is required to provide
7 Plaintiff Leeman and Rule 23 California Class Members compliant rest periods of at
8 least 10 minutes, free from employer control, for every 4 hours worked or major
9 fraction thereof. *See* Cal. Lab. Code § 226.7; *see also* Wage Order No. 4, § 12. AMN
10 violated California law by not providing Plaintiff Leeman and Rule 23 California
11 Class Members with 10 minute rest periods for every four hours worked or major
12 fraction thereof. Plaintiff Leeman's and Rule 23 California Class Members' rest
13 breaks were regularly and consistently interrupted, less than 10 minutes, and/or not
14 duty free. Plaintiff Leeman and Rule 23 California Class Members were not paid a
15 premium wage (at their regular rate of pay) for these rest-period violations.

16 15. Under California law, AMN is required to provide Plaintiff Leeman and
17 Rule 23 California Class Members, "semimonthly or at the time of each payment of
18 wages," with accurate wage statements showing, among other things: "(1) gross wages
19 earned, (2) total hours worked by the employee..., [3] net wages earned, ... [4] the
20 name and address of the legal entity that is the employer ..., and [5] all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee..." Cal. Lab. Code § 226(a). By failing
23 to, among other things, include all hours worked in the wage statements, failing to
24 accurately reflect all wages earned, failing to include premium wages for meal-and-
25 rest period violations, and failing to include the correct name of the employer, AMN
26 knowingly and intentionally failed to provide Plaintiff Leeman and Rule 23 California
27 Class Members with accurate wage statements. *See Naranjo v. Spectrum Security*

1 *Services, Inc.*, --- P.3d ---- 2022 WL 1613499 (May 23, 2022).

2 16. Under California law, AMN is required to adequately indemnify Plaintiff
3 Leeman and Rule 23 California Class Members for employment-related business
4 expenses. *See* Cal. Lab. Code § 2802. As alleged above, Plaintiff Leeman and Rule 23
5 California Class Members were required to provide internet services, internet
6 equipment and replacement computer equipment necessary to complete their
7 Interpreter job duties for AMN. AMN failed to reimburse Plaintiff Leeman and the
8 Rule 23 California Class Members for these business expenses.

9 17. Under California law, AMN is required to pay Rule 23 California Class
10 Members their final wages immediately upon termination, or within 72 hours of
11 voluntarily leaving employment. *See* Cal. Lab. Code §§ 201-203. As alleged above,
12 Rule 23 California Class Members worked hours for which they were not properly
13 paid and were therefore not paid all wages due upon separation. Accordingly, Rule 23
14 California Class Members, who are former employees, are entitled to waiting-time
15 penalties. *Id.*

16 18. Under California law, AMN's violations of the FLSA and
17 aforementioned California Labor Codes constitutes a violation of the UCL.

18 **JURISDICTION AND VENUE**

19 19. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29
20 U.S.C. § 201, *et seq.* because this civil action arises under the laws of the United
21 States.

22 20. Venue is proper in this district under 28 U.S.C. § 1391(b)(ii) because acts
23 giving rise to the claims of Plaintiffs, the FLSA Collective Members and Rule 23 Class
24 Members occurred within this District.

25 21. At all relevant times, Plaintiff Oliveira has been a resident of Franklin
26 County, Ohio and performed work for AMN within the state of Ohio.

27 22. At all relevant times, Plaintiff Leeman has been a resident of Santa
28

1 Barbara, California and performed work for AMN within the state of California.

2 23. AMN is headquartered at 12400 High Bluff Drive San Diego, California
3 92130.

4 24. AMN regularly conducts business in and has engaged in the wrongful
5 conduct alleged herein – and, thus, is subject to personal jurisdiction in – this judicial
6 district.

7 25. Plaintiffs, the FLSA Collective Members and Rule 23 Class Members in
8 their work for AMN were employed by an enterprise engaged in commerce with
9 annual gross sales of at least \$500,000.

10 **PARTIES**

11 26. At all times material to the matters alleged in this FAC, Plaintiffs are
12 current employees of AMN.

13 27. Plaintiff Oliveira is a full-time employee of AMN who worked and
14 continues to work as an Interpreter from approximately May 1, 2020 through the
15 present.

16 28. Plaintiff Leeman is a full-time employee of AMN who worked and
17 continues to work as an Interpreter from approximately June 1, 2020 through the
18 present.

19 29. The FLSA Collective Members are all current and former Interpreters
20 who worked for AMN in the United States at any point in the three years preceding
21 the filing of the initial complaint up to the present.

22 30. The Rule 23 Ohio Class Members are all current and former Interpreters
23 who worked for AMN in the state of Ohio at any point in the three years preceding
24 the filing of the initial complaint up to the present.

25 31. The Rule 23 California Class Members are all current and former
26 Interpreters who worked for AMN in the state of California at any point in the four
27 years preceding the filing of the initial complaint up to the present.

1 32. The FLSA Collective Members and Rule 23 Class Members are non-
2 exempt employees and therefore entitled to overtime under the FLSA, OMFWSA and
3 California law.

4 33. At all material times, AMN is a Delaware corporation duly licensed to
5 transact business in the State of California, and is headquartered in San Diego,
6 California.

7 34. Under the FLSA, OMFWSA and California law, AMN is an employer.
8 At all relevant times, AMN had the authority to hire and fire employees, supervised
9 and controlled work schedules or the conditions of employment, determined the rate
10 and method of payment, and maintained employment records in connection with
11 Plaintiffs' employment with AMN. As a person who acted in the interest of AMN in
12 relation to the company's employees, AMN is subject to liability under the FLSA,
13 OMFWSA and California law.

14 35. At all material times, Plaintiffs, the FLSA Collective Members, and Rule
15 23 Class Members were employees of AMN as defined by the FLSA, OMFWSA and
16 California law. *See* 29 U.S.C. § 203(e)(1).

17 36. At all material times, Plaintiffs, the FLSA Collective Members and Rule
18 23 Class Members were non-exempt employees under 29 U.S.C. § 213(a)(1).

19 37. Plaintiff Oliveira has given her written consent to be a named party in
20 this action under 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
21 this FAC as **Exhibit C**.

22 38. Plaintiff Leeman has given her written consent to be a named party in
23 this action under 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
24 this FAC as **Exhibit D**.

25 39. The true names and capacities, whether individual, corporate, associate,
26 representative, alter ego or otherwise, of defendants named in this action as DOES 1
27 through 10 inclusive are presently unknown to Plaintiffs, who therefore sue such
28

1 defendants by such fictitious names. Plaintiffs will seek to amend this FAC to allege
2 the true names and capacities of DOES 1 through 10 when the same have been
3 ascertained. Plaintiffs are informed and believe, and based thereon allege, that DOES
4 1 through 10 were and/or are, in some manner or way, responsible for and liable to
5 Plaintiffs, the FLSA Collective Members and Rule 23 Class Members for the events,
6 happenings, and damages set forth below.

7 40. Plaintiffs are informed and believe, and based thereon allege, that at all
8 relevant times mentioned herein, Defendants acted as agents, employees, supervisors,
9 partners, conspirators, servants and/or joint venturers of each other, and in doing the
10 acts hereafter alleged, were acting within the course, scope, and authority of such
11 agency, employment, partnership, conspiracy, enterprise and/or joint venture, and
12 with the express and/or implied permission, knowledge, consent, authorization and
13 ratification of their co-defendants.

14 **FACTUAL ALLEGATIONS**

15 41. AMN's parent company, AMN Healthcare, Inc., provides staffing and
16 recruitment services for healthcare providers nationwide.⁴

17 42. AMN, however, supplies healthcare providers with qualified language
18 interpreters such as Plaintiffs, the FLSA Collective Members and the Rule 23 Class
19 Members.⁵

20 43. The FLSA Collective Members are all current and former Interpreters
21 who worked for AMN in the United States at any point in the three years preceding
22 the filing of the initial complaint to the present. The FLSA Collective Members are
23 non-exempt from the FLSA's overtime requirements.

24 ⁴ See <https://www.amnhealthcare.com/about/why-amn-healthcare/> (last visited
25 September 22, 2022).

26 ⁵ See <https://www.amnhealthcare.com/staffing/schools/language-interpretation/> (last
27 visited September 22, 2022).

1 44. The Rule 23 Ohio Class Members are all current and former Interpreters
2 who worked for AMN in Ohio at any point in the three years preceding the filing of
3 the initial complaint to the present. The Rule 23 Ohio Class Members are non-exempt
4 from the OMFWSA's overtime requirements.

5 45. The Rule 23 California Class Members are all current and former
6 Interpreters who worked for AMN in California at any point in the four years
7 preceding the filing of the initial complaint to the present. The Rule 23 California
8 Class Members are non-exempt from California's overtime requirements.

9 46. Plaintiffs worked for AMN as Interpreters, providing two-way language
10 translation for AMN's clients. At all relevant times, Plaintiff Oliveira worked
11 remotely from her residence in Franklin County, Ohio, and Plaintiff Leeman worked
12 remotely from her residence in Santa Barbara, California. The FLSA Collective
13 Members and the Rule 23 Class Members similarly work remotely using AMN's
14 propriety technology, hardware, and software.

15 47. At all relevant times, Plaintiffs were compensated on an hourly basis at a
16 rate of approximately \$22.00.

17 48. At all relevant times, Plaintiff Oliveira works approximately 50 hours per
18 week. Plaintiff Leeman works at least 8 hours a day and 40 hours a week.

19 49. During every workweek, Plaintiffs, the FLSA Collective Members and
20 Rule 23 Class Members were paid on an hourly basis.

21 50. Plaintiffs, the FLSA Collective Members, and Rule 23 Class Members
22 perform their duties, work and provide their interpretation services for AMN remotely.
23 As part of this design, AMN issues Plaintiffs, the FLSA Collective Members and Rule
24 23 Class Members computer, audio and video equipment for use in Plaintiffs', the
25 FLSA Collective Members' and Rule 23 Class Members' homes. This AMN
26 equipment contains AMN's proprietary software programs which Plaintiffs, the FLSA
27 Collective Members and Rule 23 Class Members must log on to perform their job
28

1 functions for AMN.

2 51. At all relative times, Plaintiffs, the FLSA Collective Members and Rule
3 23 Class Members have been subject to AMN's policy of requiring them to spend time
4 working before clocking in at the beginning of their shifts and after clocking out at the
5 end of their shifts without compensation, including working through their meal
6 periods.

7 52. Specifically, Plaintiffs, the FLSA Collective Members and Rule 23 Class
8 Members must set up the required audio and video equipment and perform quality
9 checks before "clocking in." In addition, Plaintiffs, the FLSA Collective Members and
10 Rule 23 Class Members are required to spend time booting up their computers and
11 "logging in" or "signing in" several apps or software, checking their Webcam and
12 microphone, and pre-session screening before "clocking in" for the beginning of their
13 scheduled shifts. Furthermore, Plaintiffs, the FLSA Collective Members and Rule 23
14 Class Members are required to watch mandatory training videos and participate in
15 meetings off the clock. As a result, Plaintiffs, the FLSA Collective Members and Rule
16 23 Class Members are required to perform pre-shift work for which they are not being
17 compensated. Moreover, Plaintiffs, the FLSA Collective Members and Rule 23 Class
18 Members are required to "clock out" at the end of their scheduled shifts before
19 "logging off" or "signing off" their apps or software, shutting down their computers
20 and cleaning the AMN issued equipment. As a result, Plaintiffs, the FLSA Collective
21 Members and Rule 23 Class Members are required to perform post-shift work for
22 which they are not being compensated.

23 53. As a result of the pre- and post-shift work, Plaintiffs, the FLSA Collective
24 Members and Rule 23 Class Members typically spend at least 15 minutes or more each
25 shift that goes completely uncompensated, whether at a regular rate of pay or an
26 overtime rate of pay. In addition, and as a result of the pre- and post-shift work,
27 Plaintiffs, the FLSA Collective Members and Rule 23 Ohio Class Members are
28

1 working more than 40 hours in a week for which they are not being paid overtime, and
2 Plaintiff Leeman and Rule 23 California Class Members are working more than 8-
3 hours in a day and/or 40-hours in a week for which they are not being paid overtime.
4 In all instances, AMN's failure to compensate Plaintiffs, the FLSA Collective
5 Members and Rule 23 Class Members for such time violates the minimum wage
6 provisions of the FLSA, OMFWSA and California law. In all instances wherein
7 Plaintiffs, the FLSA Collective Members and Rule 23 Class Members work over 40
8 hours in a workweek or 8 hours in a day (for Rule 23 California Class Members),
9 AMN's failure to compensate Plaintiffs and the FLSA Collective Members for such
10 time violates the overtime provisions of the FLSA, and for Rule 23 Class Members,
11 violates the overtime provisions of OMFWSA or California law. *See Landers v.*
12 *Quality Communications, Inc.*, 771 F.3d 638, 644-645 (9th Cir. 2014) ("We agree with
13 our sister circuits that in order to survive a motion to dismiss, a plaintiff asserting a
14 claim to overtime payments must allege that she worked more than forty hours in a
15 given workweek without being compensated for the overtime hours worked during
16 that workweek."). In all instances wherein Plaintiffs, the FLSA Collective Members
17 and Rule 23 Class Members worked, but not over 40 hours in a workweek or 8 hours
18 in a day (for Rule 23 California Class Members), AMN's failure to compensate
19 Plaintiffs and the FLSA Collective Members for such time violates the minimum wage
20 provisions of the FLSA, and for Rule 23 Class Members violates the minimum wage
21 provisions of OMFWSA and California law.

22 54. At all relevant times, Plaintiffs, the FLSA Collective Members and Rule
23 Class Members were subject to AMN's company-wide "Break Policy." *See* excerpt
24 from Language Operations US Policies Manual attached hereto as **Exhibit E** and
25 incorporated as if fully rewritten herein.

26 55. Pursuant to AMN's "Break Policy," if Plaintiffs, the FLSA Collective
27 Members and Rule Class Members work 3.75 hours or less, then they receive no paid
28

1 break time whatsoever. If Plaintiffs, the FLSA Collective Members and Rule 23 Class
2 Members work between 5.25 - 7.75 hours, then they receive only one paid 15-minute
3 break and one 30-minute unpaid lunch. If Plaintiffs, the FLSA Collective Members
4 and Rule 23 Class Members work between 8 - 10 hours, then they receive only two
5 paid 15-minute scheduled breaks and only one 30-minute unpaid meal period. If
6 Plaintiffs, the FLSA Collective Members and Rule 23 Class Members work more than
7 10 hours, the Break Policy is silent on whether Plaintiffs, the FLSA Collective
8 Members, or Rule 23 Class Members are entitled to a third rest break or a second meal
9 period.

10 56. AMN's Break Policy further provides that "[s]hifts extended due to long
11 sessions will not be eligible to have additional breaks paid out, as breaks are intended
12 to be scheduled and taken during the shift." Moreover, "[i]f the last break cannot be
13 taken due to servicing a long session, that break time is not to be added as paid time
14 at the end of the shift." In addition, under the Break Policy, Interpreters are
15 discouraged from "needlessly transferring or logging out of a live session to take their
16 scheduled break/lunch time."

17 57. The primary job function of Plaintiffs, the FLSA Collective Members
18 and Rule 23 Class Members is to listen to a patient speaking in a foreign language,
19 translate the patient's words to the healthcare provider in English, then listen to the
20 healthcare provider's response, and then translate the healthcare provider's response
21 to the patient in their foreign language. Naturally, these sessions go beyond their
22 allotted time, but Plaintiffs, the FLSA Collective Members and Rule 23 Class
23 Members cannot, or are highly discouraged, from terminating or transferring the
24 session. As a result, Plaintiffs, the FLSA Collective Members and Rule 23 Class
25 Members cannot take one or more of their scheduled 15-minute breaks and therefore
26 must work through their 15-minute breaks. Moreover, under the Break Policy, if an
27 Interpreter misses a scheduled break during his or her scheduled shift, he or she can
28

1 take that missed break only if there is time left in the shift as “breaks are intended to
2 be scheduled and taken during the shift.” Plaintiff Leeman and Rule 23 California
3 Class Members are prohibited from adding the missed break to total hours worked
4 during a shift, and as a result, are not being compensated for all hours worked. In
5 addition, Plaintiffs, the FLSA Collective Members and Rule 23 Class Members may
6 need brief rest breaks between 5 to 14 minutes, which fall outside of AMN’s sparse
7 scheduled break policy. Any such break is treated as an “unscheduled break” and
8 AMN does not compensate Plaintiffs, the FLSA Collective Members and Rule 23
9 Class Members for same.

10 58. AMN’s failure to pay Plaintiffs, the FLSA Collective Members and Rule
11 23 Class Members for any unscheduled break of 20 minutes or less violates the
12 minimum wage provisions of the FLSA, OMFWSA and California in all instances. In
13 all instances wherein Plaintiffs, the FLSA Collective Members and Rule 23 Class
14 Members worked over 40 hours in a workweek or 8 hours in a day (for California
15 Class Members), AMN’s failure to compensate Plaintiffs, the FLSA Collective
16 Members and Rule 23 Class Members for any break of 20 minutes or less violates the
17 overtime provisions of the FLSA, OMFWSA and California law.

18 59. AMN employed Plaintiff Leeman and Rule 23 California Class Members
19 for work periods of more than 5 and 10 hours a day, entitling them to first and second
20 meal periods of at least 30 minutes each. AMN, however, failed to provide Plaintiff
21 Leeman and Rule 23 California Class Members duty-free, uninterrupted meal periods
22 of at least 30 minutes for every five hours worked. As a result, Plaintiff Leeman and
23 Rule 23 California Class Members missed their meal periods, worked through their
24 meal periods, the meal periods were interrupted, cut short, or were taken late. By
25 failing to provide Plaintiff Leeman and Rule 23 California Class Members with 30-
26 minute, off-duty, compliant meal breaks for every five hours worked, AMN owes
27 Plaintiff Leeman and Rule 23 California Class Members premium wages (at their
28

1 regular rate of pay) for these meal period violations.

2 60. AMN employed Plaintiff Leeman and Rule 23 California Class Members
3 for work periods of four hours or more without rest periods of at least 10 minutes of
4 rest time for every four hours worked, or major fraction thereof. In addition, the rest
5 breaks were regularly interrupted, less than 10 minutes, and/or on duty. By failing to
6 provide Plaintiff Leeman and Rule 23 California Class Members with 10-minute, off
7 duty, compliant rest breaks for every four hours worked or major fraction thereof,
8 AMN owes Plaintiff and Rule 23 California Class Members premium wages (at their
9 regular rate of pay) for these rest period violations.

10 61. By failing to provide Plaintiff Leeman and Rule 23 California Class
11 Members wage statements showing all hours worked, all wages earned, including
12 meal-and-rest premiums for meal and rest period violations, and the correct hourly
13 rates for each hour worked, AMN knowingly and intentionally violated California
14 Labor Code §§ 226, 1174(d), 1198 and Wage Order No. 4. *See also Naranjo, supra*,
15 P.3d, 2022 WL 1613499 (May 23, 2022).

16 62. AMN requires Plaintiffs, the FLSA Collective Members and Rule 23
17 Class Members to supply their own highspeed internet routers and modems. *See*
18 excerpt from Language Operations US Policies Manual attached hereto as **Exhibit F**
19 and incorporated as if fully rewritten herein. Moreover, Plaintiffs, the FLSA
20 Collective Members and Rule 23 Class Members must provide highspeed internet
21 service with bandwidth capable of at least 10 megabytes per second on download and
22 at least 2 megabytes per second on upload. However, AMN fails to reimburse
23 Plaintiffs, the FLSA Collective Members and Rule 23 Class Members for such
24 required equipment and internet service. As such, AMN has violated the overtime
25 provisions of the FLSA and OMFWSA and section 2802 of the California Labor Code.

26 63. AMN failed to pay Rule 23 California Class Members all wages due to
27 them immediately upon termination, or within 72 hours of voluntarily leaving
28

1 employment. Thus, AMN violated California Labor Code §§ 201-203.

2 64. On information and belief, Plaintiffs allege that AMN applied the same
3 policies described above to all other members of the proposed Rule 23 California
4 Class. As alleged below, these uniform policies, practices and procedures violated
5 California's labor laws and therefore constitute unfair, fraudulent or illegal business
6 practices under California Business & Professions Code § 17200, *et seq.*

7 **COLLECTIVE ACTION ALLEGATIONS**

8 65. Plaintiffs and the FLSA Collective Members reallege and incorporate by
9 reference all allegations in all preceding paragraphs.

10 66. Plaintiffs bring the FLSA action under 29 U.S.C. § 216(b) on their own
11 behalf and as representatives of individuals similarly situated who are current or
12 former Interpreters employed by AMN.

13 67. AMN subjected all of its Interpreters, including Plaintiffs and the FLSA
14 Collective Members, to its policy and practice of not paying them the minimum wage
15 or overtime for all pre- and post-shift work, including time spent setting up the
16 computer, audio and video equipment, booting up the computer and launching AMN's
17 apps or software, logging out of AMN's apps or software, shutting down the computer,
18 taking down audio and video equipment, cleaning the computer, audio and video
19 equipment, and watching mandatory training videos and participating in meetings in
20 violation of 29 U.S.C. §§ 206 and 207.

