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County of Los Angeles

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 DAMETA AFENI O'BRIEN, individually, and
13 on behalf of all others similarly situated,

14 *Plaintiff,*

15 vs.

16 ONE MEDICAL GROUP, INC., a California
17 corporation; ASTON CARTER, INC., a
Maryland corporation; and DOES 1 through 10,
inclusive,

18 *Defendants.*
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Case No.: 23STCV18291

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION COMPLAINT:**

**[Amended As of Right Pursuant to Labor Code
Section 2699.3(2)(C)]**

1. Civil Penalties Under PAGA [Cal. Lab. Code
§ 2699, *et seq.*].

Action Filed: August 2, 2023

Trial Date: Not Set

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1 Plaintiff Dameta Afeni O'Brien ("Plaintiff"), based upon facts that either have evidentiary support or are
2 likely to have evidentiary support after a reasonable opportunity for further investigation and discovery,
3 alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants One Medical Group, Inc., Aston Carter,
6 Inc., and Does 1 through 10 (collectively referred to as "Defendants") on a representative basis only, for
7 civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*
8 ("PAGA") stemming from Defendants' failure to pay minimum wages, failure to pay overtime wages,
9 failure to provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
10 records of hours worked and meal periods, failure to timely pay all wages to terminated employees,
11 failure to indemnify necessary business expenses, and failure to furnish accurate wage statements.

12 2. For over 50 years, California's courts and legislature have recognized that this State's
13 wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not
14 ordinary debts. Because of the economic position of the average worker and his or her family, it is
15 essential to the public welfare that employers obey the wage-and-hour laws so that employees are
16 promptly paid the minimum/overtime wages that the Legislature has required for employees. So
17 fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of
18 violations. In extending extra protection to deter violations of these underlying statutes—since Plaintiff is
19 not seeking general and/or special damages, restitution or other damages other than civil penalties—
20 California has enacted the PAGA to permit an individual to bring an action on behalf of himself and on
21 behalf of others for PAGA penalties only, which is the precise and sole nature of this action.

22 3. For purposes of this First Amended Complaint, all California employees other than
23 Plaintiff during the relevant statute of limitations who are or were harmed by Defendant's illegal
24 practices are referred to herein as "Aggrieved Employees."

25 4. Plaintiff brings this action against Defendants seeking to recover penalties on behalf of
26 the State of California and on behalf of all Aggrieved Employees that worked for Defendants, but not on
27 behalf of Plaintiff via an "individual" PAGA claim. Plaintiff does not seek to recover anything on behalf
28 of the Aggrieved Employees other than penalties as permitted by PAGA at this time. To the extent that

1 statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or
2 special damages for those violations, but simply penalties as permitted by PAGA, declaratory relief, and
3 injunctive relief for all Aggrieved Employees as permitted by the PAGA.

4 5. Defendants own/owned and operate/operated an industry, business, and establishment
5 within the State of California, including Los Angeles County. As such, and based upon all the facts and
6 circumstances incident to Defendants' business in California, Defendants are subject to the California
7 Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California
8 Business & Professions Code.

9 6. Despite these requirements, throughout the statutory period Defendants maintained a
10 systematic, company-wide policy and practice of:

- 11 (a) Failing to pay employees for all hours worked, including all minimum wages,
12 and overtime wages in compliance with the California Labor Code and IWC
13 Wage Orders;
 - 14 (b) Failing to provide employees with timely and duty-free meal periods in
15 compliance with the California Labor Code and IWC Wage Orders, failing to
16 maintain accurate records of all meal periods taken or missed, and failing to pay
17 an additional hour's pay for each workday a meal period violation occurred;
 - 18 (c) Failing to authorize and permit employees to take timely and duty-free rest
19 periods in compliance with the California Labor Code and IWC Wage Orders,
20 and failing to pay an additional hour's pay for each workday a rest period
21 violation occurred;
 - 22 (d) Failing to indemnify employees for necessary business expenses incurred;
 - 23 (e) Willfully failing to pay employees all minimum wages, overtime wages, meal
24 period premium wages, and rest period premium wages due within the time
25 period specified by California law when employment terminates; and
 - 26 (f) Failing to maintain accurate records of the hours that employees worked.
- 27
28

(g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident that worked for Defendants in the County of Los Angeles, State of California, as a member support specialist from approximately June 2022 to August 26, 2022.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants are:

- (a) Corporations with their principal places of business in Los Angeles, California.
- (b) Business entities conducting business in numerous counties throughout the State of California, including in Los Angeles County;
- (c) The former employers of Plaintiff, and the current and/or former employers of the putative Aggrieved Employees. Defendants suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions; and

(d) At all times mentioned herein, Defendants are and were the joint employers of Plaintiff and the Aggrieved Employees.

12. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

14. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the Aggrieved Employees definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

GENERAL ALLEGATIONS

15. Plaintiff is a California resident who worked for Defendants in the County of Los Angeles, State of California, as a member support specialist from approximately June 2022 to August 26, 2022. During the statutory period, Defendants classified Plaintiff as a non-exempt employee, and paid Plaintiff an hourly wage.

1 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked
2 (including minimum wages and overtime wages), failed to provide Plaintiff with uninterrupted meal
3 periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify
4 Plaintiff for necessary business expenses, failed to timely pay all final wages to Plaintiff when
5 Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements to
6 Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

7 17. Throughout the statutory period, Defendants maintained a policy and practice of not
8 paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages.
9 Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in
10 failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually
11 worked, even though the realities of Defendants' operations are such that it is possible, practical, and
12 feasible to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff
13 and the Aggrieved Employees less than all their work time, some of which should have been paid at the
14 overtime rate. Alternatively, Defendants paid Plaintiff and the Aggrieved Employees based on the shift
15 scheduled as opposed to the actual time worked, leading to underpayment of wages. Also throughout the
16 statutory time period, Plaintiff and the Aggrieved Employees were required to work off the clock, and
17 uncompensated. For example, Plaintiff and the Aggrieved Employees were required to arrive at work
18 early in order to prepare for patients and prepare for the start of the shift, but they were not paid for this
19 time. Also, Plaintiff and the Aggrieved Employees sometimes worked after the scheduled shift ended,
20 and they clocked out and continued to work, uncompensated. Some of this off the clock time should have
21 been paid as overtime compensation.

22 18. Despite a written request for personnel records and payroll records, Defendants failed to
23 produce either, in violation of Labor Codes 1198.5, 432, and 226(b).

24 19. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiff
25 and the Aggrieved Employees with legally compliant meal periods. Defendants sometimes, but not
26 always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a
27 day without providing 30-minute, continuous and uninterrupted, duty-free meal period for every five
28 hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that

1 were not provided by the end of the fifth hour of work or tenth hour of work. Defendants also did not
2 adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end
3 of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work.
4 Defendants also failed to accurately record meal periods. Accordingly, Defendants' policy and practice
5 was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California
6 law.

7 20. Throughout the statutory period, Defendants have wrongfully failed to authorize and
8 permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants
9 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of four
10 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
11 continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours),
12 or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized
13 or permitted. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees of their
14 right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting
15 or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate
16 policies or practices regarding the timing of rest periods. Defendants also did not have adequate policies
17 or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest
18 periods. Further, Defendants did not maintain accurate records of employee work periods, and therefore
19 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the
20 middle of each work period. Accordingly, Defendants' policy and practice was to not authorize and
21 permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

22 21. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
23 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
24 Defendants without reimbursement, which included the occasional use of personal cellular telephones for
25 work purposes.

26 22. Throughout the statutory period, Defendants willfully failed and refused to timely pay
27 Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for all minimum
28 wages, overtime wages, meal period premium wages, and rest period premium wages.

1 23. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved
2 Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross
3 and net wages earned (including correct hours worked, correct wages earned for hours worked, correct
4 overtime hours worked, correct wages for meal periods that were not provided in accordance with
5 California law, correct wages for rest periods that were not authorized and permitted to take in
6 accordance with California law, and Defendant's address). Further, the wage statements do not show
7 Defendant's address as required by California law. As a result of these violations of California Labor
8 Code § 226(a), the Plaintiff and the Aggrieved Employees suffered injury because, among other things:

