

1 Joshua H. Haffner, SBN 188652
2 jhh@haffnerlawyers.com
3 Vahan Mikayelyan, SBN 337023
4 vh@haffnerlawyers.com
5 **HAFFNER LAW PC**
6 445 South Figueroa Street, Suite 2625
7 Los Angeles, California 90071
8 Telephone: (213) 514-5681
9 Facsimile: (213) 514-5682

10 Attorneys for Plaintiff and all others similarly
11 situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN JOAQUIN**

14 CYNTHIA WOOD, an individual; on behalf
15 of himself and all others similarly situated,

16 Plaintiffs,

17 v.

18 MAXIM HEALTHCARE STAFFING,
19 INC.; and DOES 1 through 10, inclusive,

20 Defendants.

Case No.

STK-CV- UOE-2022-6312

REPRESENTATIVE ACTION

**COMPLAINT FOR P.A.G.A. PENALTIES,
Labor Code § 2698 et seq.**

1 Joshua H. Haffner, SBN 188652
2 jhh@haffnerlawyers.com
3 Vahan Mikayelyan, SBN 337023
4 vh@haffnerlawyers.com
5 **HAFFNER LAW PC**
6 445 South Figueroa Street, Suite 2625
7 Los Angeles, California 90071
8 Telephone: (213) 514-5681
9 Facsimile: (213) 514-5682

10 Attorneys for Plaintiff and all others similarly
11 situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN JOAQUIN**

14 CYNTHIA WOOD, an individual; on behalf
15 of himself and all others similarly situated,

16 Plaintiffs,

17 v.

18 MAXIM HEALTHCARE STAFFING,
19 INC.; and DOES 1 through 10, inclusive,

20 Defendants.

Case No.

REPRESENTATIVE ACTION

**COMPLAINT FOR P.A.G.A. PENALTIES,
Labor Code § 2698 et seq.**

1 Plaintiff Cynthia Wood ("Plaintiff") brings this representative action against Defendant
2 Maxim Healthcare Staffing, Inc., and Does 1 through 10, and respectfully alleges the following:

3 **NATURE OF THE ACTION**

4 1. This is a California statewide representative Private Attorney General Act
5 ("PAGA") action for wage and labor violations arising out of Defendant Maxim Healthcare
6 Staffing, Inc.'s ("Defendant") failure to pay Plaintiff and class members for overtime at their
7 regular rate of pay, failure to provide meal and rest breaks, and associated labor violations. As set
8 forth herein, Defendant operates a national healthcare professional staffing company, and has a
9 policy of failing to pay overtime based on all nondiscretionary income Plaintiff and class
10 members received. Plaintiff worked for Defendant in California as a nurse, and did not receive
11 overtime pay at the legal rate, and did not receive lawful meal and rest breaks. Plaintiff brings
12 this action on behalf of herself and other employees subject to Defendant's unlawful practices.

13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the entire action by virtue of the fact that this is a
15 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the
16 jurisdictional minimum of the Court. The acts and omissions complained of in this action took
17 place in the State of California. Venue is proper because the acts and/or omissions complained of
18 took place, in whole or in part, within the venue of this Court.

19 **PARTIES**

20 3. Plaintiff Cynthia Wood is a resident of Florida, who is employed by Defendant as
21 a nonexempt hourly nurse, performing services in California at the San Joaquin General Hospital,
22 from February 2022 to the present.

23 4. Plaintiff is informed, believes, and thereon alleges that Defendant Maxim
24 Healthcare Staffing, Inc. is a staffing company, headquartered in Maryland, and which is
25 authorized to transact and is actually transacting the business of health care staffing throughout
26 California and the rest of the United States.

27 5. Plaintiff is currently ignorant of the true names and capacities, whether individual,
28 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1

1 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff will
2 seek leave to amend this complaint to allege the true names and capacities of said fictitiously
3 named defendants when their true names and capacities have been ascertained. Plaintiff is
4 informed and believe and thereon alleges that each of the fictitiously named defendants is legally
5 responsible in some manner for the events and occurrences alleged herein, and for the damages
6 suffered by the Class.

7 6. Plaintiff is informed and believes and thereon alleges that all defendants, including
8 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
9 ostensible agents, alter egos, partners and/or joint venturers and/or employees of all other
10 defendants, and that all acts alleged herein occurred within the course and scope of said agency,
11 employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or
12 implied permission, knowledge, consent authorization and ratification of their co-defendants;
13 however, each of these allegations are deemed “alternative” theories whenever not doing so
14 would result in a contradiction with other allegations.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 7. Defendant is a staffing company that employs hourly health professionals for
17 travel assignments at health care providers throughout the United States.