21 68. AMN subjected all of its Interpreters, including Plaintiffs and the FLSA
22 Collective Members, to its policy of failing to pay them for all unscheduled breaks of
23 20 minutes or less in violation of 29 U.S.C §§ 206 and 207.

24 69. AMN subjected all of its Interpreters, including Plaintiffs and the FLSA
25 Collective Members, to its policy of requiring them to provide highspeed internet
26 equipment and service without reimbursing Plaintiffs and the FLSA Collective
27 Members for same.

1 70. Plaintiffs' claims stated in this FAC are essentially the same as those of
2 the FLSA Collective Members. This action is properly maintained as a collective
3 action because, in all pertinent aspects, the employment relationship of individuals
4 similarly situated to Plaintiffs is identical or substantially similar.

5 71. The FLSA Collective Members perform or have performed the same or
6 similar work as Plaintiffs.

7 72. AMN's failure to pay minimum wage and overtime compensation
8 required by the FLSA results from generally applicable policies or practices, and does
9 not depend on the personal circumstances of Plaintiffs or the FLSA Collective
10 Members.

11 73. Although the exact amount of damages may vary among the FLSA
12 Collective Members, the damages for the FLSA Collective Members can be easily
13 calculated by a simple formula and based on records in AMN's possession. *Landers*,
14 *supra*, 771 F.3d at 645 ("[L]ike the other circuit courts that have ruled before us, we
15 decline to make the approximation of overtime hours the sine qua non of plausibility
16 for claims brought under the FLSA. After all, most (if not all) of the detailed
17 information concerning a plaintiff-employee's compensation and schedule is in the
18 control of the defendants."). The claims of all FLSA Collective Members arise from
19 a common nucleus of facts. Liability is based on a systematic course of wrongful
20 conduct by AMN that caused harm to the FLSA Collective Members.

21 74. As such, Plaintiffs bring their FLSA minimum wage and overtime claims
22 as a collective action on behalf of the following **FLSA Collective Class** or **FLSA**
23 **Collective Members**:

24 **All of AMN's current and former Interpreters and those with**
25 **similar job duties, but different titles, who worked for AMN**
26 **in the United States at any time from three years preceding**
27 **the filing of the initial complaint to the present.**

1 75. AMN's unlawful conduct, as described herein, is pursuant to AMN's
2 corporate policy or practice of minimizing labor costs by refusing and/or failing to
3 properly compensate its employees according to the FLSA.

4 76. AMN is aware or should have known state and/or federal law prohibited
5 them from not paying Plaintiffs and the FLSA Collective Members all minimum wage
6 and overtime as detailed herein.

7 77. AMN's unlawful conduct has been widespread, repeated, and consistent.

8 78. This action is properly brought and maintained as an opt-in collective
9 action under 29 U.S.C. § 216(b).

10 79. Upon information and belief, the individuals similarly situated to
11 Plaintiffs include thousands of Interpreters nationally currently and/or formerly
12 employed by AMN. Plaintiffs cannot state the precise number of similarly-situated
13 employees because that information is solely in AMN's possession, custody, or
14 control, but it can be readily ascertained from its employment records.

15 80. Notice can be provided to the FLSA Collective Members by First Class
16 Mail to the last address known to AMN, via email at the last known email address
17 known to AMN, and by text message to the last known telephone number known to
18 AMN.

19 **RULE 23 CLASS DEFINITIONS AND ALLEGATIONS**

20 81. Plaintiffs reallege and incorporate by reference all allegations in all
21 preceding paragraphs.

22 82. **Rule 23 Ohio Class.** Plaintiff Oliveira brings Claims for Relief for
23 violation of Ohio wage-and-hour laws as a class action under Rule 23(a), (b)(2), and
24 (b)(3). Plaintiff Oliveira brings these claims on behalf of herself and all members of
25 the following **Rule 23 Ohio Class** or **Rule 23 Ohio Class Members**:

26 **All of AMN's current and former Interpreters and those with**
27 **similar job duties, but different titles, who worked for AMN,**
28

1 **within Ohio, at any time from three years preceding the filing**
2 **of the initial complaint to the present.**

3 83. **Rule 23 California Class.** Plaintiff Leeman brings Claims for Relief in
4 violation of California wage-and-hour laws as a class action under Rule 23(a), (b)(2)
5 and (b)(3). Plaintiff Leeman brings these claims on behalf of herself and all members
6 of the following **Rule 23 California Class** or **Rule 23 California Class Members**:

7 **All of AMN’s current and former Interpreters and those with**
8 **similar job duties, but different titles, who worked for AMN,**
9 **within California, at any time from four years preceding the**
10 **filing of the initial complaint to the present.**

11 84. **Numerosity (Rule 23(a)(1)).** The Rule 23 Class Members are so
12 numerous that joinder of all members is impracticable. Plaintiffs on information and
13 belief alleges that the Rule 23 Class Members number in the hundreds.

14 85. **Existence of Common Questions of Law and Fact (Rule 23(a)(2)).**
15 Common questions of law and fact exist as to Plaintiffs and the Rule 23 Class
16 Members including, but not limited to, the following:

- 17 a. Whether AMN unlawfully failed to pay the Rule 23 Ohio Class
18 Members all minimum and overtime wages in violation of the
19 OMFWSA;
- 20 b. Whether AMN violated California law by failing to pay Rule 23
21 California Class Members at the least the minimum wage for all hours
22 worked;
- 23 c. Whether AMN violated California law by failing to pay Rule 23
24 California Class Members overtime compensation for all overtime
25 hours worked;
- 26 d. Whether AMN violated California law by failing to provide Rule 23
27 California Class Members first and second meal periods of at least 30-
- 28

1 minutes when the shifts exceeded 5 and 10 hours of work, and not
2 compensating employees with one hour of pay at the employees'
3 regular rate of compensation for each workday that meal periods were
4 not provided;

5 e. Whether AMN violated California law by failing to provide Rule 23
6 California Class Members daily rest periods of 10 minutes per 4 hours
7 or major fraction thereof worked when the shift exceeded three-and-a
8 half hours and by failing to compensate employees one hour's wages
9 in lieu of rest periods;

10 f. Whether AMN violated California law by failing to provide Rule 23
11 California Class Members accurate wage statements;

12 g. Whether AMN violated California law by failing to reimburse Rule
13 23 California Class Members all reasonable and necessary business
14 expenses incurred;

15 h. Whether AMN violated California law by failing to timely pay Rule
16 23 California Class Members all earned wages and final paychecks
17 due at the time of separation of employment;

18 i. Whether AMN's practices constitute an unfair, fraudulent, or
19 unlawful business practice under the UCL;

20 j. Whether AMN unlawfully failed to keep and maintain accurate and
21 true records of the hours worked by the Rule 23 Class Members as
22 required by applicable law; and

23 k. The damages sustained and the proper measure of restitution
24 recoverable by the Rule 23 Class Members.

25 86. **Typicality (Rule 23(a)(3)).** Plaintiffs' claims are typical of the Rule 23
26 Class Members' claims. Plaintiffs, like the Rule 23 Class Members, were subjected to
27 AMN's illegal scheme to maximize profits by depriving its employees of minimum
28

1 wage and overtime compensation, premium wages for meal-and-rest period
2 violations, and accurate wage statements.

3 87. **Adequacy (Rule 23(a)(4)).** Plaintiffs will fairly and adequately represent
4 and protect the interests of their respective Rule 23 Class. Plaintiffs have retained
5 counsel competent and experienced in complex class actions, the FLSA, and state
6 labor and employment litigation.

7 88. **Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class certification
8 of the Rule 23 claims is appropriate under Rule 23(b)(2) because AMN acted or
9 refused to act on grounds generally applicable to the Rule 23 Class Members, making
10 appropriate declaratory relief with respect to the Rule 23 Class Members as a whole.

11 89. **Predominance and Superiority of Class Action (Rule 23(b)(3)).** Class
12 certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because
13 questions of law and fact common to the Rule 23 Class Members predominate over
14 questions affecting only individual members of the class, and because a class action
15 is superior to other available methods for the fair and efficient adjudication of this
16 litigation. AMN's common and uniform policies and practices illegally deprived
17 Plaintiffs and all similarly situated employees of wages; thus, making the question of
18 liability and damages much more manageable and efficient to resolve in a class action,
19 compared to hundreds of individual trials. The damages suffered by individual Rule
20 23 Class Members are small compared to the expense and burden of individual
21 prosecution. In addition, class certification is superior because it will obviate the need
22 for unduly duplicative litigation that might result in inconsistent judgments about
23 AMN's practices.

24 90. Plaintiffs intend to send notice to all Rule 23 Class Members to the extent
25 required by Rule 23.

26 **COUNT ONE: FAIR LABOR STANDARDS ACT**

27 **OFF-THE-CLOCK WORK**

1 **(Brought by Plaintiffs on behalf of themselves and members of the FLSA**
2 **Collective Class against all Defendants)**

3 91. Plaintiffs and the FLSA Collective Members reallege and incorporate by
4 reference all allegations in all preceding paragraphs.

5 92. AMN has a consistent enterprise-wide policy of requiring Plaintiffs and
6 the FLSA Collective Members to perform work while off the clock and failing and/or
7 refusing to compensate Plaintiffs and the FLSA Collective Members their regular rate
8 of pay for all non-overtime hours worked, and one and one-half times their regular
9 hourly rate for all the time they worked over 40 hours in a workweek.

10 93. Plaintiffs and the FLSA Collective Members perform their duties and
11 provide their interpretation services for AMN remotely. As part of this design, AMN
12 issues Plaintiffs and the FLSA Collective Members computer, audio and video
13 equipment for use in their homes. This AMN equipment contains AMN's proprietary
14 apps and software programs which Plaintiffs and the FLSA Collective Members must
15 "log on" or "sign in" to perform their job functions for AMN.

16 94. At all relative times, Plaintiffs and the FLSA Collective Members have
17 been subject to AMN's policy of requiring them to spend time working before
18 "clocking in" at the beginning of their scheduled shifts and after "clocking out" at the
19 end of their scheduled shifts.

20 95. Specifically, Plaintiffs, and the FLSA Collective Members must set up
21 the required audio and video equipment and perform quality checks before being
22 "clocked in" and therefore perform uncompensated work. Moreover, Plaintiffs and the
23 FLSA Collective Members are required to spend time booting up their computer and
24 "logging in" or "signing in" AMN's apps and software programs before "clocking in"
25 for their scheduled shift and required to "clock out" at the end of their scheduled shift
26 before "logging off" or "signing off," shutting down their computers and cleaning the
27 AMN issued equipment. In addition, Plaintiffs and FLSA Collective Members are
28

1 required to watch mandatory training videos and participate in meetings while off the
2 clock.

3 96. As a result, Plaintiffs and the FLSA Collective Members typically spend
4 at least 15 minutes or more each shift that goes completely uncompensated. In all
5 instances, AMN's failure to compensate Plaintiffs and the FLSA Collective Members
6 for such time violates the minimum wage provisions of the FLSA, 29 U.S.C. § 206.
7 In all instances wherein Plaintiffs and the FLSA Collective Members work over 40
8 hours in a workweek, AMN's failure to compensate Plaintiffs and the FLSA
9 Collective Members for such time violates the overtime provisions of the FLSA, 29
10 U.S.C. § 207.

11 97. For example, during the pay period beginning November 6, 2021 and
12 ending November 19, 2021, AMN recorded and paid Plaintiff Oliveira for 86.66 hours
13 worked. During that pay period, Plaintiff Oliveira worked no less than 150 minutes
14 that was not recorded or compensated by AMN whatsoever.

15 98. As a result, AMN did not pay Plaintiff Oliveira the minimum wage as
16 required by the FLSA for no less than 150 minutes that were worked between
17 November 6, 2021 and November 19, 2021.

18 99. Because Plaintiff Oliveira worked in excess of 40 hours in each of the
19 workweeks within the pay period spanning from November 6, 2021 through
20 November 19, 2021, AMN likewise failed to pay Plaintiff Oliveira for no less than
21 150 minutes of overtime at one-and-one-half times her regular rate of pay as required
22 by the overtime provisions of the FLSA.

23 100. Although at this stage, Plaintiffs and the FLSA Collective Members
24 cannot state the exact amount owed for all time worked during their employment,
25 Plaintiffs and the FLSA Collective Members believe that such information will
26 become available during discovery. *See Landers, supra*, 771 F.3d at 645 (“[L]ike the
27 other circuit courts that have ruled before us, we decline to make the approximation
28

1 of overtime hours the sine qua non of plausibility for claims brought under the FLSA.
2 After all, most (if not all) of the detailed information concerning a plaintiff-
3 employee's compensation and schedule is in the control of the defendants....We
4 further agree with our sister circuits that, at a minimum, a plaintiff asserting a violation
5 of the FLSA overtime provisions must allege that she worked more than forty hours
6 in a given workweek without being compensated for the hours worked in excess of
7 forty during that week.”). Furthermore, when an employer fails to keep complete and
8 accurate time records, employees may establish the hours worked by their testimony,
9 and the burden of overcoming such testimony shifts to the employer.

10 101. AMN knew that – or acted with reckless disregard as to whether – its
11 refusal or failure to properly compensate Plaintiffs and the FLSA Collective Members
12 during their employment would violate the FLSA, and AMN knew the FLSA's
13 minimum wage and overtime requirements. As such, AMN's conduct constitutes a
14 willful violation of the FLSA.

15 102. As a result of AMN's failure or refusal to pay Plaintiffs and the FLSA
16 Collective Members for all hours worked, and AMN's failure or refusal to pay them
17 one and one-half times their regular rate of pay for all hours worked over 40 hours in
18 any workweek, AMN violated 29 U.S.C. §§ 206 and 207(a). Plaintiffs and the FLSA
19 Collective Members are therefore entitled to compensation of all unpaid minimum
20 wages and one and one-half times their regular rate of pay, to be proven at trial, plus
21 an additional equal amount as liquidated damages, together with interest, reasonable
22 attorney's fees, and costs.

23 **COUNT TWO: OHIO MINIMUM FAIR WAGE STANDARDS ACT**

24 **OFF-THE-CLOCK WORK**

25 **(Brought by Plaintiff Oliveira on behalf of herself and members of the Rule 23**
26 **Ohio Class against all Defendants)**

1 103. Plaintiff Oliveira and the Rule 23 Ohio Class Members reallege and
2 incorporate by reference all allegations in all preceding paragraphs.

3 104. The “FLSA and Ohio Minimum Fair Wage Standards Act claims are
4 subject to [the] same standards.” *Craig v. Landry’s, Inc.*, No. 1:16-CV-277, 2016
5 WL 3406032, at *3 (S.D. Ohio June 21, 2016) (citing *Haight; Mitchell v.*
6 *Abercrombie & Fitch, Co.*, 428 F. Supp.2d 725, 732 (S.D. Ohio 2006); *Pritchard v.*
7 *Dent Wizard Int’l. Corp.*, 210 F.R.D. 591, 596 (S.D. Ohio 2002).

8 105. AMN has a consistent enterprise-wide policy of requiring Plaintiff
9 Oliveira and the Rule 23 Ohio Class Members to perform work while off the clock
10 and failing and/or refusing to compensate Plaintiff Oliveira and the Rule 23 Ohio
11 Class Members their regular rate of pay for all non-overtime hours worked, and one-
12 half times their regular hourly rate for all the time they worked over 40 hours in a
13 workweek.

14 106. Plaintiff Oliveira and the Rule 23 Ohio Class Members perform their
15 duties and provide their interpretation services for AMN remotely. As part of this
16 design, AMN issues Plaintiff Oliveira and the Rule 23 Ohio Class Members
17 computer, audio and video equipment for use in their homes. This AMN equipment
18 contains AMN’s proprietary apps and software programs which Plaintiff Oliveira
19 and the Rule 23 Ohio Class Members must “log in” or “sign in” to perform their job
20 functions for AMN.

21 107. At all relevant times, Plaintiff Oliveira and the Rule 23 Ohio Class
22 Members have been subject to AMN’s policy of requiring them to spend time
23 working before clocking in at the beginning of their scheduled shifts and after
24 clocking out at the end of their scheduled shifts.

25 108. Specifically, Plaintiff Oliveira and the Rule 23 Ohio Class Members
26 must set up the required audio and video equipment and perform quality checks
27 before being “logged in” or “signed in” and therefore perform work that is
28

1 uncompensated. Moreover, Plaintiff Oliveira and the Rule 23 Ohio Class Members
2 are required to spend time booting up their computer and “logging in” or “signing
3 in” to AMN’s apps or software programs before “clocking in” for their scheduled
4 shifts and required to “clock out” at the end of their shift before “logging off” or
5 “signing off,” shutting down their computers and cleaning the AMN issued
6 equipment. In addition, Plaintiff Oliveira and Rule 23 Ohio Class Members are
7 required to watch mandatory training videos and participate in meetings while off
8 the clock.

9 109. As a result, Plaintiff Oliveira and the Rule 23 Ohio Class Members
10 typically spend at least 15 minutes or more each shift that goes completely
11 uncompensated. In all instances, AMN’s failure to compensate Plaintiff Oliveira and
12 the Rule 23 Ohio Class Members for such time violates the minimum wage
13 provisions of O.R.C. § 4111, *et seq.* In all instances wherein Plaintiff Oliveira and
14 the Rule 23 Ohio Class Members work over 40 hours in a workweek, AMN’s failure
15 to compensate them for such time violates the overtime provisions of O.R.C. § 4111,
16 *et seq.*

17 110. For example, during the pay period beginning November 6, 2021 and
18 ending November 19, 2021, AMN recorded and paid Plaintiff Oliveira for 86.66
19 hours worked. During that pay period, Plaintiff Oliveira worked no less than 150
20 minutes that was not recorded or compensated by AMN whatsoever.

21 111. As a result, AMN did not pay Plaintiff Oliveira the minimum wage as
22 required by the OMFWSA for no less than 150 minutes that were worked between
23 November 6, 2021 and November 19, 2021.

24 112. Because Plaintiff Oliveira worked in excess of 40 hours in each of the
25 workweeks within the pay period spanning from November 6, 2021 through
26 November 19, 2021, AMN likewise failed to pay Plaintiff Oliveira for no less than
27
28

1 150 minutes of overtime at one-and-one-half times her regular rate of pay as
2 required by the overtime provisions of the OMFWSA.

3 113. Although at this stage, Plaintiff Oliveira and the Rule 23 Ohio Class
4 Members cannot state the exact amount owed for all time worked during their
5 employment, they believe that such information will become available during
6 discovery. *See Landers, supra*, 771 F.3d at 645. Furthermore, when an employer
7 fails to keep complete and accurate time records, employees may establish the hours
8 worked by their testimony, and the burden of overcoming such testimony shifts to
9 the employer.

10 114. AMN knew that – or acted with reckless disregard as to whether – its
11 refusal or failure to properly compensate Plaintiff Oliveira and the Rule 23 Ohio
12 Class Members for all hours worked would violate Ohio law, and AMN knew the
13 Ohio’s minimum wage and overtime requirements during their employment. As
14 such, AMN’s conduct constitutes a willful violation of the OMFWSA.

15 115. As a result of AMN’s failure or refusal to pay Plaintiff Oliveira and the
16 Rule 23 Ohio Class Members all minimum wages and overtime due under Ohio law,
17 Plaintiff Oliveira and the Rule 23 Ohio Class Members are entitled to compensation
18 for all such unpaid wages, to be proven at trial, plus treble damages and interest,
19 reasonable attorney’s fees, and costs.

20 **COUNT THREE: FAIR LABOR STANDARDS ACTS**

21 **UNLAWFUL UNPAID BREAKS**

22 **(Brought by Plaintiffs on behalf of themselves and members of the FLSA**
23 **Collective Class against all Defendants)**

24 116. Plaintiffs and the FLSA Collective Members reallege and incorporate
25 by reference all allegations in all preceding paragraphs.

26 117. Under the FLSA, “[r]est periods of short duration, running from 5
27 minutes to about 20 minutes. . . must be counted as hours worked.” *See* 29 C.F.R.

1 785.18; *see also* *Mauia*, *supra*, 5 F.4th at 1074. AMN violated the FLSA by
2 routinely failing to pay Plaintiffs and the FLSA Collective Members for rest breaks
3 shorter than 20 minutes.

4 118. At all relevant times, Plaintiffs and the FLSA Collective Members were
5 subject to AMN's company-wide "Break Policy." *See* **Exhibit E**.

6 119. Under AMN's break policy, Plaintiffs and the FLSA Collective
7 Members can work as much as 7.75 hours while receiving only one paid 15-minute
8 break, i.e. the "scheduled break." Plaintiffs and the FLSA Collective Members can
9 work over 10 hours while receiving only two paid 15-minute scheduled breaks. If
10 Plaintiffs and the FLSA Collective Members work 3.75 hours or less, then they
11 receive no paid break time whatsoever.

12 120. AMN's break policy further provides that "[s]hifts extended due to long
13 sessions will not be eligible to have additional breaks paid out, as breaks are
14 intended to be scheduled and taken during the shift." Moreover, "[i]f the last break
15 cannot be taken due to servicing a long session, that break time is not to be added as
16 paid time at the end of the shift."