- 9 (a) the violations led them to believe that they were not entitled to be paid
10 minimum wages, overtime wages, meal period premium wages, and rest period
11 premium wages to which they were entitled, even though they were entitled;
12 (b) the violations led them to believe that they had been paid the minimum,
13 overtime, meal period premium, and rest period premium wages, even though
14 they had not been;
15 (c) the violations led them to believe they were not entitled to be paid minimum,
16 overtime, meal period premium, and rest period premium wages at the correct
17 California rate even though they were;
18 (d) the violations led them to believe they had been paid minimum, overtime, meal
19 period premium, and rest period premium wages at the correct California rate
20 even though they had not been;
21 (e) the violations hindered them from determining the amounts of minimum,
22 overtime, meal period premium, and rest period premium owed to them;
23 (f) in connection with their employment before and during this action, and in
24 connection with prosecuting this action, the violations caused them to have to
25 perform mathematical computations to determine the amounts of wages owed
26 to them, computations they would not have to make if the wage statements
27 contained the required accurate information;
28

- 1 (g) by understating the wages truly due them, the violations caused them to lose
2 entitlement and/or accrual of the full amount of Social Security, disability,
3 unemployment, and other governmental benefits;
- 4 (h) the wage statements inaccurately understated the wages, hours, and wages rates
5 to which Plaintiff and the Aggrieved Employees were entitled, and Plaintiff and
6 the Aggrieved Employees were paid less than the wages and wage rates to
7 which they were entitled.

8
9 **FIRST CAUSE OF ACTION**

10 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
11 **2004, Cal. Lab. Code § 2698 et seq.)**

12 24. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though fully
13 set forth herein.

14 25. At all times herein mentioned, Defendants were subject to the Labor Code of the State of
15 California and the applicable Industrial Welfare Commission Orders.

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

23 27. Plaintiff has exhausted her administrative remedies pursuant to California Labor Code §
24 2699.3. On August 2, 2023, Plaintiff gave written notice by online filing to the Labor and Workforce
25 Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code
26 that Defendants have violated against Plaintiff and current and former aggrieved employees, including
27 the facts and theories to support the violations (See attached as **Exhibit A**). Plaintiff’s PAGA case
28 number is No. LWDA-CM-972491-23. At the time of this filing, 65 days has elapsed since Plaintiff

provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

28. In addition, Plaintiff seeks penalties on behalf of the Aggrieved Employees for Defendants' violation of California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

29. During the time period of employment for Plaintiff and the Aggrieved Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

1 30. For purposes of this First Amended Complaint, Plaintiff utilizes the terms “individual”
2 and “non-individual” PAGA claims in accordance with the utilization of those terms in *Viking River*
3 *Cruises, Inc. v. Moriana*, 596 U.S. — [142 S.Ct. 1906], 213 L.Ed.2d 179 (2022) (*Viking River*) and
4 *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104, 1113 (2023) (*Adolph*). Plaintiff, as the individual
5 authorized by the PAGA statute to act on behalf of the State of California in seeking to recovery civil
6 penalties via PAGA, will not seek to recover any civil penalties pursuant to PAGA for the “individual”
7 portion of the PAGA claims, instead electing to pursue only the “non-individual” PAGA claims for
8 Aggrieved Employees (i.e., every “aggrieved employee” other than Plaintiff, as the term “aggrieved
9 employee” is used in PAGA and interpreting decisional authority). This election is without prejudice.
10 Because *Adolph* explicitly holds that an individual remedy is unnecessary to possess standing to pursue
11 PAGA penalties, it necessarily follows that Plaintiff is not obligated to seek any individual remedy, in the
12 form of any “individual” PAGA penalties, to possess standing to pursue PAGA penalties for fellow
13 employees:

14 As *Kim* and *Johnson* make clear, a worker becomes an “aggrieved employee” with
15 standing to litigate claims on behalf of fellow employees upon sustaining a Labor Code
16 violation committed by his or her employer. (See *Kim, supra*, 9 Cal.5th at pp. 84–85,
17 259 Cal.Rptr.3d 769, 459 P.3d 1123; *Johnson, supra*, 66 Cal.App.5th at p. 930, 281
18 Cal.Rptr.3d 478; § 2699, subd. (c).) Standing under PAGA is not affected by
19 enforcement of an agreement to adjudicate a plaintiff's individual claim in another
20 forum. Arbitrating a PAGA plaintiff's individual claim does not nullify the fact of the
21 violation or extinguish the plaintiff's status as an aggrieved employee, any more than the
22 time-barring of remedies did in *Johnson* or the settlement of the individual damages
23 claims did in *Kim*. (See *Kim*, at pp. 84–85, 259 Cal.Rptr.3d 769, 459 P.3d 1123;
24 *Johnson*, at p. 930, 281 Cal.Rptr.3d 478.) The operative complaint alleges that Adolph
25 experienced Labor Code violations while driving for Uber. Under *Kim*, Adolph's
26 allegations that Labor Code violations were committed against him while he was
27 employed by Uber suffice to confer standing to bring a PAGA action.

