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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

3/18/2025 3:45:54 PM

Clerk of the Superior Court
By M. Manneh , Deputy Clerk

Attorneys for Plaintiff in BRIANA HOLLEY. in a Representative capacity, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BRIANA HOLLEY, in a Representative
capacity, and on behalf of other members of
the general public similarly situated,

Plaintiff,

v.

TORY PRESTERA, MD INC., a California
Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. 25CU013922C

COMPLAINT FOR:

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***
6. **FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.***

COMES NOW Plaintiff BRIANA HOLLEY ("Plaintiff"), in a Representative capacity, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant TORY PRESTERA, MD INC., (Referred to herein as "Defendant" or "Prester"), was and is a California corporation doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendant named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-Defendants. Plaintiff's injuries as herein alleged were proximately caused by said
3 defendants. Wherever it is alleged herein that any act or omission was done or committed by
4 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
5 allege that the same act or omission was also done and committed by each and every defendant
6 named as a DOE, both separately and in concert with the named Defendant or Defendants.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
9 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
10 legal entities which were licensed to do and/or were doing business in the County of San
11 Diego, State of California at all times relevant to the subject matter of this action.

12 **FACTUAL BACKGROUND**

- 13 7. Plaintiff was employed by Defendant from approximately January 2023 through July 26, 2024.
14 Throughout her employment with Defendant, Plaintiff performed her job in a capable, and
15 competent manner.
- 16 8. Throughout the term of their employment, Plaintiff and all other aggrieved employees were,
17 and currently are, denied the benefits and protections of the Labor Code due to Defendant's
18 institutionalized pay practices, standard as to all of Defendant's California-based employees.
- 19 9. On December January 3, 2025, counsel for Plaintiff prepared and submitted via online filing
20 a letter to the California Labor & Workforce Development Agency ("LWDA"). A copy of the
21 letter was mailed to Defendant, via USPS Certified Mail. The letter contained the specific
22 provisions of the California Labor Code and Business and Professions Code violated by
23 Defendant, as well as the facts and theories in support of Plaintiffs' claims. (Please see **Exhibit**
24 **1**, a true and correct copy of this letter.)
- 25 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer
26 to respond, has concluded.

27
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REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Plaintiff is proceeding in a representative capacity under PAGA. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendant's standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendant failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendant failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendant failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.
12. Plaintiff brings this action on the grounds that she and other current and former aggrieved employees of Defendant were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed One Hundred (100) members.
13. The approximately One Hundred (100) aggrieved employees are comprised of Defendant's current or former California-based employees.
14. The questions of law and fact common to all aggrieved employees arising from Defendant's actions include, among others, the following:
 - a. Whether Defendant failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
 - b. Whether Defendant failed to pay its employees all compensation due and owing at

- 1 termination of employment;
- 2 c. Whether Defendant failed to provide its employees with statutorily-compliant Meal
- 3 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
- 4 226.7, in that Defendant's written policies are not compliant with California law, and
- 5 Defendant do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- 6 d. Whether Defendant failed to properly provide Meal and Rest Period Premiums in
- 7 accordance with law;
- 8 e. Whether Defendant failed to properly calculate and pay its employees overtime
- 9 compensation or Meal and Rest Period Premiums in accordance with law by failing to
- 10 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and
- 11 other non-discretionary compensation; and
- 12 f. Whether Defendant failed to properly reimburse its employees for necessary business
- 13 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
- 14 Labor Code section 2802.
- 15 g. Whether Defendant failed to provide Plaintiff with his personnel file within 30 days of
- 16 a written request in violation of Labor Code section 1198.5(a).
- 17 15. At all times mentioned herein, Defendant were subject to the Labor Codes and Industrial
- 18 Welfare Commission Wage Orders of the State of California, including, but not limited to,
- 19 California Labor Code section 2698 *et seq.*
- 20 16. At all times mentioned herein, Defendant are and were "employers" as that term is used within
- 21 the relevant sections of the California Labor Code.
- 22 17. Plaintiff has exhausted her administrative remedies and pre-filing requirements pursuant to
- 23 California Labor Code section 2699.3, and have also fulfilled all notice requirements under the
- 24 statute.
- 25 18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were
- 26 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
- 27 Defendant's standard practices. Said violations are set forth below.
- 28

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendant and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

20. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendant violated this section by establishing working conditions below the standard of the applicable Wage Order.

21. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).

23. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11040 (11).

24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

25. Within the operative time period, Defendant failed to possess compliant Meal and Rest Period policies.

- 1 26. For example, Defendant do not possess a legal Meal Period policy or legal Rest Period policy,
2 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
3 Periods or Rest Periods.
- 4 27. Defendant would also pressure employees to either skip, or cut short, Meal Periods and Rest
5 Periods, based on patient emergencies and coverage issues. As a first example, Time Records
6 (produced by Prestera) show that on March 4, 2024, Plaintiff started a shift at 8:25 a.m. and
7 then clocked out for a Meal Period at 1:45 p.m. On this date, this employee worked **5 hours**
8 **and 20 minutes** before receiving a Meal Period. (Please see **Exhibit 2**). Further, the Prestera
9 Wage Statements indicate **no** California Meal Period Penalty was paid for this Pay Period. As
10 a second example, Time Records (produced by Prestera) show that on July 12, 2024, Plaintiff
11 started a shift at 8:23 a.m. and then clocked out for a Meal Period at 1:39 p.m. On this date,
12 this employee worked **5 hours and 16 minutes** before receiving a Meal Period. (Please see
13 **Exhibit 3**). Further, the Prestera Wage Statements indicate **no** California Meal Period Penalty
14 was paid for this Pay Period. As a third example, Time Records (produced by Prestera) show
15 that on July 8, and July 12 Plaintiff did not receive Rest Periods. (Please see **Exhibit 3**).
- 16 28. In addition, Defendant had notice of Plaintiff working outside of her scheduled and/or reported
17 hours, as well as within Meal and Rest Periods, but failed to provide any compensation for this
18 work-time.
- 19 29. Defendant willfully failed and refused to pay Plaintiff and all other aggrieved employees one
20 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
21 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 4 § (11),
22 (12).
- 23 30. Any payments made by Defendant for non-compliant Meal Periods were not paid at the
24 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
25 Orders. Instead, these payments were made at an employee's base rate and did not include the
26 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
27 example, non-discretionary compensation and other employee benefits.
- 28 31. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor

Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code sections 2699(a) for each of these employees.

34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SECOND CAUSE OF ACTION
Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendant and DOES 1 through 10)

35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. Defendant failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal. App.4th 314, 323. These violations were caused by and through Defendant's failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendant would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendant would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendant knowingly failing to consider other work performed by the employees, including all time employees were under Defendant's control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime

1 compensation.

2 37. As a result of Defendant's failure to comply with the provisions of the Labor Code, Plaintiff
3 and all other aggrieved employees have been damaged in an amount to be proven at trial.

4 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff
5 on behalf of herself and all other aggrieved employees by and through Labor Code section
6 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
7 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
8 Prayer For Relief.

9 39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
10 pursuant to Labor Code sections 2699(a) for each of these employees.

11 40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
12 section 2699(g)(1).

13 **THIRD CAUSE OF ACTION**
14 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
15 **Representative Action**
16 **(By Plaintiff against Defendant and DOES 1 through 10)**

17 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
18 herein.

19 42. Defendant failed to pay Plaintiff and all other aggrieved employees all compensation, including
20 overtime compensation, due in violation of, among other statutes, Labor Code section 510.
21 These violations occurred due to Defendant's illegal policies, referenced above, whereby
22 employees experienced monetary under-compensation. The systematic failure to provide
23 proper overtime compensation is a violation of California law.

24 43. Additionally, Defendant also failed to provide the actual Overtime Rate of Pay by ignoring
25 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
26 commissions, shift differentials, various forms of bonus and/or incentive pay, and the value
27 of employee benefits and employee discounts, in violation of Labor Code section 510.

28 44. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor
Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be

1 proved at trial.