17 121. The primary job function of Plaintiffs and the FLSA Collective
18 Members is to listen to a patient speaking in a foreign language, translate the
19 patient's words to the healthcare provider in English, then listen to the healthcare
20 provider's response, and then translate the healthcare provider's response to the
21 patient in their foreign language. Naturally, Plaintiffs and the FLSA Collective
22 Members may need brief rest breaks which fall outside of AMN's sparse scheduled
23 break policy. Any such break is treated as an "unscheduled break" and AMN does
24 not compensate Plaintiffs and the FLSA Collective Members for same.

25 122. AMN's failure to pay Plaintiffs and the FLSA Collective Members for
26 any unscheduled break of 20 minutes or less violates the minimum wage provisions
27 of the FLSA in all instances. In all instances wherein Plaintiffs and the FLSA
28

1 Collective Members worked over 40 hours in a workweek, AMN's failure to
2 compensate Plaintiffs and the FLSA Collective Members for any unscheduled break
3 of 20 minutes or less violates the overtime provisions of the FLSA.

4 123. Although Plaintiffs do not have access to their time punch records,
5 Plaintiff Oliveira has knowledge and belief that during the pay period beginning
6 November 6, 2021 and ending November 19, 2021, she took approximately 10 rest
7 breaks of 20 minutes or less for which she was not paid. AMN recorded Plaintiff
8 Oliveira's time to the 1/100th of an hour and paid her for precisely 86.66 hours that
9 pay period. As a result of AMN's failure to pay Plaintiff Oliveira for these
10 approximately 10 rest breaks during this pay period, AMN violated both the
11 minimum wage and overtime wage requirements of the FLSA.

12 124. AMN is in possession of all of the time punch records which Plaintiffs
13 do not have access to at this time. Upon information and belief, these records will
14 evidence all of the breaks for which Plaintiffs and the FLSA Collective Members
15 were paid, and all of the breaks for which they were not paid. Upon information and
16 belief, these time punch records should be readily available in discovery.

17 125. Although at this stage, Plaintiffs and the FLSA Collective Members
18 cannot state the exact amount owed for all time worked during their employment,
19 Plaintiffs and the FLSA Collective Members believe that such information will
20 become available during discovery. *See Landers, supra*, 771 F.3d at 645.
21 Furthermore, when an employer fails to keep complete and accurate time records,
22 employees may establish the hours worked by their testimony, and the burden of
23 overcoming such testimony shifts to the employer.

24 126. AMN knew that – or acted with reckless disregard as to whether – its
25 refusal or failure to properly compensate Plaintiffs and the FLSA Collective
26 Members during their employment would violate the FLSA, and AMN knew the
27
28

1 FLSA's minimum wage and overtime requirements. As such, AMN's conduct
2 constitutes a willful violation of the FLSA.

3 127. As a result of AMN's failure or refusal to pay Plaintiffs and the FLSA
4 Collective Members their regular rate of pay for all hours worked and one and one-
5 half times their regular rate of pay for all hours worked over 40 hours in any
6 workweek, AMN violated 29 U.S.C. § 207(a). Plaintiffs and the FLSA Collective
7 Members are therefore entitled to compensation for unpaid wages at their regular
8 rate of pay for non-overtime hours worked and one and one-half times their regular
9 rate of pay for unpaid overtime hours, to be proven at trial, plus an additional equal
10 amount as liquidated damages, together with interest, reasonable attorney's fees, and
11 costs.

12 **COUNT FOUR: OHIO MINIMUM FAIR WAGE STANDARDS ACT**

13 **UNLAWFUL UNPAID BREAKS**

14 **(Brought by Plaintiff Oliveira on behalf of herself and members of the Rule 23**
15 **Ohio Class against all Defendants)**

16 128. Plaintiff Oliveira and the Rule 23 Ohio Class Members reallege and
17 incorporate by reference all allegations in all preceding paragraphs.

18 129. The "FLSA and Ohio Minimum Fair Wage Standards Act claims are
19 subject to [the] same standards." *Craig, supra*, 2016 WL 3406032, at *3 (S.D. Ohio
20 June 21, 2016) (citing *Haight, supra*, 428 F. Supp.2d at 732 (S.D. Ohio 2006);
21 *Pritchard, supra*, 210 F.R.D. at 596. Under the OMFWSA, rest periods of short
22 duration, running from 5 minutes to about 20 minutes, must be counted as hours
23 worked. AMN violated the OMFWSA by routinely failing to pay Plaintiff Oliveira
24 and the Rule 23 Ohio Class Members for rest breaks shorter than 20 minutes.

25 130. At all relevant times, Plaintiff Oliveira and the Rule 23 Ohio Class
26 Members were subject to AMN's company-wide "Break Policy." See **Exhibit E**.

1 131. Pursuant to AMN's break policy, Plaintiff Oliveira and the Rule 23
2 Ohio Class Members can work as much as 7.75 hours while receiving only one paid
3 15-minute break, i.e. the "scheduled break." Plaintiff Oliveira and the Rule 23 Ohio
4 Class Members can work over 10 hours while receiving only two paid 15-minute
5 scheduled breaks. If Plaintiff Oliveira and the Rule 23 Ohio Class Members work
6 3.75 hours or less, then they receive no paid break time whatsoever.

7 132. AMN's break policy further provides that "[s]hifts extended due to long
8 sessions will not be eligible to have additional breaks paid out, as breaks are
9 intended to be scheduled and taken during the shift." Moreover, "[i]f the last break
10 cannot be taken due to servicing a long session, that break time is not to be added as
11 paid time at the end of the shift."

12 133. The primary job function of Plaintiff Oliveira and the Rule 23 Ohio
13 Class Members is to listen to a patient speaking in a foreign language, translate the
14 patient's words to the healthcare provider in English, then listen to the healthcare
15 provider's response, and then translate the healthcare provider's response to the
16 patient in their foreign language. Naturally, Plaintiff Oliveira and the Rule 23 Ohio
17 Class Members may need brief rest breaks which fall outside of AMN's sparse
18 scheduled break policy. Any such break is treated as an "unscheduled break" and
19 AMN does not compensate Plaintiff Oliveira and the Rule 23 Ohio Class Members
20 for same.

21 134. AMN's failure to pay Plaintiff Oliveira and the Rule 23 Ohio Class
22 Members for any unscheduled break of 20 minutes or less violates the minimum
23 wage provisions of the OMFWSA in all instances. In all instances wherein Plaintiff
24 Oliveira and the Rule 23 Ohio Class Members worked over 40 hours in a workweek,
25 AMN's failure to compensate them for any unscheduled break of 20 minutes or less
26 violates the overtime provisions of the OMFWSA.

1 135. Although Plaintiff Oliveira does not have access to her time punch
2 records, she has knowledge and belief that during the pay period beginning
3 November 6, 2021 and ending November 19, 2021, Plaintiff Oliveira took
4 approximately 10 rest breaks of 20 minutes or less for which she was not paid. AMN
5 recorded her time to the 1/100th of an hour and paid her for precisely 86.66 hours
6 that pay period. As result of AMN's failure to pay Plaintiff Oliveira for these
7 approximately 10 rest breaks during this pay period, AMN violated both the
8 minimum wage and overtime wage requirements of the OMFWSA.

9 136. AMN is in possession of all of the time punch records which Plaintiff
10 Oliveira does not have access to at this time. Upon information and belief, these
11 records will evidence all of the breaks for which Plaintiff Oliveira and the Rule 23
12 Ohio Class Members were paid, and all of the breaks for which they were not paid.
13 Upon information and belief, these time punch records should be readily available in
14 discovery.

15 137. Although at this stage, Plaintiff Oliveira and the Rule 23 Ohio Class
16 Members cannot state the exact amount owed for all time worked during their
17 employment, they believe that such information will become available during
18 discovery. *See Landers, supra*, 771 F.3d at 645. Furthermore, when an employer
19 fails to keep complete and accurate time records, employees may establish the hours
20 worked by their testimony, and the burden of overcoming such testimony shifts to
21 the employer.

22 138. AMN knew that – or acted with reckless disregard as to whether – its
23 refusal or failure to properly compensate Plaintiff Oliveira and the Rule 23 Ohio
24 Class Members for all hours worked would violate Ohio law, and AMN knew the
25 Ohio's minimum wage and overtime requirements during their employment. As
26 such, AMN's conduct constitutes a willful violation of the OMFWSA.

139. As a result of AMN's failure or refusal to pay Plaintiff Oliveira and the Rule 23 Ohio Class Members all minimum wages and overtime due under Ohio law, they are entitled to compensation for all such unpaid wages, to be proven at trial, plus treble damages and interest, reasonable attorney's fees, and costs.

COUNT FIVE: FAIR LABOR STANDARDS ACT

IMPROPER KICKBACKS

**(Brought by Plaintiffs on behalf of themselves and members of the FLSA
Collective Class against all Defendants)**

140. Plaintiffs and the FLSA Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

141. The wage requirements of the FLSA “will not be met where the employee ‘kicks-back’ directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee.” See 29 C.F.R. 531.35. “For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer’s particular work, there would be a violation of the Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act.” *Id.*

142. AMN requires Plaintiffs and the FLSA Collective Members to supply their own highspeed internet routers and modems. See **Exhibit F**. Moreover, Plaintiffs and the FLSA Collective Members must provide highspeed internet service with bandwidth capable of at least 10 megabytes per second on download and at least 2 megabytes per second on upload. However, AMN fails to reimburse Plaintiffs and the FLSA Collective Members for such required equipment and internet service. As such, AMN has violated the overtime provisions of the FLSA.

1 143. For example, during the pay period beginning November 6, 2021
2 through the pay period ending December 3, 2021, AMN recorded and compensated
3 Plaintiff Oliveira for a total of 7.66 overtime hours, i.e., hours worked in excess of
4 40 hours in any given workweek during that period. During this time, Plaintiff
5 Oliveira’s regular rate of pay was \$22.00 per hour. As such, AMN owed Plaintiff
6 Oliveira an overtime premium of \$11.00 per hour for each of these 7.66 overtime
7 hours, for a total of \$84.26.

8 144. However, from November 6, 2021 through December 3, 2021, Plaintiff
9 Oliveira had to pay approximately \$94.37 for high speed internet necessary to
10 perform her job duties for AMN.

11 145. As such, while AMN ostensibly paid Plaintiff Oliveira \$84.26 in
12 overtime for this period spanning from November 6, 2021 through December 3,
13 2021, AMN did not pay this overtime “free and clear” as required by the FLSA.
14 Instead, by shifting its necessary operating costs to Plaintiff Oliveira, AMN required
15 her to “kickback” the entirety of AMN’s \$84.26 overtime obligation owed to
16 Plaintiff Oliveira in violation of the FLSA.

17 146. Although at this stage, Plaintiffs and the FLSA Collective Members
18 cannot state the exact amount owed for all time worked during their employment,
19 Plaintiffs and the FLSA Collective Members believe that such information will
20 become available during discovery. *See Landers, supra*, 771 F.3d at 645.
21 Furthermore, when an employer fails to keep complete and accurate time records,
22 employees may establish the hours worked by their testimony, and the burden of
23 overcoming such testimony shifts to the employer.

24 147. AMN knew that – or acted with reckless disregard as to whether – its
25 refusal or failure to properly compensate Plaintiffs and the FLSA Collective
26 Members during their employment would violate the FLSA, and AMN knew the
27
28

FLSA's overtime requirements. As such, AMN's conduct constitutes a willful violation of the FLSA.

148. As a result of AMN's failure to reimburse Plaintiffs and the FLSA Collective Members for their internet equipment and service, AMN violated the overtime provisions of the FLSA. Plaintiffs and the FLSA Collective Members are therefore entitled to overtime compensation, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

COUNT SIX: OHIO MINIMUM FAIR WAGE STANDARDS ACT

IMPROPER KICKBACKS

(Brought by Plaintiff Oliveira on behalf of herself and members of the Rule 23 Ohio Class against all Defendants)

149. Plaintiff Oliveira and the Rule 23 Ohio Class Members reallege and incorporate by reference all allegations in all preceding paragraphs.

150. The "FLSA and Ohio Minimum Fair Wage Standards Act claims are subject to [the] same standards." *Craig, supra*, 2016 WL 3406032, at *3 (citing *Haight, supra*, 428 F. Supp.2d at 732; *Pritchard, supra*, 210 F.R.D. at 596. The wage requirements of the OMFWSA will not be met where the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee.

151. AMN requires Plaintiff Oliveira and the Rule 23 Ohio Class Members to supply their own highspeed internet routers and modems. See **Exhibit F**. Moreover, Plaintiff Oliveira and the Rule 23 Ohio Class Members must provide highspeed internet service with bandwidth capable of at least 10 megabytes per second on download and at least 2 megabytes per second on upload. However, AMN fails to reimburse Plaintiff Oliveira and the Rule 23 Ohio Class Members for such

1 required equipment and internet service. As such, AMN has violated the overtime
2 provisions of the OMFWSA.

3 152. For example, during the pay period beginning November 6, 2021
4 through the pay period ending December 3, 2021, AMN recorded and compensated
5 Plaintiff Oliveira for a total of 7.66 overtime hours, i.e., hours worked in excess of
6 40 hours in any given workweek during that period. During this time, Plaintiff's
7 regular rate of pay was \$22.00 per hour. As such, AMN owed Plaintiff an overtime
8 premium of \$11.00 per hour for each of these 7.66 overtime hours, for a total of
9 \$84.26.

10 153. However, from November 6, 2021 through December 3, 2021, Plaintiff
11 Oliveira had to pay approximately \$94.37 for high speed internet service and
12 equipment necessary to perform her job duties for AMN.

13 154. As such, while AMN ostensibly paid Plaintiff Oliveira \$84.26 in
14 overtime for this period spanning from November 6, 2021 through December 3,
15 2021, AMN did not pay this overtime "free and clear" as required by the OMFWSA.
16 Instead, by shifting its necessary operating costs to Plaintiff Oliveira, AMN required
17 her to "kickback" the entirety of AMN's \$84.26 overtime obligation owed to
18 Plaintiff Oliveira in violation of the OMFWSA.

19 155. Although at this stage, Plaintiff Oliveira and the Rule 23 Ohio Class
20 Members cannot state the exact amount owed for all time worked during their
21 employment, they believe that such information will become available during
22 discovery. *See Landers, supra*, 771 F.3d at 645. Furthermore, when an employer
23 fails to keep complete and accurate time records, employees may establish the hours
24 worked by their testimony, and the burden of overcoming such testimony shifts to
25 the employer.

26 156. AMN knew that – or acted with reckless disregard as to whether – its
27 refusal or failure reimburse Plaintiff Oliveira and the Rule 23 Ohio Class Members
28

1 for their highspeed internet equipment and service would violate Ohio law, and
2 AMN knew the Ohio's overtime requirements during their employment. As such,
3 AMN's conduct constitutes a willful violation of the OMFWSA.

4 157. As a result of AMN's refusal or failure reimburse Plaintiff Oliveira and
5 the Rule 23 Ohio Class Members for their highspeed internet equipment and service,
6 they are entitled to compensation for all such unpaid wages, to be proven at trial,
7 plus treble damages and interest, reasonable attorney's fees, and costs.

8 **COUNT SEVEN: VIOLATION OF CALIFORNIA'S MINIMUM WAGE**
9 **REQUIREMENTS**

10 **(Cal. Lab. Code §§ 200, 218 and 1194)**

11 **(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23**
12 **California Class against all Defendants)**

13 158. Plaintiff Leeman and the Rule 23 California Class Members reallege
14 and incorporate by this reference each of the preceding and foregoing paragraphs as
15 if fully set forth herein.

16 159. In addition to the FLSA, Plaintiff Leeman seeks to represent the
17 proposed Rule 23 California Class as a basis to enforce equal or greater protections
18 for wages owed that are offered by various California labor laws and local
19 regulations as set forth herein. Because the practices alleged herein are uniform,
20 systematic and continuous and affect each member of the Rule 23 California Class
21 in a legally identical way, Plaintiff Leeman, at the appropriate time, will move to
22 certify the California Class to the extent permitted by Rule 23.

23 160. Under Labor Code § 1194, employees must be separately paid an
24 hourly wage for each and every hour worked. *Balasanyan v. Nordstrom, Inc.*, 913
25 F.Supp.2d 1001, 1007 (S.D. Cal. Dec. 20, 2012). A California employer cannot
26 average an employee's compensation over the total number of hours worked to
27 determine compliance with minimum wage obligations. *Armenta v. Osmose, Inc.*,

1 135 Cal.App.4th 314, 323-324 (2005) (employees must be compensated the
2 minimum wage for “non-productive time”); *Cardenas v. McLane FoodServices,*
3 *Inc.*, 796 F.Supp.2d 1246, 1252-1253 (C.D. Cal. Jul. 8, 2011) (employees must be
4 paid a separate hourly rate for pre-and-post shift duties not covered by the piece-rate
5 formula); *Balasanyan, supra*, 913 F.Supp.2d at p. 1007; *Gonzalez v. Downtown LA*
6 *Motors, LP*, 215 Cal.App.4th 36, 48-49 (2013) (employees paid on a piece-rate basis
7 must be paid a separate hourly rate for “non-repair tasks”). “The *Armenta* line of
8 cases is quite clear: employees must be directly compensated at least minimum wage
9 for all time spent on activities that do not allow them to *directly* earn wages.”
10 *Balasanyan, supra*, 913 F.Supp.2d at 1007 (emphasis added). The California
11 Supreme Court also held that commissions earned in one pay period cannot be
12 reassigned to other pay periods to meet California’s strict wage and hour
13 requirements. *Peabody v. Time Warner Cable, Inc.*, 174 Cal.Rptr.3d 287 (2014), 328
14 P.3d 1028 (2014).

15 161. Plaintiff Leeman and the proposed Rule 23 California Class were at all
16 times subject to California’s laws and regulations protecting the employees’
17 entitlement to be paid and presumption to be paid an hourly wage for each and every
18 hour worked.

19 162. As set forth above, California law requires employers, such as AMN, to
20 pay a separately hourly wage to all nonexempt employees for each and every hour
21 worked. Labor Code § 1194 provides that employees are entitled to wages and
22 compensation for work performed, at the legal rate, including straight time,
23 overtime, and double time.

24 163. Labor Codes §§ 218, 1194(a) and 1194.2(a) provide that an employee
25 who has not been paid the legal wage may recover the unpaid balance and together
26 with attorney’s fees and costs of suit, as well as liquidated damages in an amount
27 equal to the wages unpaid and interest thereon.

164. At all relevant times herein, AMN was required to compensate Plaintiff Leeman and the members of the Rule 23 California Class for all hours worked pursuant to Labor Code § 1194.

165. By uniformly and consistently failing to pay members of the Rule 23 California Class for pre- and post-shift work, rest periods, and time during which employees were not provided duty-free, uninterrupted meal periods, as alleged above, AMN violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

166. Plaintiff Leeman is informed and believes and based thereupon alleges that the result of the unlawful and illegal policy and practice caused damage in the nonpayment of minimum wages to Plaintiff Leeman and the proposed Rule 23 California Class, in an amount according to proof at trial.

167. Plaintiff Leeman is informed and believes that the nonpayment of wages is fixed and ascertainable on a classwide basis such that prejudgment interest on those wages is recoverable.

168. Plaintiff Leeman is informed and believes that the nonpayment of minimum wages for all hours worked also entitles her and the proposed Rule 23 California Class to attorneys' fees and costs, and liquidated damages in an amount equal to the amount unlawfully unpaid according to Labor Code § 1194.2.

COUNT EIGHT: VIOLATION OF CALIFORNIA'S OVERTIME LAWS

(Cal. Lab. Code §§ 510 and 1194)

**(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23
California Class against all Defendants)**

169. Plaintiff Leeman and the Rule 23 California Class Members reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

1 170. In addition to the FLSA, Plaintiff Leeman seeks to represent the
2 proposed Rule 23 California Class as a basis to enforce equal or greater protections
3 for wages owed that are offered by California labor laws and local regulations as set
4 forth herein. Because the practices alleged herein are uniform, systematic and
5 continuous and affect each proposed member of the Rule 23 California Class in a
6 legally identical way, Plaintiff Leeman, at the appropriate time will move to certify
7 the California Class to the extent permitted by Rule 23.

8 171. Plaintiff Leeman and the proposed Rule 23 California Class were at all
9 times subject to state laws and regulations protecting the employees' entitlement to
10 be paid and presumption to be paid overtime wages for requisite hours worked
11 beyond a normal work day or a normal work week, as specified, without limitation,
12 by Cal. Labor Code §§ 510, 1194 and Wage Order No. 4.

13 172. Plaintiff Leeman and members of the Rule 23 California Class were
14 primarily engaged in non-exempt duties. Plaintiff Leeman and Rule 23 California
15 Class Members were neither managers, administrative, nor professional employees.
16 No known exemptions to overtime apply to Plaintiff Leeman or Rule 23 California
17 Class Members. Accordingly, Plaintiff Leeman and Rule 23 California Class
18 Members are entitled to overtime.