28 *Adolph*, 14 Cal. 5th at 1121. Plaintiff, as the “master of the complaint,” has determined that “individual”
PAGA remedies will not be sought at this time. *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1202,
(2013) (“Aryeh is the master of his complaint, and we must accept his allegations at face value.”).
Plaintiff has alleged employment by Defendants. Plaintiff has alleged conduct violative of the Labor
Code that falls within the ambit of PAGA. That is sufficient to confer standing to proceed upon Plaintiff,
and Plaintiff cannot be forced by Defendants to assert any claim that Plaintiff chooses not to pursue. In
this instance, Plaintiff expressly declares without prejudice that “individual” PAGA penalties will not be

sought, thereby eliminating from this action any claim subject to any arbitration agreement.

31. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of the State of California and Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

32. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, on behalf of all similarly Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to reimburse business expenses, failing to furnish accurate wage statements, and failing to maintain accurate records of all hours worked;

2. An award of civil penalties on behalf of all Aggrieved Employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA; and

6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: October 6, 2023

MOON LAW GROUP, PC

By: _____

Kane Moon
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EXHIBIT A

MOON LAW GROUP, PC

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Kane Moon, Esq.
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August 18, 2023

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

One Medical Group, Inc.
One Embarcadero Center, Floor 19
San Francisco, CA 94111

VIA CERTIFIED MAIL

Aston Carter, Inc.
7317 Parkway Drive
Hanover, MD 21076

Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Dameta Afeni O'Brien v. One Medical Group, Inc., and Aston Carter, Inc.***

To Whom It May Concern:

Please be advised that my office has been retained by Dameta Afeni O'Brien ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, One Medical Group, Inc., and Aston Carter, Inc. (collectively referred herein as "Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

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

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a member support specialist from approximately June 2022 to August 26, 2022, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked at least 5 days per week, and at least 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

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

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Class for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Class properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff and the Class less than all their work time, some of which should have been paid at the overtime rate. Alternatively, Defendants paid Plaintiff and the Class based on the shift scheduled as opposed to the actual time worked, leading to underpayment of wages. Also throughout the statutory time period, Plaintiff and the Class were required to work off the clock, and

uncompensated. For example, Plaintiff and the Class were required to arrive at work early in order to prepare for patients and prepare for the start of the shift, but they were not paid for this time. Also, Plaintiff and the Class sometimes worked after the scheduled shift ended, and they clocked out and continued to work, uncompensated. Some of this off the clock time should have been paid as overtime compensation.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

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

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

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

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

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

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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

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

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

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the occasional use of personal cellular telephones for work purposes. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a

direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

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

Failure to Timely Pay All Wages at Termination

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

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

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate

until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

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

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

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

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

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

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

Failure to Pay All Earned Wages Twice Per Month

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

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

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

Action for Civil Penalties Under PAGA

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

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON LAW GROUP, PC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over a light blue circular stamp.

Kane Moon, Esq.
Attorney at Law

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the action; my business address is 1055 West Seventh Street, Suite 1880, Los
7 Angeles, California 90017. On October 6, 2023, I served the foregoing document described as:

8 **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT**

9 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as
10 follows:

11 Lucky Mainz (SBN 260632)
lmeinz@sheppardmullin.com
12 Lowell B. Ritter (SBN 317738)
lritter@sheppardmullin.com
13 **SHEPPARD, MULLIN, RICHTER &
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14 Four Embarcadero Center, 17th Floor
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15 *Attorneys for Defendant ONE MEDICAL*
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17 **SNELL & WILMER, LLP**
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City National 2Cal
Los Angeles, CA 90071

18 *Attorneys for Defendant ASTON*
19 *CARTER, INC.*

20 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
21 to accept electronic service, I caused the documents to be sent to the persons at the
22 electronic service addresses listed above via third-party cloud service
23 **CASEANYWHERE.**

24 X (State) I declare under penalty of perjury under the laws of the State of
25 California that the above is true and correct.

26 Executed on October 6, 2023, at Los Angeles, California.

27 Ximena Reyes

28 Name

/S/ Ximena Reyes

Signature