18 8. Plaintiff is employed by Defendant as a nurse at San Joaquin General Hospital,
19 from February 2022 to the present.

20 9. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff and other
21 employees are not paid their regular rate of pay for overtime by Defendant. Plaintiff and the other
22 employees class receive nondiscretionary compensation for: (1) working more shifts than they are
23 contracted for; and (2) for housing. Defendant fails to account for this nondiscretionary
24 compensation in Plaintiff and the representative group of employees’ regular rate of pay.

25 10. Plaintiff is informed and believes, and on that basis alleges, that the representative
26 group of employees contract with Defendant to work a certain number of shifts per week.
27 Plaintiff contracted with Defendant to work three (3) shifts per week. Plaintiff is informed and
28 believes, and on that basis alleges, that Plaintiff and class members receive nondiscretionary

1 bonuses, in addition to their regular pay, for, among other things, working extra shifts. Plaintiff's
2 extra shift bonus was \$400 for each additional shift, in addition to regular pay. Plaintiff is
3 informed and believes, and on that basis alleges, that Defendant's other employees also had
4 similar per extra shift bonuses.

5 11. Plaintiff is informed and believes, and on that basis alleges, that the representative
6 group of employees receive a housing benefit as part of their nondiscretionary employment
7 compensation with Defendant. Defendant's pay policy, as stated in Defendant's Travel
8 Assignment Agreement, with respect to the housing benefit, is that it paid for a "minimum
9 number of weekly work hours." Plaintiff is informed and believes, and on that basis alleges, that
10 the housing stipend was contingent upon class members working their minimum required number
11 of hours each week, and if Defendant's employees failed to work their minimum number of
12 weekly required hours, the housing benefit is clawed back through a "housing charge back."

13 12. Defendant fails to calculate Plaintiff and class members' nondiscretionary
14 compensation, including for working extra shifts and/or for housing, in Plaintiff and class
15 members' regular rate of pay when calculating overtime. For example, for the pay period from
16 February 27, 2022 to March 5, 2022, Plaintiff's paystub provides that she worked 40 hours of
17 regular time at \$94 dollars per hour, 20 hours of overtime at \$141 per hour, and .5 hours of double
18 time at \$188 per hour. The paystub also reflects that Plaintiff received a nondiscretionary bonus
19 for working extra shifts during this pay period of \$800, and a housing stipend of \$980, neither of
20 which was accounted for in Plaintiff's regular rate of pay when calculating Plaintiff's overtime
21 rate.

22 13. Defendant's "Travel Assignment Agreement" with Plaintiff states "[o]vertime is
23 paid at a rate of 1.5 times the base hourly rate and double-time is paid at a rate of 2 times the base
24 hourly rate." This is Defendant's standard contract, and Plaintiff is informed and believes, and on
25 that basis alleges, that the same or similar pay policy applies and/or overtime is calculated and
26 paid in the same manner, to all employees. Defendant's pay plan excludes non-base pay, like the
27 nondiscretionary compensation for working extra shifts and for housing, from Plaintiff and class
28 members' overtime pay calculations.

1 14. Plaintiff is informed and believes, and on that basis alleges, that Defendant's
2 employees were regularly employed in shifts that were understaffed, and Defendant failed to
3 provide Plaintiff and other employees with legally compliant meal and rest periods. Plaintiff is
4 informed and believes, and on that basis alleges, that a break nurse is needed to relieve employees
5 for breaks, and was often not able to provide the required breaks. As an example, on March 1,
6 2022, in violation of California law, Plaintiff did not receive a second or third rest break, although
7 she worked a shift that required such break, and this happened regularly.

8 15. Defendant also fails to pay Plaintiff and other employees at their regular rate of
9 compensation for missed meal and rest breaks, as required by California Labor Code section
10 226.7. For instance, Plaintiff's pay stub of February 27, 2022 to March 5, 2022, reflects \$427 for
11 missed meals. Plaintiff is informed and believes, that this amount failed to account for
12 nondiscretionary pay, including extra shift bonuses and housing payments.