19 173. California law requires employers, such as AMN, to pay overtime
20 compensation to all nonexempt employees for all hours worked over 40 hours per
21 week, or over 8 hours per day. Labor Code § 204 establishes the fundamental right
22 of all employees in California to be paid wages, including straight time and
23 overtime, in a timely fashion for their work. This precludes any waiver for unpaid
24 due and owing wages that remain unpaid at the time of separation.

25 174. Labor Code § 510(a) states: "Any work in excess of [8] hours in one
26 workday and any work in excess of 40 hours in any one workweek and the first [8]
27 hours worked on the seventh day of work in any one workweek shall be
28

1 compensated at the rate of no less than one and one-half times the regular rate of pay
2 for an employee. Any work in excess of 12 hours in one day shall be compensated at
3 the rate of no less than twice the regular rate of pay for an employee. In addition, any
4 work in excess of eight hours on any seventh day of a workweek shall be
5 compensated at the rate of no less than twice the regular rate of pay of an employee.”

6 175. Plaintiff Leeman and the Rule 23 California Class Members are
7 scheduled to work a minimum of 8 hours in a day and 40 hours in a week. As
8 alleged above, Plaintiff Leeman and Rule 23 California Class Members performed
9 uncompensated pre- and post-shift work of at least 15 minutes a day and potentially
10 more if they had to work through their meal periods. As a result, Plaintiff Leeman
11 and Rule 23 California Class Members worked more than 8 hours in a workday
12 and/or 40 hours in a workweek for which they were not paid overtime. *Landers*,
13 *supra*, 771 F.3d at 645 (“We agree with our sister circuits that in order to survive a
14 motion to dismiss, a plaintiff asserting a claim to overtime payments must allege that
15 she worked more than forty hours in a given workweek without being compensated
16 for the overtime hours worked during that workweek.”).

17 176. As a direct and proximate result of AMN’s unlawful conduct, as set
18 forth herein, Plaintiff Leeman and Rule 23 California Class Members have sustained
19 damages, including loss of earnings for hours of overtime worked on behalf of AMN
20 in an amount to be established at trial, prejudgment interest, and costs and attorneys’
21 fees, pursuant to statute and other applicable law.

22 **COUNT NINE: VIOLATION OF CALIFORNIA’S MEAL-AND-REST**
23 **PERIOD REQUIREMENTS**

24 **(Cal. Lab. Code §§ 226.7, 512 and Wage Order No. 4)**

25 **(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23**
26 **California Class)**

1 177. Plaintiff Leeman and Rule 23 California Class Members reallege and
2 incorporate by this reference each of the preceding and foregoing paragraphs as if
3 fully set forth herein.

4 178. Labor Code § 226.7(b) provides, in pertinent part, that “[a]n employer
5 shall not require an employee to work during a meal or rest or recovery period
6 mandated pursuant to an applicable statute, or applicable regulation, standard, or
7 order of the Industrial Welfare Commission ...”

8 179. Labor Code § 512(a) provides that “[a]n employer may not employ an
9 employee for a work period of more than five hours per day without providing the
10 employee with a meal period of not less than 30 minutes, except that if the total
11 work period per day of the employee is no more than six hours, the meal period may
12 be waived by mutual consent of both the employer and employee.”

13 180. Labor Code § 512(a) further provides that “[a]n employer may not
14 employ an employee for a work period of more than 10 hours per day without
15 providing the employee with a second meal period of not less than 30 minutes,
16 except that if the total hours worked is no more than 12 hours, the second meal
17 period may be waived by mutual consent of the employer and the employee only if
18 the first meal period was not waived.”

19 181. Section 11(A) of Wage Order No. 4 provides that “[u]nless the
20 employee is relieved of all duty during a 30 minute meal period, the meal period
21 shall be considered an ‘on duty’ meal period and counted as time worked.” An “on
22 duty” meal period shall be permitted only when the nature of the work prevents an
23 employee from being relieved of all duty and when by written agreement between
24 the parties an on-the-job paid meal period is agreed to. “The written agreement shall
25 state that the employee may, in writing, revoke the agreement at any time.”

26 182. Section 11(B) of Wage Order No. 4 provides that “[i]f an employer fails
27 to provide an employee a meal period in accordance with the applicable provisions
28

1 of this order, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the meal period is
3 not provided."

4 183. Plaintiff Leeman and Rule 23 California Class Members consistently
5 worked over five hours, and ten hours, per shift and therefore were entitled to a first
6 and second meal period of not less than 30 minutes prior to exceeding the fifth and
7 tenth hour of work.

8 184. Plaintiff Leeman and Rule 23 California Class Members did not waive
9 their meal periods by mutual consent with AMN or otherwise.

10 185. Plaintiff Leeman and Rule 23 California Class Members did not enter
11 into any written agreement with AMN agreeing to an on-the-job paid meal period.

12 186. Similarly, Plaintiff Leeman and members of the proposed Rule 23
13 California Class were entitled to be authorized and permitted paid, duty-free,
14 uninterrupted 10 minute rest periods for every 4 hours worked (or every major
15 fraction thereof) or be paid for one hour of "premium wage" at the employee's
16 regular rate of pay for each day that a rest period was not authorized, permitted or
17 otherwise compliant with applicable law.

18 187. As alleged above, AMN failed to comply with the required meal
19 periods and rest periods established by Labor Code §§ 226.7, 512, 516 and Section
20 11 and 12 of Wage Order No. 4. AMN did not provide compliant meal periods and,
21 as a result, Plaintiff Leeman and Rule 23 California Class Members missed their
22 meal periods, took short meal periods, and/or took late meal periods. In addition, the
23 meal periods that Plaintiff Leeman and Rule 23 California Class Members did take
24 were not duty free and free from employer control. AMN further did not authorize or
25 permit compliant rest periods for every four hours worked, or major fraction thereof,
26 nor did it pay a "premium wage" for missed, short, late or interrupted rest periods.

188. Pursuant to Section 11(B) and Section 12 of Wage Order No. 4 and Labor Code § 226.7(c)—which states “[i]f an employer fails to provide an employee a meal or rest ... period in accordance with a state law ..., the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest ... period is not provided”—Plaintiff Leeman and the members of the Rule 23 California Class are entitled to damages in an amount equal to one additional hour of pay at each employee’s regular rate of compensation for each work day that the meal or rest period was not provided, in a sum to be proven at trial.

189. Pursuant to Labor Code § 218.6 and Civil Code § 3287, Plaintiff Leeman and Rule 23 California Class Members seek recovery of prejudgment interest on all amounts recovered herein.

190. Plaintiff Leeman and Rule 23 California Class Members limit the recovery of “premium wages” to one hour of pay per day for any missed, short, late, or uninterrupted meal period and to one hour of pay per day for any missed, short, late, or uninterrupted rest period, as demonstrated by the Division of Labor Standards Enforcement Policy Manual guidelines, for a maximum recovery of two premium wages payment per employee per day.

**COUNT TEN: VIOLATION OF CALIFORNIA’S WAGE STATEMENT
REQUIREMENTS**

(Cal. Lab. Code §§ 226, 1174(d), and 1198; Wage Order No. 4)
(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23 California Class)

191. Plaintiff Leeman and Rule 23 California Class Members reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

1 192. Labor Code § 226(a) requires AMN, “semimonthly or at the time of
2 each payment of wages,” to furnish their workers with “an accurate itemized
3 statement in writing” showing gross and net wages earned, total hours worked by the
4 employee, rates of pay, and the correct entity that employs them. AMN knowingly
5 and intentionally failed to provide its workers with such timely and accurate wage-
6 and-hour statements.

7 193. Rule 23 California Class Members suffered injury as a result of AMN’s
8 knowing and intentional failure to provide their workers with the wage-and-hour
9 statements required by law.

10 194. Under Labor Code § 226(e) and (t), and based on AMN’s conduct as
11 alleged herein, Rule 23 California Class Members are entitled to (a) \$50 for the
12 initial pay period in which a wage and hour statement violation occurred, and \$100
13 per employee for each violation in a subsequent pay period, not exceeding an
14 aggregate penalty of four thousand dollars \$4,000; (b) injunctive relief to ensure
15 Defendants’ compliance with Labor Code § 226; and (c) an award of costs and
16 reasonable attorney's fees.

17 195. Moreover, as a result of AMN’s conduct, Rule 23 California Class
18 Members have suffered actual damages in that, among other things, the lack of
19 accurate wage statements hindered them from determining the correct amount of
20 wages owed to them and what legal entity employed them. The absence of accurate
21 wage statements has caused Rule 23 California Class Members time, money, and
22 energy in attempting to reconstruct time and pay records and resulted in the
23 submission by AMN of inaccurate information about hours worked and wages
24 earned. As a result of AMN’s failure to provide Rule 23 California Class Members
25 with timely and accurate wage statements, they are entitled to recover the aggregate
26 sum according to proof, of all actual damages they suffered.

1 196. AMN's conduct also entitles Rule 23 California Class Members to seek
2 preliminary and permanent injunctive relief including, but not limited to, an order
3 that it issue wage-and-hour statements to their workers that comply with Labor Code
4 § 226.

5 **COUNT ELEVEN: VIOLATION OF CALIFORNIA'S EXPENSE**

6 **REIMBURSEMENT REQUIREMENTS**

7 **(Cal. Lab. Code § 2802)**

8 **(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23**
9 **California Class)**

10 197. Plaintiff Leeman and Rule 23 California Class Members reallege and
11 incorporate by this reference each of the preceding and foregoing paragraphs as if
12 fully set forth herein.

13 198. Plaintiff Leeman and Rule 23 California Class Members have been
14 employed by AMN in the State of California. California law requires that AMN
15 indemnify its employees for all necessary expenditures or losses incurred by the
16 employee in discharge of his or her duties or at the obedience of the directions of the
17 employer. Moreover, an employer is prohibited from passing the ordinary business
18 expenses and losses of the employer onto the employee. *See* Cal. Lab. Code § 2802.

19 199. AMN has violated Labor Code § 2802 by failing to indemnify Plaintiff
20 Leeman and Rule 23 California Class Members for necessary expenditures they
21 incurred in the discharge of their duties. Specifically, AMN employed a policy,
22 practice, and procedure whereby Plaintiff Leeman and Rule 23 California Class
23 Members were required to supply their own highspeed internet service, internet
24 equipment and replacement computer equipment.

25 200. Moreover, AMN employed policies and procedures which ensured
26 Plaintiff Leeman and Rule 23 California Class Members would not receive
27 indemnification for their employment-related expenses. This practice resulted in
28

1 Plaintiff Leeman and Rule 23 California Class Members not receiving such
2 indemnification in compliance with California law.

3 201. Because AMN failed to properly indemnify employees for the
4 necessary expenditures incurred in the discharge of their duties, it is liable to
5 Plaintiff Leeman and Rule 23 California Class Members for monies to compensate
6 them for the use of the employment-related expenses they incurred under Labor
7 Code § 2802.

8 202. As a direct and proximate result of Defendants' violation of Labor Code
9 § 2802, Plaintiff Leeman and Rule 23 California Class Members have suffered
10 irreparable harm and monetary damages entitling them to both injunctive relief and
11 restitution. Plaintiff Leeman, on behalf of herself and on behalf of the Rule 23
12 California Class, seek damages and all other relief allowable including
13 indemnification for all employment-related expenses and ordinary business expenses
14 incurred by AMN and passed onto Plaintiff Leeman and Rule 23 California Class
15 Members pursuant to Labor Code § 2802.

16 203. Pursuant to Labor Code § 2802, Plaintiff Leeman and Rule 23
17 California Class Members are entitled to recover full indemnification of
18 unreimbursed business expenses, reasonable attorney's fees and costs of suit.

19 **COUNT TWELVE: VIOLATION OF CALIFORNIA'S TIMELY WAGE**

20 **PAYMENT REQUIREMENTS**

21 **(Cal. Lab. Code §§ 201-203)**

22 **(Brought by Plaintiff Leeman on behalf of members of the Rule 23 California**
23 **Class)**

24 204. Plaintiff Leeman and Rule 23 California Class Members reallege and
25 incorporate by this reference each of the preceding and foregoing paragraphs as if
26 fully set forth herein.

1 205. At all times relevant to this FAC, Plaintiff Leeman and Rule 23
2 California Class Members were employees of AMN, covered by California Labor
3 Code §§ 201-203.

4 206. Pursuant to California Labor Code §§ 201-203, Rule 23 California
5 Class Members were entitled upon separation of employment to timely payment of
6 all wages earned and unpaid prior to separation. Discharged employees were entitled
7 to payment of all wages earned and unpaid prior to discharge immediately upon
8 termination. Employees who resigned were entitled to payment of all wages earned
9 and unpaid prior to resignation within 72 hours after giving notice of resignation or,
10 if they gave 72 hours previous notice, they were entitled to payment of all wages
11 earned and unpaid prior to resignation at the time of resignation.

12 207. AMN failed to pay Rule 23 California Class Members all wages earned
13 and unpaid prior to separation of employment, in accordance with California Labor
14 Code §§ 201-203. Plaintiff Leeman is informed and believes and thereon alleges that
15 at all relevant times within the limitations period applicable to this cause of action,
16 AMN maintained a policy or practice of not paying hourly employees all earned
17 wages timely upon separation of employment.

18 208. AMN's failure to pay Rule 23 California Class Members all wages
19 earned prior to separation of employment timely in accordance with California
20 Labor Code §§ 201 and 202 was willful. AMN had the ability to pay all wages
21 earned by hourly workers prior to separation of employment in accordance with
22 California Labor Code §§ 201 and 202, but intentionally adopted policies or
23 practices incompatible with the requirements of California Labor Code §§ 201 and
24 202. AMN's practices include failing to pay at least minimum wage for all time
25 worked, overtime wages for overtime hours worked, failing to pay premium wages
26 for workdays, not providing, or not timely providing, employees all meal periods
27
28

1 and rest periods in compliance with California law, and failing to reimburse
2 employment-related expenditures.

3 209. When AMN failed to pay its hourly non-exempt workers all earned
4 wages timely upon separation of employment, AMN was aware of its actions and
5 did so willfully and intentionally.

6 210. Pursuant to either California Labor Code §§ 201 or 202, Rule 23
7 California Class Members are entitled to all wages earned prior to separation of
8 employment that AMN did not pay them.

9 211. Pursuant to California Labor Code § 203, Rule 23 California Class
10 Members are entitled to continuation of their wages, from the day their earned and
11 unpaid wages were due upon separation until paid, up to a maximum of 30 days.

12 212. As a result of AMN's conduct, Rule 23 California Class Members have
13 suffered damages in an amount, subject to proof, to the extent they were not paid for
14 all wages earned prior to separation.

15 213. As a result of Defendants' conduct, members of the California Rule 23
16 Class have suffered damages in an amount, subject to proof, to the extent they were
17 not paid all continuation wages owed under California Labor Code § 203.

18 214. Rule 23 California Class Members are entitled to recover the full
19 amount of their unpaid wages, continuation wages under § 203, and interest thereon.

20 **COUNT THIRTEEN: VIOLATIONS OF CALIFORNIA'S UCL**

21 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

22 **(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23**
23 **California Class)**

24 215. Plaintiff Leeman and Rule 23 California Class Members reallege and
25 incorporate by this reference each of the preceding and foregoing paragraphs as if
26 fully set forth herein.

1 216. Defendants, and each of them, have engaged and continue to engage in
2 unfair and unlawful business practices in California by practicing, employing and
3 utilizing the employment practices outlined above, including, to wit, by: (a) failing
4 to provide off-duty meal periods in violation of Labor Code §§ 226.7 and 512; (b)
5 failing to provide off-duty rest periods in violation of Labor Code § 226.7; (c) failing
6 to pay all applicable overtime and double-time wages for all hours worked in
7 violation of §§ 510, 1194, 1198 and the FLSA; (d) failing to pay all minimum wages
8 for all hours worked in violation of §§ 1194, 1197 and the FLSA; (e) failing to
9 reimburse all business expenses in violation of § 2802; (f) failing to provide all
10 employees accurate wage statements in violation of §§ 201-203; and (g) failing to
11 renumerate all employees for all wages due upon separation of employment in
12 violation of §§ 201-203.

13 217. Defendants' utilization of such unfair and unlawful business practices
14 constitutes unfair, unlawful competition and provides an unfair advantage over
15 Defendants' competitors.

16 218. Plaintiff Leeman seeks individually and on behalf of Rule 23 California
17 Class Members, full restitution of monies, as necessary and according to proof, to
18 restore any and all monies withheld, acquired and/or converted by Defendants by
19 means of the unfair practices complained of herein.

20 219. Plaintiff Leeman is informed and believes, and based thereon alleges,
21 that at all times herein mentioned Defendants have engaged in unlawful, deceptive
22 and unfair business practices, as proscribed by California Business and Professions
23 Code § 17200, *et seq.*, including those set forth herein above thereby depriving
24 Plaintiff Leeman and Rule 23 California Class Members the minimum working
25 condition standards and conditions due to them under the California laws as
26 specifically described therein and the FLSA.

27 **COUNT FOURTEEN: VIOLATIONS OF THE PAGA**

(Cal. Lab. Code § 2698, *et seq.*)

**(Brought by Plaintiff Leeman on behalf of herself and members of the Rule 23
California Class)**

220. Plaintiff Leeman and Rule 23 California Class Members reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

221. Labor Code § 2698, *et seq.* (the PAGA) creates specified remedies that are triggered when an employer violates any provision of the Labor Code specified in Labor Code § 2699.5.

222. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendants failed to comply with their statutory obligations to pay Plaintiff Leeman and aggrieved employees all wages they were due according to the applicable California Labor Code sections set forth herein and Wage Order No. 4. Defendants' illegal actions give rise to statutory penalties including, but not limited to, penalties provided by, and pursuant to, Labor Code §§ 201-204, 210, 218, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1198, 2802, and 2699.5.

223. Pursuant to Labor Code § 2699(f), for all provisions of the Labor Code that do not have a civil penalty specifically specified, there is an established civil penalty for a violation of the provisions as follows: \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

224. Labor Code § 558 mandates a penalty be assessed against any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of the chapter starting with Labor Code § 500, *et seq.* or any provision regulating hours and days of work in any order of the Industrial Welfare Commission as follows: \$50 for the first pay period in which the employee is

1 underpaid; and, for each subsequent violation, \$100 for each pay period in which the
2 employee is underpaid. The civil penalties so provided in this section are in addition
3 to any other civil penalties provided by law.

4 225. Labor Code § 2699(a) specifically provides for a private right of action
5 to recover penalties for violations of the California Labor Code.

6 226. On May 26, 2022, Plaintiff Leeman gave notice of these claims to the
7 LWDA and to the agent for service of process for Defendants. On July 27, 2022,
8 Plaintiff Leeman filed an amended PAGA Claim Notice adding Defendant AMN
9 Healthcare Language Services, Inc. as a corporate defendant/employer to the
10 original PAGA Notice and served the amended notice on the agent for service of
11 process for Defendants. Plaintiffs did not receive any response from the LWDA
12 indicating that it intends to investigate these claims. Accordingly, Plaintiff Leeman
13 has exhausted all notice requirements under the PAGA. Attached hereto as **Exhibits**
14 **A** and **B**, respectively, are true and correct copies of Plaintiff Leeman's original
15 PAGA Notice and amended notice, which she hereby incorporates by reference.

16 227. Plaintiff Leeman will seek recovery of civil penalties per pay period
17 during the relevant PAGA time period for Plaintiff Leeman and each "aggrieved
18 employee" in an amount according to proof, subject to Court approval as set forth in
19 Labor Code § 2699.

20 228. Plaintiff Leeman will seek recovery of attorneys' fees and costs
21 pursuant to Labor Code § 2699(g) and/or Code of Civil Procedure § 1021.5 to the
22 extent enforcement of California's labor laws and applicable regulations is
23 determined to be in the public interest and consistent with the Legislative intent
24 stated in Labor Code § 90.5, in an amount according to proof and subject to Court
25 approval.

229. As provided above, Plaintiff Leeman has completed all administrative prerequisites to seeking the penalties for Labor Code violations provided by the PAGA (including Labor Code § 558).

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of all other similarly situated persons, requests this Court grant the following relief in Plaintiffs', the FLSA Collective Members' and the Rule 23 Class Members' favor, and against AMN:

- A. For an order conditionally certifying the proposed FLSA Collective Class and certifying the proposed Rule 23 Ohio Class and Rule 23 California Class;
- B. For an order appointing Plaintiffs as the representatives of the FLSA Collective Class, Plaintiff Oliveira as the representative for the Rule 23 Ohio Class, and Plaintiff Leeman as the representative for the Rule 23 California Class as described herein;
- C. For the Court to declare and find AMN committed one or more of the following acts:
 - i. Violated the minimum wage and overtime provisions of the FLSA;
 - ii. Willfully violated the minimum wage and overtime provisions of the FLSA;
 - iii. Violated the minimum wage and overtime provisions of the OMFWSA;
 - iv. Willfully violated the minimum wage and overtime provisions of the OMFWSA;
 - v. Violated the minimum wage, overtime, meal-and-rest period, wage statement, expense reimbursement, and timely wage payment requirements of California law; and
 - vi. Violated the PAGA.

- 1 D. For the Court to award damages and/or restitution in the amounts of all
2 unpaid minimum and overtime wages, premium wages, unreimbursed
3 expenses, statutory and civil penalties, and waiting-time penalties due
4 and owed to Plaintiffs, the FLSA Collective Members, and Rule 23 Class
5 Members;
- 6 E. For the Court to award compensatory damages, including liquidated
7 damages pursuant to 29 U.S.C. § 216(b) and Cal. Lab. Code § 1194.2, in
8 amounts to be determined at trial;
- 9 F. For the Court to award civil penalties to Plaintiff Leeman and aggrieved
10 employees pursuant to Cal. Lab. Code §§ 558 and 2699(f) and for other
11 penalties under the PAGA as allowed and as the Court deems
12 appropriate;
- 13 G. For the Court to award prejudgment and post-judgment interest on any
14 damages awarded;
- 15 H. For the Court to award all treble damages, interest, attorney's fees and
16 costs owed to Plaintiffs and the Rule 23 Class Members under the
17 OMFWSA and California law including, but not limited to, California
18 Labor Code §§ 218.5, 226, 1194, 2802, 2699(g), and Code of Civil
19 Procedure § 1021.5;
- 20 I. For the Court to award Plaintiffs and the FLSA Collective Members
21 reasonable attorneys' fees and costs of the action under 29 U.S.C. §
22 216(b) and all other causes of action set forth in this FAC;
- 23 J. For the Court to provide a reasonable service award for Plaintiffs to
24 compensate them for the time they spent attempting to recover wages for
25 the FLSA Collective Members and Rule 23 Class Members and for the
26 risks they took in doing so; and
- 27 K. Such other relief as this Court deems just and proper
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

DATED: September 22, 2022

By: /s/ Jerusalem F. Beligan
 Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
 Shant Karnikian (SBN 285048)
sk@kbklawyers.com
 Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
 633 W. Fifth Street, Suite 3200
 Los Angeles, CA 90071
 Telephone: (213) 217-5000

By: /s/ James L. Simon
James L. Simon (admitted *pro hac*
vice)
james@bswages.com
5000 Rockside Road
Liberty Plaza – Suite 520
Independence, OH 44131
Telephone: (216) 525-8890

*Attorneys for Plaintiffs and the Putative
Classes*

Exhibit A



May 26, 2022

Via Online Filing

Labor & Workforce Development Agency
800 Capital Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Via Certified Mail (Return Receipt Requested)

AMN Healthcare, Inc.
12400 High Bluff Drive, Suite 100
San Diego, CA 92130

Via Email Only (Counsel of Record for Defendant AMN Healthcare, Inc.)

Robin A. Wofford, Esq.
Katherine M. McCray, Esq.
Rita M. Leong, Esq.
Michaela P. Delacruz, Esq.
WILSON TURNER KOSMO LLP
402 West Broadway, Suite 1600
San Diego, CA 92101
E-mail: rwofford@wilsonturnerkosmo.com
E-mail: kmccray@wilsonturnerkosmo.com
E-mail: rleong@wilsonturnerkosmo.com
E-mail: mdelacruz@wilsonturnerkosmo.com

Re: Notice Pursuant to the Private Attorneys General Act, Cal. Lab. Code § 2699.3 (the “PAGA”) (related to *Sharon Oliveira v. AMN Healthcare, Inc.*, currently pending in the United States District Court—Southern District of California, Case No. 22-cv-00003-LL-WVG)

Dear Sir or Madam:

Claimant Ingrid Leeman (“Claimant”) has retained our firm to represent her and other similarly situated current and former employees of Defendant AMN Healthcare, Inc. (“AMN” or “Defendant”) for alleged violations of California’s Labor Codes. We intend to add her as a named plaintiff and include California claims in a collective and class action currently pending in the United States District Court—Southern District of California styled, *Sharon Oliveira v. AMN Healthcare, Inc.*, Case No. 22-cv-00003-LL-WVG. A true and correct copy of the First Amended Collective and Class Action Complaint (“FAC”) is attached hereto as **Exhibit A** and incorporated herein by reference. AMN currently employs Claimant and other similarly situated employees as Interpreters holding comparable positions but different titles throughout California (collectively, the “Aggrieved Employees”). As will be explained in detail below, Claimant alleges that AMN violated and continues to violate numerous California Labor Codes; thus, entitling Claimant and the Aggrieved Employees to penalties under the PAGA.

This letter serves to inform AMN of Claimant’s intent to amend the complaint and bring a cause of action for violations of the PAGA for AMN’s failure to comply with California’s mandatory minimum wage, overtime, meal-and-rest period, wage statement, and expense reimbursement requirements. During the relevant time period, and as alleged in the FAC, AMN failed to pay regular and overtime wages, provide compliant meal-and-rest periods, provide accurate wage statements, failed to reimburse Aggrieved Employees for reasonably and necessary business



expenses, and failed to pay Claimant and the Aggrieved Employees additional wages and penalties for said violations. As a result, AMN violated, among other statutes and regulations, Labor Code §§ 201-204, 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1174(d), 1194, 1198, 2802, and provisions of Industrial Welfare Commission Wage Order 4-2001 (“Wage Order No. 4”).

Claimant is informed and believes that said violations are ongoing, systematic and uniform. If AMN fails to cure these alleged violations on a representative basis, as stated above, Claimant will amend the complaint and bring an action against AMN under the PAGA to recover penalties as provided by California law.¹

Facts and Theories to Support the Alleged Labor Code Violations

The Aggrieved Employees are neither managerial, administrative, nor professional employees and therefore entitled to an hourly wage for each hour worked, overtime pay, mandatory meal-and-rest breaks, and accurate itemized wage statements. Despite being non-exempt employees, AMN uniformly, and as a matter of corporate policy, did not pay the Aggrieved Employees for all non-overtime and overtime hours worked. Specifically, and as alleged in the FAC, Aggrieved Employees were required to perform pre- and post-shift work, and on occasion had to miss or work through their meal periods, without compensation. Put another way, these hours were not included in total hours worked by the Aggrieved Employees and, as a result, they were not being paid a separate hourly wage for all regular hours worked, and if they worked more than 8 hours in a day or more than 40 hours in a week, they were not being properly compensated for all overtime hours worked.

Pursuant to uniform corporate policy and practice, AMN also did not provide Aggrieved

¹ Without limitation, Claimant, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.



Employees with timely, duty-free, uninterrupted meal periods of at least 30-minutes for every five hours worked, and did not provide Aggrieved Employees with duty-free, uninterrupted rest periods of at least 10 minutes for every four hours worked or major fraction thereof. In addition, AMN did not provide the Aggrieved Employees with accurate wage statements showing, among other things, total hours worked, gross and net wages earned, the correct entity that employs them, premium wages for meal-and-rest period violations, and the correct applicable rate of pay for each regular and overtime hour worked. Furthermore, AMN required Aggrieved Employees to incur necessary business expenses, such as a higher bandwidth and internet speed, but failed to reimburse them for said necessary business expenses. Moreover, AMN did not pay Aggrieved Employees, who separated from AMN's employment, all wages due to them within the timeline required by law. As a result of its uniform treatment of the Aggrieved Employees, AMN has committed numerous violations of California's Labor Codes including, but not limited to: (1) failing to pay the Aggrieved Employees an hourly wage for each and every hour worked; (2) failing to pay the Aggrieved Employees for all overtime hours worked; (3) failing to provide the Aggrieved Employees compliant meal-and-rest periods; (4) failing to provide the Aggrieved Employees accurate wage statements; (5) failing to reimburse Aggrieved Employees for necessary business expenses; and (6) failing to timely pay the Aggrieved Employees wages upon termination of employment.

A. AMN failed to pay the Aggrieved Employees an hourly wage for each and every hour worked and failed to pay them overtime wages for all overtime hours worked.

At all times relevant, pursuant to Labor Code §§ 1197 and 1198, it is unlawful for an employer to pay less than the wage established by law or to employ persons in excess of the hours fixed by the IWC or under conditions prohibited by Wage Order No. 4.

At all times relevant, Labor Code § 1194(a) provides that "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."

At all times relevant, Labor Code § 510 provides for payment of a minimum wage regardless of the number of hours worked, and one and one-half times each employee's regular rate of pay for all work over eight hours in a day, 40 hours in any workweek, or the first eight hours of the seventh consecutive day of work. In addition, Labor Code § 510 provides for payment of double the employee's regular rate of pay for work in excess of 12 hours per day or in excess of eight hours on the seventh consecutive day of any work week.

At all times relevant, Labor Code § 558 provides, in pertinent part, "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the [IWC] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition



to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 204 provides, in pertinent part, that “[a]ll 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.” It further provides that “[l]abor performed between the 1st and 15th days ... of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day ... of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Labor Code § 210, which became effective on January 1, 2020, provides, in pertinent part, that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section[] ... 204 ... shall be subject to a penalty ...” That statute further states that “[a]n employee is ... entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.” At all times relevant, Labor Code § 210 provides, in pertinent part, that “every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

At all times relevant, Labor Code § 218 provides in pertinent part, “...Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

Here, AMN violated Labor Code §§ 204, 210, 218, 510, 558, 1182.12, 1194, 1197 and 1198. As a result of its failure to pay the Aggrieved Employees for all pre- and post-shift work, including occasions they had to miss or work through their meal periods, AMN failed to properly compensate the Aggrieved Employees. Specifically, AMN did not pay the Aggrieved Employees an hourly wage for each and every hour worked, nor did it pay the Aggrieved Employees overtime for all work performed in excess of 8 hours per workday or 40 hours in a given workweek. AMN had a policy and practice to violate said Labor Code provisions by, *inter alia*, failing to include all pre- and post-shift work, including missed meal periods, into the Aggrieved Employees total hours worked.

AMN also failed to tender to the Aggrieved Employees all of their earned regular and overtime wages in accordance with California law, including, but not limited to, Labor Code § 204, such that labor performed between the 1st and 15th days, inclusive, of any calendar month was not paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, was not paid for between the 1st and 10th day of the following month. Because the Aggrieved Employees were not paid for all labor performed during the correct pay periods, AMN also violated Labor Code §§ 204 and 210.



B. AMN failed to provide the Aggrieved Employees with uninterrupted, off-duty first and second meal periods.

At all times relevant, Labor Code § 512 requires that each employee working at least 5 hours must be given a paid or unpaid meal period of not less than 30-minutes, uninterrupted, where the employee is relieved of all job duties and is free to leave the work premises; and that a second meal period of not less than 30-minutes, uninterrupted, be given to each employee working at least 10 hours in any given workday.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who is not permitted to take a valid meal period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid meal period is not provided.

Here, Defendants did not provide the Aggrieved Employees with compliant meal periods. Specifically, the Aggrieved Employees' meal periods were routinely late (after the end of the fifth or tenth hour of work), interrupted, and/or controlled by AMN because of its policy precluding Aggrieved Employees from terminating sessions, even if it would interfere with their meal periods. The Aggrieved Employees' meal periods were also cut short or less than 30-minutes or completely missed. AMN also lacked a compliant meal period policy applicable to the Aggrieved Employees and therefore the Aggrieved Employees were not given an opportunity to take compliant meal periods. For example, Aggrieved Employees, who worked more than 10 hours in a shift, were not provided a second 30-minute meal period under AMN's policy. Moreover, AMN did not pay the Aggrieved Employees one hour of pay for instances where AMN failed to provide the Aggrieved Employees the opportunity to take a 30-minute meal break, relieved of all duties, for shifts of 5 hours or greater, or a second meal period for shifts in excess of 10 hours. As a result, AMN violated Labor Code §§ 226.7, 512, 558, 1197, and 1198.

C. AMN failed to provide the Aggrieved Employees with uninterrupted, off-duty rest periods for every four hours worked or major fraction thereof.

At all times relevant, Wage Order No. 4, which applies to the Aggrieved Employees' employment with AMN specifically requires each nonexempt employee working at least three and a-half hours to be given a paid rest period of not less than ten consecutive minutes, uninterrupted, where the employee is relieved of all duties. In addition, a second rest period of not less than ten consecutive minutes must be given to each nonexempt employee working at least six hours in any given workday, and a third rest period for shifts in excess of ten hours.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who was not permitted to take a valid rest period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid rest period was not provided.

Here, Defendants did not have a compliant rest break policy applicable to the Aggrieved Employees. AMN's policy does not authorize or permit the correct number of rest breaks that are required by California law. Nor does AMN's policy provide for rest breaks free from employer



control, and at least 10-minutes of duty-free time. AMN's rest period policy prohibited Aggrieved Employees from terminating sessions to take mandatory rest periods; thus, AMN exerted unlawful control over the Aggrieved Employees' rest breaks. AMN also failed to pay one hour of pay for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a paid ten minute rest break, relieved of all duties, for shifts of at least three and a-half hours. AMN also failed to pay the Aggrieved Employees one hour of pay for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a second rest period for shifts of more than six hours, or a third rest period for shifts in excess of 10 hours. In a nutshell, AMN failed to make available to the Aggrieved Employees proper rest periods in compliance with California law. As a result, AMN violated Labor Code §§ 226.7, 558, 1197, and 1198.

D. AMN failed to furnish accurate wage statements to the Aggrieved Employees.

At all times relevant, Labor Code § 226 requires AMN to “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,...(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.”

Here, AMN violated Labor Code § 226. AMN had a uniform policy and practice to violate said Labor Code by failing to account for all of the hours worked by the Aggrieved Employees, inaccurately setting forth the net and gross wages earned, by failing to show premium wages for meal-and-rest break violations as detailed herein, and by failing to identify the correct name of the employer. As a result, AMN violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees' respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, (4) all applicable hourly rates and the corresponding number of hours worked at each hourly rate, and (5) the correct name of the legal entity that employs the Aggrieved Employees.

E. AMN failed to reimburse the Aggrieved Employees for reasonable and necessary business expenses incurred as a result of performing their duties.

California law requires that AMN indemnify their employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. *See* Cal. Lab. Code § 2802.

AMN has violated Labor Code § 2802 by failing to indemnify Claimant and Aggrieved Employees for the necessary expenditures they incurred in the discharge of their duties. Specifically, AMN employed a policy, practice, and procedure whereby the Aggrieved Employees were required to supply their own highspeed internet service, internet equipment and replacement computer



equipment. This practice resulted in the Aggrieved Employees not receiving indemnification for these necessary business expenses in violation of Labor Code § 2802.

F. AMN failed to pay all wages due to the Aggrieved Employees upon termination.

At all times relevant, Labor Code § 200 defines “wages” as including all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Here, AMN violated Labor Code §§ 200-203. When former Aggrieved Employees’ employment with AMN ended, AMN failed to pay them all of their earned wages as detailed above, immediately upon their discharge or within 72 hours thereafter. In addition, AMN failed to pay the waiting time penalties to which the Aggrieved Employees are entitled.

To date, as set forth in detail above, AMN has failed to pay the Aggrieved Employees all of their earned regular and overtime wages, premium wages for meal-and-rest break violations, accrued interest thereon, and failed to remit the Labor Code §§ 210 and 558 penalties to be imposed as a consequence of said violations of the California Labor Code.

G. AMN failed to maintain records of all hours worked by Aggrieved Employees.

Labor Code § 1174(d) provides that every person employing labor in this state shall “[k]eep, at a central location in the state or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments.” It further states that “[t]hese records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

As alleged above, Claimant and the other Aggrieved Employees routinely worked hours for which they were not paid the appropriate hourly wage. Further, as alleged *supra*, Claimant and the



Aggrieved Employees routinely missed meal periods, or they were cut short or late, but AMN failed to accurately record the meal periods of Claimant and other Aggrieved Employees in direct violation of California law. Because of AMN's unlawful policies and practices, they have violated Labor Code § 1174(d).

Conclusion

AMN has violated several California Labor Code provisions. Claimant provides notice of these alleged violations under PAGA's provisions and requests the LWDA to investigate these alleged Labor Code violations. Alternatively, Claimant requests the LWDA to inform her if it does not intend to investigate these violations, so she may amend the complaint to include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact my office.

Sincerely,

KABATECK LLP



Jerusalem F. Beligan

cc: James L. Simon
james@bswages.com
Michael L. Fradin
mike@fradinlaw.com

Exhibit A

1 Plaintiff Sharon Oliveira (“Plaintiff”), individually and on behalf of all other
 2 persons similarly situated, files this First Amended Collective and Class Action
 3 Complaint (“Complaint”) against defendant AMN Healthcare, Inc. (hereafter “AMN”
 4 or “Defendant”) and DOES 1 through 10 (collectively, “Defendants”) and alleges as
 5 follows:

6 **PRELIMINARY STATEMENT**

7 1. This lawsuit arises under the Fair Labor Standards Act (“FLSA”), 29
 8 U.S.C. § 201, *et seq.*, Ohio Minimum Fair Wage Standards Act (“OMWFSA”), O.R.C.
 9 4111.01, *et seq.* and Fed. R. Civ. P. 23 for AMN’s failure to pay Plaintiff and other
 10 similarly-situated employees (referred to herein as “Collective Members” and “Class
 11 Members”) all earned minimum and overtime wages.

12 2. Plaintiff, the Collective Members and the Class Members are current and
 13 former employees of AMN. Plaintiff brings this action on behalf of herself and all
 14 similarly-situated current and former Interpreters (also referred to as the “Covered
 15 Positions”) of AMN.¹

16 3. The Collective Members are all current and former Interpreters, or other
 17 similarly titled employees, who were employed by AMN starting three years before
 18 this Complaint was filed, up to the present.

19 4. The Class Members are all current and former Interpreters, or other
 20 similarly titled employees, who were employed by AMN within the state of Ohio
 21 starting three years before this Complaint was filed, up to the present.

22 5. Under the FLSA and OMWFSA, employers must pay all non-exempt
 23 employees an overtime wage premium of pay one and one-half times their regular

24 ¹ For the purposes of this Complaint, “Interpreters” is exclusively a job title used for
 25 the purpose of classifying the putative class of similarly situated individuals, is not
 26 necessarily the job title of Plaintiff and the putative class, and has no bearing or
 27 relation to any specialization, skill, educating, training, or other qualification that
 28 might otherwise be associated with such a job title.

1 rates of pay for all time they spend working over 40 hours in a workweek. AMN failed
 2 to pay Plaintiff, the Collective Members and the Class Members one and one-half
 3 times their regular rate of pay for all time they spent working over 40 hours in a
 4 workweek. Plaintiff therefore brings this Complaint as a class action and collective
 5 action under Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b) for AMN's violation of federal
 6 and Ohio law as detailed further below.

7 6. Under the FLSA and OMFWSA, employers must pay all non-exempt
 8 employees an overtime wage premium of pay one and one-half times their **regular**
 9 **rate of pay** for all time they spend working over 40 hours in a workweek. To compute
 10 the lawful overtime rate, an employee's regular rate of pay must include all non-
 11 discretionary bonus payments. *See* 29 C.F.R. 778.208-215. AMN paid Plaintiff, the
 12 Collective Members and the Class Members non-discretionary bonuses, but AMN did
 13 not include these payments as part of Plaintiff's, the Collective Members' and the
 14 Class Members' regular rates of pay for purposes of paying overtime.

15 7. Under the FLSA and OMWFSa "[r]est periods of short duration, running
 16 from 5 minutes to about 20 minutes. . . must be counted as hours worked." *See* 29
 17 C.F.R. 785.18; *see also* *Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th
 18 Cir. 2021). AMN violated the FLSA and OMWFSa by routinely failing to pay
 19 Plaintiff, the Collective Members and the Class Members for rest breaks shorter than
 20 20 minutes.

21 8. The wage requirements of the FLSA and OMFWSA "will not be met
 22 where the employee 'kicks-back' directly or indirectly to the employer or to another
 23 person for the employer's benefit the whole or part of the wage delivered to the
 24 employee." *See* 29 C.F.R. 531.35. "For example, if it is a requirement of the employer
 25 that the employee must provide tools of the trade which will be used in or are
 26 specifically required for the performance of the employer's particular work, there
 27 would be a violation of the Act in any workweek when the cost of such tools purchased
 28

1 by the employee cuts into the minimum or overtime wages required to be paid him
 2 under the Act.” *Id.* AMN violated the FLSA and OMFWSA by requiring Plaintiff, the
 3 Collective Members and the Class Members to provide the internet services necessary
 4 to complete their Interpreter job duties for AMN while failing to reimburse Plaintiff,
 5 the Collective Members and the Class Members for the costs of the same.

6 **JURISDICTION AND VENUE**

7 9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29
 8 U.S.C. § 201, *et seq.* because this civil action arises under the laws of the United
 9 States.

10 10. Venue is proper in this district under 28 U.S.C. § 1391(b)(ii) because acts
 11 giving rise to the claims of Plaintiff and the Collective Members occurred within this
 12 District.

13 11. At all relevant times, Plaintiff has been a resident of Franklin County,
 14 Ohio and performed work for AMN within the state of Ohio.

15 12. AMN is headquartered at 12400 High Bluff Drive San Diego, California
 16 92130.

17 13. AMN regularly conducts business in and has engaged in the wrongful
 18 conduct alleged herein – and, thus, is subject to personal jurisdiction in – this judicial
 19 district.