13 16. In violation of Labor Code § 226(a), Defendant has issued false and inaccurate
14 wage statements which fail to account for all Plaintiff and other non-exempt employees' wages
15 earned, including overtime and premium pay for missed meal or rest breaks.

16 17. Defendant's conduct violated, among other statutes and/or regulations, Labor Code
17 §§ 204, 218.5, 226, 226.3, 226.7, 510, 512, 1194, as well as IWC Wage Order No. 5-2001.

18 18. Plaintiff brings this as a representative action for the group of non-exempt
19 employees who all have been exposed to, have suffered, and/or were permitted to work under,
20 Defendant's unlawful employment practices as alleged herein.

21 19. Plaintiff has provided the required notice of intent to bring this PAGA action.
22 Plaintiff has complied with all conditions or requirements for bringing suit, save those Defendant
23 has waived, forfeited, and/or are estopped from asserting.

24 **FIRST CAUSE OF ACTION**
25 **REPRESENTATIVE CLAIM UNDER THE CALIFORNIA LABOR CODE**
26 **PRIVATE ATTORNEY GENERAL ACT**
27 **(Violation of California's Labor Code §§ 2698 *et seq.*)**
28 **(Against All Defendants)**

20. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth

1 herein.

2 21. The claims alleged herein are appropriately suited for a Labor Code Private
3 Attorneys General Act of 2004 (“PAGA”) action because:

- 4 a. Pursuant to California Labor Code § 2699(a), any provision of the *Labor Code* “that
5 provides for a civil penalty to be assessed and collected by the Labor and Workforce
6 Development Agency or any of its departments, divisions, commissions, boards,
7 agencies, or employees, for a violation of this code, may, as an alternative, be
8 recovered through a civil action brought by an aggrieved employee on behalf of
9 himself or herself and other current or former employees pursuant to the procedures
10 specified in section 2699.3.”
- 11 b. This action involves allegations of violations of provisions of the California Labor
12 Code that provide or do not provide for a civil penalty to be assessed and collected by
13 the LWDA or any departments, divisions, commissions, boards, agencies, or
14 employees.
- 15 c. Plaintiff is an “aggrieved employee” because she was employed by the alleged
16 violators and had one or more of the alleged violations committed against them.
- 17 d. Plaintiff satisfied the procedural requirements of section 2699.3 by serving, via
18 certified mail, the LWDA and Defendants with notice for wage and hour violations
19 and penalties, including the facts and theories to support each violation. More than
20 65 days have passed since Plaintiff served via certified mail to LWDA and her former
21 employer. Therefore, Plaintiff satisfied all the administrative requirements to pursue
22 civil penalties against Defendants pursuant to *Labor Code* section 2698 *et seq*

23 22. Plaintiff filed this cause of action pursuant to *Labor Code* section 2699(a) and (f),
24 on behalf of herself and all other current and former aggrieved employees of Defendants to
25 recover civil penalties. Said civil penalties include but are not limited to penalties pursuant to
26 *Labor Code* sections 210, 558, 1197.1 and 2699.

27 23. Defendants, including the Doe defendants, were Plaintiff’s employers or persons
28 acting on behalf of Plaintiff’s employer, within the meaning of California Labor Code § 558,

1 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code
2 or any provision regulating hours and days of work in any order of the Industrial Welfare
3 Commission and, as such, are subject to penalties for each underpaid employee, as set forth in
4 Labor Code § 558, at all relevant times.

5 24. Plaintiff, on behalf of herself and all other non-exempt employees of Defendants,
6 seeks to recover all applicable civil penalties under PAGA.

7 **PRAYER**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also
9 on behalf of the general public, pray for judgment and/or orders against Defendants as follows:

- 10 A. For penalties and other relief pursuant to Labor Code §2698, *et seq.* for Plaintiff
11 and all other aggrieved employees;
12 B. Prejudgment interest at the maximum legal rate;
13 C. Reasonable attorneys' fees;
14 D. Accounting of Defendants' records for the liability period;
15 E. Costs of suit; and
16 F. Such other relief as the Court may deem just and proper.

17
18 DATED: July 22, 2022

HAFFNER LAW PC

19
20 By: /s/ Joshua H. Haffner
21 Joshua H. Haffner
22 Vahan Mikayelyan
23 Attorneys for Plaintiff
24
25
26
27
28

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

DATED: July 22, 2022

By: /s/ Joshua H. Haffner
Joshua H. Haffner
Vahan Mikayelyan
Attorneys for Plaintiff and others
Similarly situated