20 14. Plaintiff, the Collective Members and the Class Members in their work
 21 for AMN were employed by an enterprise engaged in commerce with annual gross
 22 sales of at least \$500,000.

23 **PARTIES**

24 15. At all times material to the matters alleged in this Complaint, Plaintiff is
 25 a current employee of AMN.

26 16. Plaintiff is a full-time employee of AMN who worked and continues to
 27 work as an Interpreter from approximately May 1, 2020 through the present.
 28

1 17. The Collective Members are all current and former Interpreters who
2 worked for AMN in the United States at any point in the three years preceding the
3 filing of this Complaint.

4 18. The Class Members are all current and former Interpreters who worked
5 for AMN in the state of Ohio at any point in the three years preceding the filing of this
6 Complaint.

7 19. The Class and Collective Members are non-exempt from the OMFWSA
8 and FLSA overtime requirements.

9 20. At all material times, AMN Healthcare, Inc. is a Nevada corporation duly
10 licensed to transact business in the State of Ohio, and is headquartered in San Diego,
11 California.

12 21. Under the OMFWSA and FLSA, AMN is an employer. At all relevant
13 times, AMN had the authority to hire and fire employees, supervised and controlled
14 work schedules or the conditions of employment, determined the rate and method of
15 payment, and maintained employment records in connection with Plaintiff's
16 employment with AMN. As a person who acted in the interest of AMN in relation to
17 the company's employees, AMN is subject to liability under the OMFWSA and
18 FLSA.

19 22. At all material times, Plaintiff and the Collective and Class Members
20 were employees of AMN as defined by the OMFWSA and FLSA, 29 U.S.C.
21 § 203(e)(1).

22 23. At all material times, Plaintiff and the Collective and Class Members
23 were non-exempt employees under 29 U.S.C. § 213(a)(1).

24 24. Plaintiff has given her written consent to be a named party in this action
25 under 29 U.S.C. § 216(b), a true and accurate copy of which is attached to this
26 Complaint as "**Exhibit A.**"

27 25. The true names and capacities, whether individual, corporate, associate,
28

representative, alter ego or otherwise, of defendants named in this action as DOES 1 through 10 inclusive are presently unknown to Plaintiff, who therefore sues such defendants by such fictitious names. Plaintiff will seek to amend this Complaint to allege the true names and capacities of DOES 1 through 10 when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that DOES 1 through 10 were and/or are, in some manner or way, responsible for and liable to Plaintiff and the Collective and Class Members for the events, happenings, and damages set forth below.

26. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times mentioned herein, Defendants acted as agents, employees, supervisors, partners, conspirators, servants and/or joint venturers of each other, and in doing the acts hereafter alleged, were acting within the course, scope, and authority of such agency, employment, partnership, conspiracy, enterprise and/or joint venture, and with the express and/or implied permission, knowledge, consent, authorization and ratification of their co-defendants

FACTUAL ALLEGATIONS

27. AMN provides staffing and recruitment services for healthcare providers nationwide.²

28. One of the services that AMN provides is supplying healthcare providers with qualified language interpreters such as Plaintiff, the Collective Members and the Class Members.³

29. The Collective Members are all current and former Interpreters who worked for AMN nationwide at any point in the three years preceding the filing of this

² See <https://www.amnhealthcare.com/about/why-amn-healthcare/> (last visited Nov. 5, 2021)

³ See <https://www.amnhealthcare.com/staffing/schools/language-interpretation/> (last visited Nov. 5, 2021).

1 Complaint. The Collective Members are non-exempt from the FLSA's overtime
2 requirements.

3 30. The Class Members are all current and former Interpreters who worked
4 for AMN in Ohio at any point in the three years preceding the filing of this Complaint.
5 The Class Members are non-exempt from the OMFWSA's overtime requirements.

6 31. Plaintiff worked for AMN as an Interpreter, providing two-way language
7 translation for AMN's clients. At all relative times, Plaintiff worked remotely from
8 her residence in Franklin County, Ohio. The Collective and Class Members similarly
9 work remotely using AMN's propriety technology, hardware, and software.

10 32. At all relevant times, Plaintiff was compensated on an hourly basis at a
11 rate of approximately \$22.00.

12 33. At all relevant times, Plaintiff worked approximately 50 hours per week.

13 34. During every workweek, Plaintiff and the Collective and Class Members
14 were paid on an hourly basis.

15 35. Plaintiff, the Collective Members, and the Class Members perform their
16 duties, work and provide their interpretation services for AMN remotely. As part of
17 this design, AMN issues Plaintiff, the Collective Members and the Class Members
18 computer, audio and video equipment for use in Plaintiff's, the Collective Members'
19 and the Class Members' homes. This AMN equipment all contains AMN's proprietary
20 software programs which Plaintiff, the Collective Members and the Class Members
21 must log on to perform their job functions for AMN.

22 36. At all relative times, Plaintiff, the Collective Members and the Class
23 Members have been subject to AMN's policy of requiring Plaintiff, the Collective
24 Members and the Class Members to spend time working before clocking in at the
25 beginning of their shifts and after clocking out at the end of their shifts.

26 37. Specifically, Plaintiff, the Collective Members and the Class Members
27 must set up the required audio and video equipment and perform quality checks before
28

1 “clocking in.” In addition, Plaintiff, the Collective Members and the Class Members
2 are required to spend time booting up and logging into their computers before clocking
3 in for their shift. As a result, Plaintiff, the Collective Members and the Class Members
4 were being required to perform pre-shift work for which they were not being
5 compensated. Moreover, Plaintiff, the Collective Members and the Class Members
6 are required to clock out at the end of their shift before logging off, shutting down
7 their computers and cleaning the AMN issued equipment. As a result, Plaintiff, the
8 Collective Members and the Class Members were being required to perform post-shift
9 work for which they were not being compensated.

10 38. As a result of the pre- and post-shift work, Plaintiff, the Collective
11 Members and the Class Members typically spend at least 15 minutes or more each
12 shift that goes completely uncompensated, whether at a regular rate of pay or an
13 overtime rate of pay. In all instances, AMN’s failure to compensate Plaintiff, the
14 Collective Members and the Class Members for such time violates the minimum wage
15 provisions of the FLSA and OMFWSA. In all instances wherein Plaintiff, the
16 Collective Members and the Class Members work over 40 hours in a workweek,
17 AMN’s failure to compensate Plaintiff, the Collective Members and the Class
18 Members for such time violates the overtime provisions of the FLSA and OMFWSA.
19 In all instances wherein Plaintiff, the Collective Members and the Class Members
20 worked, but not over 40 hours in a workweek, AMN’s failure to compensate Plaintiff,
21 the Collective Members and the Class Members for such time violates the minimum
22 wage provisions of the FLSA and OMFWSA

23 39. At all relevant times, Plaintiff, the Collective Members and the Class
24 Members were eligible to earn non-discretionary bonus payments because of positive
25 or exemplary performance. These bonus payments were typically made in a lump sum.
26 For example, on or about October 15, 2021, Plaintiff earned a \$250 bonus payment as
27 result of her positive or exemplary performance. However, AMN does not include
28

1 these non-discretionary bonus payments in Plaintiff's, the Collective Members' and
2 the Class Members' regular rates of pay to compute the overtime rate paid. As a result,
3 AMN has violated the overtime provisions of the FLSA and OMFWSA.

4 40. At all relevant times, Plaintiff, the Collective Members and the Class
5 Members were subject to AMN's company-wide "break" policy. *See* excerpt from
6 Language Operations US Policies Manual attached hereto as "**Exhibit B**" and
7 incorporated as if fully rewritten herein.

8 41. Pursuant to AMN's break policy, Plaintiff, the Collective Members and
9 the Class Members can work as much as 7.75 hours while receiving only one paid 15-
10 minute break, i.e. the "scheduled break." Plaintiff, the Collective Member and the
11 Class Members can work over 10 hours while receiving only two paid 15-minute
12 scheduled breaks. If Plaintiff, the Collective Members and the Class Members work
13 3.75 hours or less, then they receive no paid break time whatsoever.

14 42. AMN's break policy further provides that "[s]hifts extended due to long
15 sessions will not be eligible to have additional breaks paid out, as breaks are intended
16 to be scheduled and taken during the shift." Moreover, "[i]f the last break cannot be
17 taken due to servicing a long session, that break time is not to be added as paid time
18 at the end of the shift." In addition, under the policy, Interpreters are discouraged from
19 "needlessly transferring or logging out of a live session to take their scheduled
20 break/lunch time."

21 43. Plaintiff, the Collective Members' and the Class Members' primary job
22 function is to listen to a patient speaking in a foreign language, translate the patient's
23 words to the healthcare provider in English, then listen to the healthcare provider's
24 response, and then translate the healthcare provider's response to the patient in their
25 foreign language. Naturally, these sessions go beyond their allotted time and therefore
26 Plaintiff, the Collective Members and the Class Members cannot take one or more of
27 their scheduled 15-minute breaks and therefore must work through their 15-minute
28

1 breaks. However, under the policy, they are prohibited from adding the missed break
2 to total hours worked during a shift, and as a result, are not being compensated for all
3 hours worked. In addition, Plaintiff, the Collective Members and the Class Members
4 may need brief rest breaks which fall outside of AMN sparse scheduled break policy.
5 Any such break is treated as an “unscheduled break” and AMN does not compensate
6 Plaintiff, the Collective Members and the Class Members for the same.

7 44. AMN’s failure to pay Plaintiff, the Collective Members and the Class
8 Members for any unscheduled break of 20 minutes or less violates the minimum wage
9 provisions of the FLSA and OMFWSA in all instances. In all instances wherein
10 Plaintiff, the Collective Members and the Class Members worked over 40 hours in a
11 workweek, AMN’s failure to compensate Plaintiff, the Collective Members and the
12 Class Members for any break of 20 minutes or less violates the overtime provisions
13 of the FLSA and OMFWSA.

14 45. AMN requires Plaintiff, the Collective Members and the Class Members
15 to supply their own highspeed internet routers and modems. *See* excerpt from
16 Language Operations US Policies Manual attached hereto as “**Exhibit C**” and
17 incorporated as if fully rewritten herein. Moreover, Plaintiff, the Collective Members
18 and the Class Members must provide highspeed internet service with bandwidth
19 capable of at least 10 megabytes per second on download and at least 2 megabytes per
20 second on upload. However, AMN fails to reimburse Plaintiff, the Collective
21 Members and the Class Members for such required equipment and internet service.
22 As such, AMN has violated the overtime provisions of the FLSA and OMFWSA.

23 **COLLECTIVE ACTION ALLEGATIONS**

24 46. Plaintiff and the Collective Members reallege and incorporate by
25 reference all allegations in all preceding paragraphs.

26 47. Plaintiff brings this action under 29 U.S.C. § 216(b) on her own behalf
27 and as a representative of individuals similarly situated who are current or former
28

1 Interpreters employed by AMN.

2 48. AMN subjected all of its Interpreters, including Plaintiff and the
3 Collective Members, to its policy and practice of not paying them minimum wage or
4 overtime for all time spent setting up computer, audio and video equipment; booting
5 up computers and launching AMN software; logging out of AMN software; shutting
6 down computers; taking down audio and video equipment; and cleaning computer,
7 audio and video equipment in violation of 29 U.S.C. §§ 206 and 207.

8 49. AMN subjected all of its Interpreters, including Plaintiff and the
9 Collective Members, to its policy of failing to include non-discretionary bonus
10 payments in Plaintiff's and the Collective Members' regular rates of pay to compute
11 their overtime paid in violation of 29 U.S.C §§ 206 and 207.

12 50. AMN subjected all of its Interpreters, including Plaintiff and the
13 Collective Members, to its policy of failing to pay Plaintiff and the Collective
14 Members for all scheduled breaks they missed or had to work through and all
15 unscheduled breaks of 20 minutes or less in violation of 29 U.S.C §§ 206 and 207.

16 51. AMN subjected all of its Interpreters, including Plaintiff and the
17 Collective Members, to its policy of requiring Plaintiff and the Collective Members
18 to provide highspeed internet equipment and service without reimbursing Plaintiff and
19 the Collective Members for same.

20 52. Plaintiff's claims stated in this Complaint are essentially the same as
21 those of the Collective Members. This action is properly maintained as a collective
22 action because in all pertinent aspects the employment relationship of individuals
23 similarly situated to Plaintiff is identical or substantially similar.

24 53. The Collective Members perform or have performed the same or similar
25 work as Plaintiff.

26 54. AMN's failure to pay minimum wage and overtime compensation
27 required by the FLSA results from generally applicable policies or practices, and does
28

1 not depend on the personal circumstances of Plaintiff or the Collective Members.

2 55. Although the exact amount of damages may vary among the Collective
3 Members, the damages for the Collective Members can be easily calculated by a
4 simple formula. The claims of all Collective Members arise from a common nucleus
5 of facts. Liability is based on a systematic course of wrongful conduct by AMN that
6 caused harm to the Collective Members.

7 56. As such, Plaintiff bring his FLSA overtime claim as a collective action
8 on behalf of the following class:

9 **All of AMN's current and former Interpreters and those with**
10 **similar job duties, but different titles, who worked for AMN**
11 **at any time from three years preceding the filing of this**
12 **Complaint to the present.**

13 57. AMN's unlawful conduct, as described herein, is pursuant to AMN's
14 corporate policy or practice of minimizing labor costs by refusing and/or failing to
15 properly compensate its employees according to the FLSA.

16 58. AMN is aware or should have known federal law prohibited them from
17 not paying Plaintiff and the Collective Members all minimum wage and overtime as
18 detailed herein.

19 59. AMN's unlawful conduct has been widespread, repeated, and consistent.

20 60. This action is properly brought and maintained as an opt-in collective
21 action under 29 U.S.C. § 216(b).

22 61. Upon information and belief, the individuals similarly situated to
23 Plaintiff includes hundreds, and possibly thousands, of Interpreters currently and/or
24 formerly employed by AMN. Plaintiff cannot state the precise number of similarly-
25 situated employees because that information is solely in AMN's possession, custody,
26 or control, but it can be readily ascertained from its employment records.

27 62. Notice can be provided to the Collective Members by First Class Mail to
28

1 the last address known to AMN, via email at the last known email address known to
2 AMN, and by text message to the last known telephone number known to AMN.

3 **OHIO RULE 23 CLASS DEFINITION AND ALLEGATIONS**

4 63. Plaintiff realleges and incorporates by reference all allegations in all
5 preceding paragraphs.

6 64. **Rule 23 Class.** Plaintiff brings Claims for Relief for violation of Ohio
7 wage-and-hour laws as a class action under Rule 23(a), (b)(2), and (b)(3). Plaintiff
8 brings these claims on behalf of herself and all members of the following class
9 comprised of:

10 **The Class Members are all of AMN's current and former**
11 **Interpreters and those with similar job duties, but different**
12 **titles, who worked for AMN, within Ohio, at any time from**
13 **three years preceding the filing of this Complaint to the**
14 **present.**

15 65. **Numerosity (Rule 23(a)(1)).** The Class Members are so numerous that
16 joinder of all members is impracticable. Plaintiff on information and belief alleges that
17 AMN employed greater than one hundred people who satisfy the definition of the
18 Class Members.

19 66. **Existence of Common Questions of Law and Fact (Rule 23(a)(2)).**
20 Common questions of law and fact exist as to Plaintiff and the Class Members
21 including, but not limited to, the following:

- 22 a. Whether AMN unlawfully failed to pay the Class Members all
23 minimum and overtime wages, in violation of the OMFWSA;
24 b. Whether AMN unlawfully failed to keep and maintain accurate and
25 true records of the hours worked by the Class Members as required by
26 applicable law; and
27 c. The damages sustained and the proper measure of restitution
28

1 recoverable by members of the Class Members.

2 67. **Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the Class
3 Members' claims. Plaintiff, like the Class Members, was subjected to AMN's illegal
4 scheme to maximize profits by depriving their employees of minimum wage and
5 overtime compensation.

6 68. **Adequacy (Rule 23(a)(4)).** Plaintiff will fairly and adequately represent
7 and protect the interests of the Class Members. Plaintiff has retained counsel
8 competent and experienced in complex class actions, the FLSA, and state labor and
9 employment litigation.

10 69. **Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class certification
11 of the Rule 23 claims is appropriate under Rule 23(b)(2) because AMN acted or
12 refused to act on grounds generally applicable to the Class Members, making
13 appropriate declaratory relief with respect to the Class Members as a whole.

14 70. **Predominance and Superiority of Class Action (Rule 23(b)(3)).** Class
15 certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because
16 questions of law and fact common to the Class Members predominate over questions
17 affecting only individual members of the class, and because a class action is superior
18 to other available methods for the fair and efficient adjudication of this litigation.
19 AMN's common and uniform policies and practices illegally deprived Plaintiff and
20 all similarly situated employees of wages; thus, making the question of liability and
21 damages much more manageable and efficient to resolve in a class action, compared
22 to hundreds of individual trials. The damages suffered by individual Class Members
23 are small compared to the expense and burden of individual prosecution. In addition,
24 class certification is superior because it will obviate the need for unduly duplicative
25 litigation that might result in inconsistent judgments about AMN's practices.

26 71. Plaintiff intends to send notice to all Class Members to the extent
27 required by Rule 23.
28

COUNT ONE: FAIR LABOR STANDARDS ACT

OFF-THE-CLOCK WORK

72. Plaintiff and the Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

73. AMN has a consistent enterprise-wide policy of requiring Plaintiff and the Collective Members to perform work while off the clock and failing and/or refusing to compensate Plaintiff and the Collective Members their regular rate of pay for all non-overtime hours worked, and one and one-half times their regular hourly rate for all the time they worked over 40 hours in a workweek.

74. Plaintiff and the Collective Members perform their duties and provide their interpretation services for AMN remotely. As part of this design, AMN issues Plaintiff and the Collective Members computer, audio and video equipment for use in Plaintiff's and the Collective Members' homes. This AMN equipment contains AMN's proprietary software programs which Plaintiff and the Collective Members must log on to perform their job functions for AMN.

75. At all relative times, Plaintiff and the Collective Members have been subject to AMN's policy of requiring Plaintiff and the Collective Members to spend time working before clocking in at the beginning of their shifts and after clocking out at the end of their shifts.

76. Specifically, Plaintiff, and the Collective Members must set up the required audio and video equipment and perform quality checks before being "clocked in" and therefore perform uncompensated work. Moreover, Plaintiff and the Collective Members are required to spend time booting up and logging into their computers before clocking in for their shift and required to clock out at the end of their shift before logging off, shutting down their computers and cleaning the AMN issued equipment.

77. As a result, Plaintiff and the Collective Members typically spend at least

1 15 minutes or more each shift that goes completely uncompensated. In all instances,
2 AMN's failure to compensate Plaintiff and the Collective Members for such time
3 violates the minimum wage provisions of the FLSA, 29 U.S.C. § 206. In all instances
4 wherein Plaintiff and the Collective Members work over 40 hours in a workweek,
5 AMN's failure to compensate Plaintiff and the Collective Members for such time
6 violates the overtime provisions of the FLSA, 29 U.S.C. § 207.

7 78. For example, during the pay period beginning November 6, 2021 and
8 ending November 19, 2021, AMN recorded and paid Plaintiff for 86.66 hours worked.
9 During that pay period, Plaintiff worked no less than 150 minutes that was not
10 recorded or compensated by AMN whatsoever.

11 79. As a result, AMN did not pay Plaintiff minimum wage as required by the
12 FLSA for no less than 150 minutes that were worked between November 6, 2021 and
13 November 19, 2021.

14 80. Because Plaintiff worked in excess of 40 hours in each of the workweeks
15 within the pay period spanning from November 6, 2021 through November 19, 2021,
16 AMN likewise failed to pay Plaintiff for no less than 150 minutes of overtime at one-
17 and-one-half times her regular rate of pay as required by the overtime provisions of
18 the FLSA.

19 81. Although at this stage, Plaintiff and the Collective Members cannot state
20 the exact amount owed for all time worked during their employment, Plaintiff and the
21 Collective Members believe that such information will become available during
22 discovery. Furthermore, when an employer fails to keep complete and accurate time
23 records, employees may establish the hours worked by their testimony, and the burden
24 of overcoming such testimony shifts to the employer.

25 82. AMN knew that – or acted with reckless disregard as to whether – its
26 refusal or failure to properly compensate Plaintiff and the Collective Members during
27 their employment would violate the FLSA, and AMN knew the FLSA's minimum
28

1 wage and overtime requirements. As such, AMN's conduct constitutes a willful
2 violation of the FLSA.

3 83. As a result of AMN's failure or refusal to pay Plaintiff and the Collective
4 Members for all hours worked, and AMN's failure or refusal to pay Plaintiff and the
5 Collective Members one and one-half times their regular rate of pay for all hours
6 worked over 40 hours in any workweek, AMN violated 29 U.S.C. §§ 206 and 207(a).
7 Plaintiff and the Collective Members are therefore entitled to compensation of all
8 unpaid minimum wages and one and one-half times their regular rate of pay, to be
9 proven at trial, plus an additional equal amount as liquidated damages, together with
10 interest, reasonable attorney's fees, and costs.

11 **COUNT TWO: OHIO MINIMUM FAIR WAGE STANDARDS ACT**

12 **OFF-THE-CLOCK WORK**

13 84. Plaintiff and the Class Members reallege and incorporate by reference all
14 allegations in all preceding paragraphs.

15 85. "FLSA and Ohio Minimum Fair Wage Standards Act claims are subject
16 to [the] same standards." *Craig v. Landry's, Inc.*, No. 1:16-CV-277, 2016 WL
17 3406032, at *3 (S.D. Ohio June 21, 2016) (citing *Haight; Mitchell v. Abercrombie &*
18 *Fitch, Co.*, 428 F. Supp.2d 725, 732 (S.D. Ohio 2006); *Pritchard v. Dent Wizard Int'l.*
19 *Corp.*, 210 F.R.D. 591, 596 (S.D. Ohio 2002).

20 86. AMN has a consistent enterprise-wide policy of requiring Plaintiff and
21 the Class Members to perform work while off the clock and failing and/or refusing to
22 compensate Plaintiff and the Class Members their regular rate of pay for all non-
23 overtime hours worked, and one-half times their regular hourly rate for all the time
24 they worked over 40 hours in a workweek.

25 87. Plaintiff and the Class Members perform their duties and provide their
26 interpretation services for AMN remotely. As part of this design, AMN issues Plaintiff
27 and the Class Members computer, audio and video equipment for use in Plaintiff's
28

1 and the Class Members' homes. This AMN equipment contains AMN's proprietary
2 software programs which Plaintiff and the Class Members must log on to perform
3 their job functions for AMN.

4 88. At all relative times, Plaintiff and the Class Members have been subject
5 to AMN's policy of requiring Plaintiff and the Class Members to spend time working
6 before clocking in at the beginning of their shifts and after clocking out at the end of
7 their shifts.

8 89. Specifically, Plaintiff and the Class Members must set up the required
9 audio and video equipment and perform quality checks before being "logged in" and
10 therefore perform work that is uncompensated. Moreover, Plaintiff and the Class
11 Members are required to spend time booting up and logging into their computers
12 before clocking in for their shift and required to clock out at the end of their shift
13 before logging off, shutting down their computers and cleaning the AMN issued
14 equipment.

15 90. As a result, Plaintiff and the Class Members typically spend at least 15
16 minutes or more each shift that goes completely uncompensated. In all instances,
17 AMN's failure to compensate Plaintiff and the Class Members for such time violates
18 the minimum wage provisions of O.R.C. § 4111, *et seq.* In all instances wherein
19 Plaintiff and the Class Members work over 40 hours in a workweek, AMN's failure
20 to compensate Plaintiff and the Class Members for such time violates the overtime
21 provisions of O.R.C. § 4111, *et seq.*

22 91. For example, during the pay period beginning November 6, 2021 and
23 ending November 19, 2021, AMN recorded and paid Plaintiff for 86.66 hours worked.
24 During that pay period, Plaintiff worked no less than 150 minutes that was not
25 recorded or compensated by AMN whatsoever.

26 92. As a result, AMN did not pay Plaintiff minimum wage as required by
27 the OMFWSA for no less than 150 minutes that were worked between November 6,
28

2021 and November 19, 2021.

93. Because Plaintiff worked in excess of forty hours in each of the workweeks within the pay period spanning from November 6, 2021 through November 19, 2021, AMN likewise failed to pay Plaintiff for no less than 150 minutes of overtime at one-and-one-half times her regular rate of pay as required by the overtime provisions of the OMFWSA.

94. Although at this stage, Plaintiff and the Class Members cannot state the exact amount owed for all time worked during their employment, Plaintiff and the Class Members believe that such information will become available during discovery. Furthermore, when an employer fails to keep complete and accurate time records, employees may establish the hours worked by their testimony, and the burden of overcoming such testimony shifts to the employer.

95. AMN knew that – or acted with reckless disregard as to whether – its refusal or failure to properly compensate Plaintiff and the Class Members for all hours worked would violate Ohio law, and AMN knew the Ohio’s minimum wage and overtime requirements during Plaintiff’s and the Class Members’ employment. As such, AMN’s conduct constitutes a willful violation of the OMFWSA.

96. As a result of AMN’s failure or refusal to pay Plaintiff and the Class Members all minimum wages and overtime due under Ohio law, Plaintiff and the Class Members are entitled to compensation for all such unpaid wages, to be proven at trial, plus treble damages and interest, reasonable attorney’s fees, and costs.

COUNT THREE: FAIR LABOR STANDARDS ACT

FAILURE TO INCLUDE BONUS PAY IN OVERTIME RATE

97. Plaintiff and the Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

98. Under the FLSA, employers must pay all non-exempt employees an overtime wage premium of pay one and one-half times their **regular rate of pay** for

1 all time they spend working over 40 hours in a workweek. To compute the lawful
2 overtime rate, an employee's regular rate of pay must include all non-discretionary
3 bonus payments. *See* 29 C.F.R. 778.208-215.

4 99. At all relevant times, Plaintiff and the Collective Members were eligible
5 to earn non-discretionary bonus payments because of positive or exemplary
6 performance. These bonus payments were typically made in a lump sum. For example,
7 on or about October 15, 2021, Plaintiff earned a \$250 bonus payment as result of her
8 positive or exemplary performance.

9 100. However, AMN does not include these non-discretionary bonus
10 payments in Plaintiff's and the Collective Members' regular rates of pay to compute
11 the overtime rate paid. As a result, AMN has violated overtime provisions of the
12 FLSA.

13 101. Although at this stage, Plaintiff and the Collective Members cannot state
14 the exact amount owed for all time worked during their employment, Plaintiff and the
15 Collective Members believe that such information will become available during
16 discovery. Furthermore, when an employer fails to keep complete and accurate time
17 records, employees may establish the hours worked by their testimony, and the burden
18 of overcoming such testimony shifts to the employer.

19 102. AMN knew that – or acted with reckless disregard as to whether – its
20 refusal or failure to properly compensate Plaintiff and the Collective Members during
21 their employment would violate the FLSA, and AMN knew the FLSA's minimum
22 wage and overtime requirements. As such, AMN's conduct constitutes a willful
23 violation of the FLSA.

24 103. As a result of AMN's failure or refusal to pay Plaintiff and the Collective
25 Members one and one-half times their regular rate of pay for all hours worked over
26 40 hours in any workweek, AMN violated 29 U.S.C. § 207(a). Plaintiff and the
27 Collective Members are therefore entitled to compensation of one and one-half times
28

1 their regular rate of pay, to be proven at trial, plus an additional equal amount as
 2 liquidated damages, together with interest, reasonable attorney's fees, and costs.

3 **COUNT FOUR: OHIO MINIMUM FAIR WAGE STANDARDS ACT**

4 **FAILURE TO INCLUDE BONUS PAY IN OVERTIME**

5 104. Plaintiff and the Class Members reallege and incorporates by reference
 6 all allegations in all preceding paragraphs.

7 105. "FLSA and Ohio Minimum Fair Wage Standards Act claims are subject
 8 to [the] same standards." *Craig v. Landry's, Inc.*, No. 1:16-CV-277, 2016 WL
 9 3406032, at *3 (S.D. Ohio June 21, 2016) (citing *Haight; Mitchell v. Abercrombie &*
 10 *Fitch, Co.*, 428 F. Supp.2d 725, 732 (S.D. Ohio 2006); *Pritchard v. Dent Wizard Int'l.*
 11 *Corp.*, 210 F.R.D. 591, 596 (S.D. Ohio 2002). Under the OMFWSA, employers must
 12 pay all non-exempt employees an overtime wage premium of pay one and one-half
 13 times their **regular rate of pay** for all time they spend working over 40 hours in a
 14 workweek. To compute the lawful overtime rate, an employee's regular rate of pay
 15 must include all non-discretionary bonus payments.

16 106. At all relevant times, Plaintiff and the Class Members were eligible to
 17 earn non-discretionary bonus payments because of positive or exemplary
 18 performance. These bonus payments were typically made in a lump sum. For example,
 19 on or about October 15, 2021, Plaintiff earned a \$250 bonus payment as result of her
 20 positive or exemplary performance.

21 107. However, AMN does not include these non-discretionary bonus
 22 payments in Plaintiff's and the Class Members' regular rates of pay to compute the
 23 overtime rate paid. As a result, AMN has violated to overtime provisions of the
 24 OMFWSA.

25 108. However, AMN does not include these non-discretionary bonus
 26 payments in Plaintiff's and the Class Members' regular rates of pay to compute the
 27 overtime rate paid. As a result, AMN has violated and continues to violate the
 28

1 overtime provisions of the OMFWSA.

2 109. Although at this stage, Plaintiff and the Class Members cannot state the
3 exact amount owed for all time worked during their employment, Plaintiff and the
4 Class Members believe that such information will become available during discovery.
5 Furthermore, when an employer fails to keep complete and accurate time records,
6 employees may establish the hours worked by their testimony, and the burden of
7 overcoming such testimony shifts to the employer.

8 110. AMN knew that – or acted with reckless disregard as to whether – its
9 refusal or failure to properly compensate Plaintiff and the Class Members for all hours
10 worked would violate Ohio law, and AMN knew the Ohio’s overtime requirements
11 during Plaintiff’s and the Class Members’ employment. As such, AMN’s conduct
12 constitutes a willful violation of the OMFWSA.

13 111. As a result of AMN’s failure or refusal to pay Plaintiff and the Class
14 Members all overtime due under Ohio law, Plaintiff and the Class Members are
15 entitled to compensation for all such unpaid wages, to be proven plus treble damages
16 and interest, reasonable attorney’s fees, and costs.

17 **COUNT FIVE: FAIR LABOR STANDARDS ACTS**

18 **UNLAWFUL UNPAID BREAKS**

19 112. Plaintiff and the Collective Members reallege and incorporate by
20 reference all allegations in all preceding paragraphs.

21 113. Under the FLSA, “[r]est periods of short duration, running from 5
22 minutes to about 20 minutes. . . must be counted as hours worked.” *See* 29 C.F.R.
23 785.18; *see also Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th Cir.
24 2021). AMN violated the FLSA by routinely failing to pay Plaintiff and the Collective
25 Members for rest breaks shorter than 20 minutes.

26 114. At all relevant times, Plaintiff and the Collective Members were subject
27 to AMN’s company-wide “break” policy. *See* excerpt from Language Operations US
28

1 Policies Manual attached hereto as “**Exhibit B**” and incorporated as if fully rewritten
2 herein.

3 115. Under AMN’s break policy, Plaintiff and the Collective Members can
4 work as much as 7.75 hours while receiving only one paid 15-minute break, i.e. the
5 “scheduled break.” Plaintiff and the Collective Members can work over 10 hours
6 while receiving only two paid 15-minute scheduled breaks. If Plaintiff and the Class
7 Members work 3.75 hours or less, then they receive no paid break time whatsoever.

8 116. AMN’s break policy further provides that “[s]hifts extended due to long
9 sessions will not be eligible to have additional breaks paid out, as breaks are intended
10 to be scheduled and taken during the shift.” Moreover, “[i]f the last break cannot be
11 taken due to servicing a long session, that break time is not to be added as paid time
12 at the end of the shift.”

13 117. Plaintiff’s and the Collective Members’ primary job function is to listen
14 to a patient speaking in a foreign language, translate the patient’s words to the
15 healthcare provider in English, then listen to the healthcare provider’s response, and
16 then translate the healthcare provider’s response to the patient in their foreign
17 language. Naturally, the length of these sessions will take longer than allotted and
18 therefore Plaintiff and Collective Members would have to work through their breaks.
19 However, under the policy, Plaintiff and Collective Members could not add the missed
20 breaks to total hours worked in a shift and therefore were not being paid for all non-
21 overtime and overtime hours worked. In addition, Plaintiff and the Collective
22 Members may need brief rest breaks which fall outside of AMN’s sparse scheduled
23 break policy. Any such break is treated as an “unscheduled break” and AMN does not
24 compensate Plaintiff and the Collective Members for same.

25 118. AMN’s failure to pay Plaintiff and the Collective Members for missed
26 breaks and/or any unscheduled break of 20 minutes or less violates the minimum wage
27 provisions of the FLSA in all instances. In all instances wherein Plaintiff and the
28

1 Collective Members worked over 40 hours in a workweek, AMN's failure to
2 compensate Plaintiff and the Collective Members for missed breaks and/or any
3 unscheduled break of 20 minutes or less violates the overtime provisions of the FLSA.

4 119. Although Plaintiff does not have access to her time punch records,
5 Plaintiff has knowledge and belief that during the pay period beginning November 6,
6 2021 and ending November 19, 2021, Plaintiff took approximately 10 rest breaks of
7 20 minutes or less for which she was not paid. AMN recorded Plaintiff's time to the
8 1/100th of an hour and paid her for precisely 86.66 hours that pay period. As result of
9 AMN's failure to pay Plaintiff for these approximately 10 rest breaks during this pay
10 period, AMN violated both the minimum wage and overtime wage requirements of
11 the FLSA.

12 120. AMN is in possession of all of the time punch records which Plaintiff
13 does not have access to at this time. Upon information and belief, these records will
14 evidence all of the breaks for which Plaintiff and the Collective Members were paid,
15 and all of the breaks for which Plaintiff and the Collective Members were not paid.
16 Upon information and belief, these time punch records should be readily available in
17 discovery.

18 121. Although at this stage, Plaintiff and the Collective Members cannot state
19 the exact amount owed for all time worked during their employment, Plaintiff and the
20 Collective Members believe that such information will become available during
21 discovery. Furthermore, when an employer fails to keep complete and accurate time
22 records, employees may establish the hours worked by their testimony, and the burden
23 of overcoming such testimony shifts to the employer.

24 122. AMN knew that – or acted with reckless disregard as to whether – its
25 refusal or failure to properly compensate Plaintiff and the Collective Members during
26 their employment would violate the FLSA, and AMN knew the FLSA's minimum
27 wage and overtime requirements. As such, AMN's conduct constitutes a willful
28

1 violation of the FLSA.

2 123. As a result of AMN's failure or refusal to pay Plaintiff and the Collective
3 Members their regular rate of pay for all hours worked and one and one-half times
4 their regular rate of pay for all hours worked over 40 hours in any workweek, AMN
5 violated 29 U.S.C. § 207(a). Plaintiff and the Collective Members are therefore
6 entitled to compensation for unpaid wages at their regular rate of pay for non-overtime
7 hours worked and one and one-half times their regular rate of pay for unpaid overtime
8 hours, to be proven at trial, plus an additional equal amount as liquidated damages,
9 together with interest, reasonable attorney's fees, and costs.

10 **COUNT SIX: OHIO MINIMUM FAIR WAGE STANDARDS ACT**

11 **UNLAWFUL UNPAID BREAKS**

12 124. Plaintiff and the Class Members reallege and incorporate by reference all
13 allegations in all preceding paragraphs.

14 125. "FLSA and Ohio Minimum Fair Wage Standards Act claims are subject
15 to [the] same standards." *Craig v. Landry's, Inc.*, No. 1:16-CV-277, 2016 WL
16 3406032, at *3 (S.D. Ohio June 21, 2016) (citing *Haight; Mitchell v. Abercrombie &*
17 *Fitch, Co.*, 428 F. Supp.2d 725, 732 (S.D. Ohio 2006); *Pritchard v. Dent Wizard Int'l.*
18 *Corp.*, 210 F.R.D. 591, 596 (S.D. Ohio 2002)). Under the OMFWFA, rest periods of
19 short duration, running from 5 minutes to about 20 minutes, must be counted as hours
20 worked. AMN violated the OMFWFA by routinely failing to pay Plaintiff and the
21 Class Members for rest breaks shorter than 20 minutes.

22 126. At all relevant times, Plaintiff and the Class Members were subject to
23 AMN's company-wide "break" policy. *See* excerpt from Language Operations US
24 Policies Manual attached hereto as "**Exhibit B**" and incorporated as if fully rewritten
25 herein.

26 127. Pursuant to AMN's break policy, Plaintiff and the Class Members can
27 work as much as 7.75 hours while receiving only one paid 15-minute break, i.e. the
28

1 “scheduled break.” Plaintiff and the Class Members can work over 10 hours while
2 receiving only two paid 15-minute scheduled breaks. If Plaintiff and the Class
3 Members work 3.75 hours or less, then they receive no paid break time whatsoever.

4 128. AMN’s break policy further provides that “[s]hifts extended due to long
5 sessions will not be eligible to have additional breaks paid out, as breaks are intended
6 to be scheduled and taken during the shift.” Moreover, “[i]f the last break cannot be
7 taken due to servicing a long session, that break time is not to be added as paid time
8 at the end of the shift.”

9 129. Plaintiff’s and the Class Members’ primary job function is to listen to a
10 patient speaking in a foreign language, translate the patient’s words to the healthcare
11 provider in English, then listen to the healthcare provider’s response, and then
12 translate the healthcare provider’s response to the patient in their foreign language.
13 Naturally, the length of these sessions will take longer than allotted and therefore
14 Plaintiff and Collective Members would have to work through their breaks. However,
15 under the policy, Plaintiff and Collective Members could not add the missed breaks to
16 total hours worked in a shift and therefore were not being paid for all non-overtime
17 and overtime hours worked. In addition, Plaintiff and the Collective Members may
18 need brief rest breaks which fall outside of AMN’s sparse scheduled break policy.
19 Any such break is treated as an “unscheduled break” and AMN does not compensate
20 Plaintiff and the Collective Members for same.

21 130. AMN’s failure to pay Plaintiff and the Class Members for any breaks
22 they missed and were required to work through and any unscheduled break of 20
23 minutes or less violates the minimum wage provisions of the OMFWSA in all
24 instances. In all instances wherein Plaintiff and the Class Members worked over 40
25 hours in a workweek, AMN’s failure to compensate Plaintiff and the Class Members
26 for any unscheduled break of 20 minutes or less violates the overtime provisions of
27 the OMFWSA.
28

1 131. Although Plaintiff does not have access to her time punch records,
2 Plaintiff has knowledge and belief that during the pay period beginning November 6,
3 2021 and ending November 19, 2021, Plaintiff took approximately 10 rest breaks of
4 20 minutes or less for which she was not paid. AMN recorded Plaintiff's time to the
5 1/100th of an hour and paid her for precisely 86.66 hours that pay period. As result of
6 AMN's failure to pay Plaintiff for these approximately 10 rest breaks during this pay
7 period, AMN violated both the minimum wage and overtime wage requirements of
8 the OMFWSA.

9 132. AMN is in possession of all of the time punch records which Plaintiff
10 does not have access to at this time. Upon information and belief, these records will
11 evidence all of the breaks for which Plaintiff and the Class Members were paid, and
12 all of the breaks for which Plaintiff and the Class Members were not paid. Upon
13 information and belief, these time punch records should be readily available in
14 discovery.

15 133. Although at this stage, Plaintiff and the Class Members cannot state the
16 exact amount owed for all time worked during their employment, Plaintiff and the
17 Class Members believe that such information will become available during discovery.
18 Furthermore, when an employer fails to keep complete and accurate time records,
19 employees may establish the hours worked by their testimony, and the burden of
20 overcoming such testimony shifts to the employer.

21 134. AMN knew that – or acted with reckless disregard as to whether – its
22 refusal or failure to properly compensate Plaintiff and the Class Members for all hours
23 worked would violate Ohio law, and AMN knew the Ohio's minimum wage and
24 overtime requirements during Plaintiff's and the Class Members' employment. As
25 such, AMN's conduct constitutes a willful violation of the OMFWSA.

26 135. As a result of AMN's failure or refusal to pay Plaintiff and the Class
27 Members all minimum wages and overtime due under Ohio law, Plaintiff and the
28

1 Class Members are entitled to compensation for all such unpaid wages, to be proven
 2 at trial, plus treble damages and interest, reasonable attorney's fees, and costs.

3 **COUNT SEVEN: FAIR LABOR STANDARDS ACT**

4 **IMPROPER KICKBACKS**

5 136. Plaintiff and the Collective Members reallege and incorporate by
 6 reference all allegations in all preceding paragraphs.

7 137. The wage requirements of the FLSA "will not be met where the employee
 8 'kicks-back' directly or indirectly to the employer or to another person for the
 9 employer's benefit the whole or part of the wage delivered to the employee." *See* 29
 10 C.F.R. 531.35. "For example, if it is a requirement of the employer that the employee
 11 must provide tools of the trade which will be used in or are specifically required for
 12 the performance of the employer's particular work, there would be a violation of the
 13 Act in any workweek when the cost of such tools purchased by the employee cuts into
 14 the minimum or overtime wages required to be paid him under the Act." *Id.*

15 138. AMN requires Plaintiff and the Collective Members to supply their own
 16 highspeed internet routers and modems. *See* excerpt from Language Operations US
 17 Policies Manual attached hereto as "**Exhibit C**" and incorporated as if fully rewritten
 18 herein. Moreover, Plaintiff and the Collective Members must provide highspeed
 19 internet service with bandwidth capable of at least 10 megabytes per second on
 20 download and at least 2 megabytes per second on upload. However, AMN fails to
 21 reimburse Plaintiff and the Collective Members for such required equipment and
 22 internet service. As such, AMN has violated both the overtime provisions of the
 23 FLSA.

24 139. For example, during the pay period beginning November 6, 2021 through
 25 the pay period ending December 3, 2021, AMN recorded and compensated Plaintiff
 26 for a total of 7.66 overtime hours, i.e., hours worked in excess of 40 hours in any given
 27 workweek during that period. During this time, Plaintiff's regular rate of pay was
 28

1 \$22.00 per hour. As such, AMN owed Plaintiff an overtime premium of \$11.00 per
2 hour for each of these 7.66 overtime hours, for a total of \$84.26.

3 140. However, from November 6, 2021 through December 3, 2021, Plaintiff
4 had to pay approximately \$94.37 for high speed internet necessary to perform her job
5 duties for AMN.

6 141. As such, while AMN ostensibly paid Plaintiff \$84.26 in overtime for this
7 period spanning from November 6, 2021 through December 3, 2021, AMN did not
8 pay this overtime “free and clear” as required by the FLSA. Instead, by shifting its
9 necessary operating costs to Plaintiff, AMN required Plaintiff to “kickback” the
10 entirety of AMN’s \$84.26 overtime obligation owed to Plaintiff in violation of the
11 FLSA.

12 142. Although at this stage, Plaintiff and the Collective Members cannot state
13 the exact amount owed for all time worked during their employment, Plaintiff and the
14 Collective Members believe that such information will become available during
15 discovery. Furthermore, when an employer fails to keep complete and accurate time
16 records, employees may establish the hours worked by their testimony, and the burden
17 of overcoming such testimony shifts to the employer.

18 143. AMN knew that – or acted with reckless disregard as to whether – its
19 refusal or failure to properly compensate Plaintiff and the Collective Members during
20 their employment would violate the FLSA, and AMN knew the FLSA’s overtime
21 requirements. As such, AMN’s conduct constitutes a willful violation of the FLSA.

22 144. As a result of AMN’s failure to reimburse Plaintiff and the Collective
23 Members for their internet equipment and service, AMN violated the overtime
24 provisions of the FLSA. Plaintiff and the Collective Members are therefore entitled to
25 overtime compensation, to be proven at trial, plus an additional equal amount as
26 liquidated damages, together with interest, reasonable attorney’s fees, and costs.

27 **COUNT EIGHT: OHIO MINIMUM FAIR WAGE STANDARDS ACT**
28

IMPROPER KICKBACKS

145. Plaintiff and the Class Members reallege and incorporate by reference all allegations in all preceding paragraphs.

146. “FLSA and Ohio Minimum Fair Wage Standards Act claims are subject to [the] same standards.” *Craig v. Landry’s, Inc.*, No. 1:16-CV-277, 2016 WL 3406032, at *3 (S.D. Ohio June 21, 2016) (citing *Haight; Mitchell v. Abercrombie & Fitch, Co.*, 428 F. Supp.2d 725, 732 (S.D. Ohio 2006); *Pritchard v. Dent Wizard Int’l. Corp.*, 210 F.R.D. 591, 596 (S.D. Ohio 2002)). The wage requirements of the OMFWSA will not be met where the employee “kicks-back” directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee.

147. AMN requires Plaintiff and the Class Members to supply their own highspeed internet routers and modems. *See* excerpt from Language Operations US Policies Manual attached hereto as “**Exhibit C**” and incorporated as if fully rewritten herein. Moreover, Plaintiff and the Class Members must provide highspeed internet service with bandwidth capable of at least 10 megabytes per second on download and at least 2 megabytes per second on upload. However, AMN fails to reimburse Plaintiff and the Class Members for such required equipment and internet service. As such, AMN has violated the overtime provisions of the OMFWSA.

148. For example, during the pay period beginning November 6, 2021 through the pay period ending December 3, 2021, AMN recorded and compensated Plaintiff for a total of 7.66 overtime hours, i.e., hours worked in excess of 40 hours in any given workweek during that period. During this time, Plaintiff’s regular rate of pay was \$22.00 per hour. As such, AMN owed Plaintiff an overtime premium of \$11.00 per hour for each of these 7.66 overtime hours, for a total of \$84.26.

149. However, from November 6, 2021 through December 3, 2021, Plaintiff had to pay approximately \$94.37 for high speed internet service and equipment

1 necessary to perform her job duties for AMN.

2 150. As such, while AMN ostensibly paid Plaintiff \$84.26 in overtime for this
3 period spanning from November 6, 2021 through December 3, 2021, AMN did not
4 pay this overtime “free and clear” as required by the OMFWSA. Instead, by shifting
5 its necessary operating costs to Plaintiff, AMN required Plaintiff to “kickback” the
6 entirety of AMN’s \$84.26 overtime obligation owed to Plaintiff in violation of the
7 OMFWSA.

8 151. Although at this stage, Plaintiff and the Class Members cannot state the
9 exact amount owed for all time worked during their employment, Plaintiff and the
10 Class Members believe that such information will become available during discovery.
11 Furthermore, when an employer fails to keep complete and accurate time records,
12 employees may establish the hours worked by their testimony, and the burden of
13 overcoming such testimony shifts to the employer.

14 152. AMN knew that – or acted with reckless disregard as to whether – its
15 refusal or failure reimburse Plaintiff and Class Members for their highspeed internet
16 equipment and service would violate Ohio law, and AMN knew the Ohio’s overtime
17 requirements during Plaintiff’s and the Class Members’ employment. As such,
18 AMN’s conduct constitutes a willful violation of the OMFWSA.

19 153. As a result of AMN’s refusal or failure reimburse Plaintiff and Class
20 Members for their highspeed internet equipment and service, Plaintiff and the Class
21 Members are entitled to compensation for all such unpaid wages, to be proven at trial,
22 plus treble damages and interest, reasonable attorney’s fees, and costs.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually, and on behalf of all other similarly
25 situated persons, requests this Court grant the following relief in Plaintiff’s, the
26 Collective Members’ and the Class Members’ favor, and against AMN:

27 A. For the Court to declare and find AMN committed one or more of the
28

1 following acts:

- 2 i. violated the minimum wage and overtime provisions of the FLSA;
3 ii. willfully violated the minimum wage and overtime provisions of the
4 FLSA;
5 iii. violated the minimum wage and overtime provisions of the
6 OMFWSA; and
7 iv. willfully violated the minimum wage and overtime provisions of the
8 OMFWSA.

9 B. For the Court to award damages in the amounts of all unpaid minimum
10 and overtime wages due and owing to Plaintiff, the Collective Members
11 and the Class Members;

12 For the Court to award compensatory damages, including liquidated
13 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
14 trial;

15 C. For the Court to award prejudgment and post-judgment interest on any
16 damages awarded;

17 D. For the Court to award all treble damages, interest, attorney's fees and
18 costs owed to Plaintiff and the Class Members under the OMFWSA;
19 For the Court to award Plaintiff's and the Collective Members'
20 reasonable attorneys' fees and costs of the action under 29 U.S.C. §
21 216(b) and all other causes of action set forth in this Complaint;

22 E. For the Court to provide a reasonable incentive award for Plaintiff to
23 compensate her for the time she spent attempting to recover wages for
24 the Collective Members and Class Members and for the risks she took in
25 doing so; and

26 F. Such other relief as this Court deems just and proper.
27
28

DEMAND FOR JURY TRIAL

Plaintiff, the Collective Members and the Class Members hereby demand a jury trial on all causes of action and claims with respect to which they each have a state and/or federal constitutional right to a jury trial.

DATED: March 9, 2022

Respectfully submitted,
KABATECK LLP

By: /s/ Jerusalem F. Beligan
Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

THE LAW OFFICES OF SIMON & SIMON

By: /s/ James L. Simon
James L. Simon (*pro hac vice*
forthcoming)
james@bswages.com
5000 Rockside Road
Liberty Plaza – Suite 520
Independence, OH 44131
Telephone: (216) 525-8890

By: /s/ Michael L. Fradin
Michael L. Fradin, Esq. (*pro hac vice*
forthcoming)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: 847-986-5889

Attorneys for Plaintiff and the Putative Classes

Exhibit B



July 27, 2022

Via Online Filing

Labor & Workforce Development Agency
800 Capital Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Via Certified Mail (Return Receipt Requested)

AMN Healthcare Language Services, Inc.
12400 High Bluff Drive, Suite 100
San Diego, CA 92130

Via Email Only (Counsel of Record for Defendants AMN Healthcare, Inc. and AMN Healthcare Language Services, Inc.)

Robin A. Wofford, Esq.
Katherine M. McCray, Esq.
Rita M. Leong, Esq.
Michaela P. Delacruz, Esq.
WILSON TURNER KOSMO LLP
402 West Broadway, Suite 1600
San Diego, CA 92101
E-mail: rwofford@wilsonturnerkosmo.com
E-mail: kmccray@wilsonturnerkosmo.com
E-mail: rleong@wilsonturnerkosmo.com
E-mail: mdelacruz@wilsonturnerkosmo.com

Re: Amended PAGA Claim Notice (*Ingrid Leeman v. AMN Healthcare, Inc.*, Case No. LWDA-CM-885862-22)

Dear Sir or Madam:

The purpose of this amended notice is to add the following corporate defendant/employer to the original notice filed on May 26, 2022:

AMN Healthcare Language Services, Inc.
12400 High Bluff Drive, Suite 100
San Diego, CA 92130

All facts, violations of the California Labor Codes, and theories of liability alleged in the original notice apply equally to Defendant AMN Healthcare Language Services, Inc.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact my office.

Sincerely,

KABATECK LLP

Jerusalem F. Beligan



cc: James L. Simon
james@bswages.com
Michael L. Fradin
mike@fradinlaw.com

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sharon Oliveira, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

AMN Healthcare, Inc. a Nevada
Corporation.

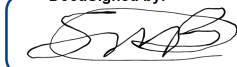
Defendant.

No.

**PLAINTIFF SHARON OLIVERIA'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Sharon Oliveira, do hereby consent to be a party plaintiff to the above-entitled action. I have read the complaint to be filed in the United States District Court for the Southern District of California, and authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

DocuSigned by:



EBD6F6F3FF40448...

Sharon Oliveira

11/9/2021

Date

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sharon Oliveira and Ingrid Leeman
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

AMN Healthcare, Inc. a Nevada
Corporation.

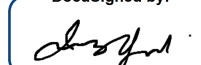
Defendant.

No.

**PLAINTIFF INGRID LEEMAN'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Ingrid Leeman, do hereby consent to be a party plaintiff to the above-entitled action. I have read the complaint to be filed in the United States District Court for the Southern District of California, and authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

DocuSigned by:


73DE6E87D2424A0...
Ingrid Leeman

5/31/2022

Date

Exhibit E



LANGUAGE
SERVICES

Standard Operating Policies

Visual Connections. Vital Conversations

Department
Name:

Language Operations

DO Title:

US Policies Manual

DO No:

LO-DO001-USPM-V2



LANGUAGE
SERVICES

Language Operations

US Policies Manual

Chapter 3: Shifts and Work Schedules

Section 1: Type of Shifts and Limitations

There are three types of schedules offered:

- **Full Time:** Required to work a minimum of 40 hours per payroll week
- **Part Time:** Required to work a minimum of 20 hours per payroll week with a maximum of 29 scheduled hours per payroll week
- **Flex Schedule** (for certain languages only): Required to work minimum of 12 hours per month or a maximum of 29 hours per payroll week

A. Daily Limitations:

Unless approved due to extenuating circumstances and on a case-by-case basis, employees are limited to scheduling a maximum daily limit of 10 hours, and in the case of CA employees, a maximum daily limit of 8 hours.

Regularly scheduled hours, plus any extra hours picked up via Calabrio (Teleopti), cannot exceed the maximum daily limit of hours.

B. Weekly Limitations:

Employees may voluntarily choose to work overtime hours, if offered. It is the employee's responsibility to observe the 7th calendar consecutive day restriction (from 12:00am to 11:59pm). An employee cannot work seven days straight, unless approved due to extenuating circumstances and on a case-by-case basis.

WFM will approve OT max hours, as staffing needs indicate, and communicate those limits via email.

Failure to comply with this policy can lead to the loss of the ability to work overtime hours and/or disciplinary actions. Additionally, to ensure that employees have ample time to rest between shifts, to effectively perform duties, when overtime is approved, maximum hours worked rules apply. WFM will communicate those maximums subject to staffing needs.

Section 2: Break Policy

A. Scheduled Breaks

Breaks are scheduled according to the length of the daily shift (number of consecutive hours scheduled), and their main purpose is to allow rest time from assigned duties and functions during the shift. Breaks are scheduled and published in Calabrio (Teleopti), to be taken at the assigned time, and for the authorized time, if not delayed by a call.

Scheduled Breaks can be paid or unpaid:

- **Scheduled Paid break:** 15-minute scheduled break in Calabrio (Teleopti). Use the "break" status on the IWS Agent Desktop. **Do not clock out of Paycom.**
- **Scheduled Unpaid Break:** 15-minute scheduled break in Calabrio (Teleopti) previously approved due to extenuating circumstances. Use "break" status on the IWS Agent Desktop and **DO clock out of Paycom.** Clock back in on Paycom once completed.
- **Scheduled Unpaid Lunch break:** 30-minute scheduled Lunch break in Calabrio (Teleopti). Use "Lunch" status on the IWS Agent Desktop and **DO clock out of Paycom.** Clock back in on Paycom once completed.

The following chart indicates the number of breaks and break-type, employees are entitled to depending on the scheduled shift duration.

US Based VI /CSR Break Time Chart for Scheduled Shifts	
Total Consecutive Hours Scheduled	Break
0 - 3.75 hours	No Break
4 - 5 hours	one 15-minute paid break
5.25 - 5.75 hours	If state required: one 15-minute paid break, one 30-minute unpaid lunch (which would extend shift by 30 minutes) **see note below.
6 - 7.75 hours	one 15-minute paid break, one 30-minute unpaid lunch
8 - 10 hours	two 15-minute paid breaks, one 30-minute unpaid lunch
10+	Shift Not allowed unless approved due to extenuating circumstances

**** Note:**

1. In some states, when working more than five consecutive hours, employees may be required to take a 30-minute unpaid lunch break, unless employee signs a written waiver (reach out to your LO Manager with any questions about eligible breaks).
2. **Shift total hours do not include unpaid breaks.**
3. Employees working extraordinary hours consecutively to the ordinary shift, may be eligible for additional break times based on Break-Chart above. Employees must report breaks/lunch taken during OT shifts in their Team's Break Room, by indicating "OT Unscheduled Break" or "OT Unscheduled Lunch."

Important Break Considerations:

- Shifts extended due to long sessions will not be eligible to have additional breaks paid out, as breaks are intended to be scheduled and taken during the shift. Additional interpreted minutes will be compensated accordingly.
- If two breaks overlap due to servicing a long session, the employee will take the breaks together, selecting the appropriate status (Break/Lunch), for the corresponding time, to avoid impacting schedule adherence.
- Employees must not postpone or combine break times, unless delayed due to a long session.
- If the last break cannot be taken due to servicing a long session, that break time is not to be added as paid time at the end of the shift.
- Employees will not use break times to compensate for any attendance issues at the beginning or during the shift, such as late arrivals and/or unauthorized offline time.
- If an interpreter is in session at their scheduled break time, the interpreter will take the break immediately after the session is completed, as long as there is still time left in the shift.
- Interpreters should avoid needlessly transferring or logging out of a live session to take their scheduled break/lunch time. Employees should follow-up with Team Leads or their LO Manager for guidance if needed.

B. Unscheduled Breaks

- Lactation Break: The company will provide break time to accommodate an employee desiring to express breast milk for the employee's infant child up to one (1) year of age, unless applicable state or local law require otherwise. If possible, this break time shall run concurrently with any break time already provided by law to the employee. Any break time given for this purpose that does not run concurrently with the break time provided by law shall be unpaid. The employee must communicate the need to the LO Manager/Supervisor. The employee must clock out from Paycom for the duration of the break and clock back in once completed.

C. Break Schedule for ASL Colleagues

This information is for US-based American Sign Language (ASL) colleagues only.

For the ASL interpreters the following break schedule is observed.

- Nine minutes paid break every hour (not built into a schedule)

Section 3. Overtime Considerations

Extra Hours and Overtime Considerations

Employees can voluntarily pick-up extra hours through the WFM scheduling platform (Calabrio (Teleopti)). These hours are automatically approved or denied based on business needs. Once the extra hour request is sent and approved, it cannot be canceled. It is the employee's responsibility to adhere to the additional hours requested, as those hours become part of the schedule. These extra hours are referred to in Calabrio (Teleopti) as "OT;" however, the definition of true OT (overtime) and OT rates is determined by the labor laws of the state in which the employee lives in.

Exhibit F

 AMN[®] Healthcare	LANGUAGE SERVICES		Visual Connections. Vital Conversations 	
	Standard Operating Policies		Department Name:	Language Operations
			DO Title:	US Policies Manual
			DO No:	LO-DO001-USPM-V2



LANGUAGE
SERVICES

Language Operations

US Policies Manual

Section 8. Confidential Company Information

While working, an employee may become aware of confidential information including but not limited to information regarding company finances, pricing, products and new product development, software and computer programs, marketing strategies, suppliers, customers and potential customers, and knowledge, skills and abilities of personnel. An employee may also become aware of confidential information belonging to the company's clients and business associates. It is extremely important that all such information remain confidential, and not disclosed to anyone including the Company's competitors. Any employee who improperly copies, removes (whether physically or electronically), uses or discloses confidential information to anyone outside of the Company may be subject to disciplinary action up to and including termination and/or legal action.

Section 9: Fraud

A single act of fraud is devastating, creates a negative impact in the service, imbalance in the workload and it breaks the trust within the work relationship. No matter how long an employee has been with the company, his/her level of education or professionalization, his/her position, fraud is an act of deceiving and stealing that impacts all parties involved with you at work. That includes peers and team members, the patients not getting assistance, the providers not getting the service.

Employees found engaging in fraudulent behavior will be subject to disciplinary action up to and including immediate termination of employment.

AMN Language Services considers the following as fraud:

Getting paid for not performing:

- Sitting on calls that should have ended
- Avoiding calls
- Hanging up on calls already in process
- Rejecting calls
- Allowing calls to ring out, thus, missing calls
- Stealing time by clocking in and not logging in to work
- Not performing required job duties
- Not reporting outages, while remaining clocked in
- Offline time not reported, while being clocked in
 - i.e., extended breaks and/or additional paid breaks
 - staying in "unavailable" status for an extended amount of time (beginning of shift, after missed opportunity, after a transfer, etc.)
- Falsely reporting Company Tech Issues
- Falsifying outages/medical documents
- Using company equipment or otherwise taking calls for competitors while scheduled with AMN Language Services
- Using company equipment for personal purposes, while clocked in

Chapter 7: Appropriate Use of Technological Equipment and Tools

Section 1: Electric Wiring

Our remote job environment (the agent's home office) must have the correct electrical wiring and be in good condition for the appropriate and efficient functioning of the electronic equipment needed to complete work-related functions. It must have a ground terminal connection (three-outlet connection or outlet with three holes) to prevent damage from electric storms. To ensure the correct connection of the ethernet cable, using the additional protection devices (Power strip and UPS) is recommended per the instructions of our IT department.

Section 2: Network Connection

Internet modems must be located at a distance no farther than 10 feet from the workstation, since the interface access must be done through an Ethernet cable CAT6 (provided by company). A WIFI connection is not allowed while performing work with the company laptop.

Section 3: Bandwidth (Internet Connection)

The required bandwidth (internet speed) for the optimal functioning of the equipment and systems is:

- Video interpreters and Audio interpreters:
10/2 Mbps, that is 10 Mbps for download and 2 Mbps for upload. An internet connection lower than 9.0 Mbps (download) or lower than 1.5 Mbps (upload) is not approved nor appropriate to perform duties.
- Customer Service Agents:
4/2 Mbps, that is 4 Mbps for download and 2 Mbps for upload. An internet connection lower than 3.5 Mbps (download) or lower than 1.5 Mbps (upload) is not approved nor appropriate to perform duties.
- Use of VPNs or connecting via WIFI is prohibited, a dedicated ethernet connection is required.
- AMN Language Services equipment is for work related activities only. Please do not access unauthorized sites, this exposes our network to the risk of malware or spyware from nefarious sources and compromises quality.
- *All equipment provided by AMN Language Services is to be maintained and returned immediately in the event of any technical malfunction or upon separation from the company.*
- Ensure the equipment is rebooted at the end of each workday and make sure it is in good working order.

NOTE: Any variation of these requirements must be approved by the IT Department. The internet connection must be installed and used exclusively for AMN Language Services' work, during working hours.

Section 4: Preventive Care of the Equipment

All equipment provided by Company must be kept clean. No cleaning product that has not been previously authorized by the IT department can be used on it. The same goes for any repair or technical intervention from a third party that was not previously approved by the IT Department.

The expected and basic care for the equipment is to use a brush to remove dust from all the parts of the equipment (especially the laptop keyboard) at least once a week, while the equipment is off.