2 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
3 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
4 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
5 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
6 Prayer For Relief.

7 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
8 pursuant to Labor Code sections 2699(a) for each of these employees.

9 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
10 section 2699(g)(1).

11 **FOURTH CAUSE OF ACTION**
12 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
13 **Representative Action**
14 **(By Plaintiff against Defendant and DOES 1 through 10)**

15 48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth
16 herein.

17 49. Defendant failed to provide Plaintiff and all other aggrieved employees with accurate itemized
18 wage statements in violation of, among other statutes, Labor Code section 226. These
19 violations include, but are not limited to, Defendant's failure to accurately identify all
20 applicable regular and overtime (including double-time) rates of pay in violation of section
21 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
22 Defendant also failed to accurately list "all applicable hourly rates in effect during the pay
23 period and the corresponding number of hours worked at each hourly rate," in violation of
24 226(a)(9). Defendant also failed to provide an accurate showing of the "total hours worked,"
25 in violation of Labor Code section 226(a)(2). For example, Defendant had notice of employees
26 working outside of their scheduled and/or reported hours, as well as within Meal and Rest
27 Periods, but did not provide compensation.

28 50. Further, the Defendant's wage statement listings are confusing and employees cannot readily
ascertain their total hours worked, applicable rates, and all gross and net wages. As one

1 example, Defendant is apparently using a time calculating system other than “minutes”, but
2 without explanation to the employees within the wage statement.

3 51. As a direct result of Defendant’s failure to comply with the foregoing provisions of the Labor
4 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
5 proven at trial.

6 52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
7 behalf of herself all other aggrieved employees by and through Labor Code section 2699.3, and
8 as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties
9 pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For
10 Relief.

11 53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
12 pursuant to Labor Code sections 2699(a) for each of these employees.

13 54. Plaintiff also seeks an award of reasonable attorneys’ fees and costs pursuant to Labor Code
14 section 2699(g)(1).

15 **FIFTH CAUSE OF ACTION**
16 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
17 **Representative Action**
(By Plaintiff against Defendant and DOES 1 through 10)

18 55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth
19 herein.

20 56. Defendant failed to reimburse their employees for all necessary business expenditures incurred
21 in direct consequence of the discharge of their duties in violation of, among other statutes,
22 Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendant’s standard
23 policies which require its employees to incur mileage and to use their own cell phones for
24 work-related purposes, without reimbursement.

25 57. As a direct result of Defendant’s failure to comply with the foregoing provisions of the Labor
26 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
27 proven at trial.

28 58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on

behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code sections 2699(a) for each of these employees.

60. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendant and DOES 1 through 10)

61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 as though fully set forth herein.

62. Defendant failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendant's willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.

63. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

65. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code sections 2699(a) for each of these employees.

1 66. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
2 section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of all aggrieved employees, pray for judgment as follows:

- 5 1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section
6 2699(g)(1);
7 2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
8 3. For such other relief as the Court deems just and proper.

9
10
11 Dated: March 18, 2025

SULLIVAN & YAECKEL LAW GROUP, APC

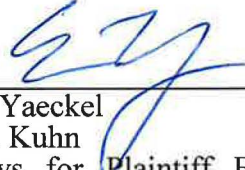
12 
13 _____
14 Eric K. Yaeckel
15 Ryan T. Kuhn
16 Attorneys for Plaintiff BRIANA HOLLEY. in a
17 Representative capacity, and on behalf of other
18 members of the general public similarly situated
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Exhibit 1

SULLIVAN & YAECKEL
LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

January 3, 2025

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: **Briana Holley v. Tory Prestera, MD Inc.**
Our File No.: 7439

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Tory Prestera, MD Inc. (hereinafter referred to as “Prestera”), in the above referenced matter. This “written notice” is filed on behalf of Ms. Holley, and all current and former non-exempt employees employed by Prestera. Thank you for your assistance and instruction on this issue.

Please Note: In providing said notice, Plaintiff intends to proceed in a “representative capacity only.” Plaintiff is not seeking individual relief.

The specific provisions alleged to have been violated by Prestera are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 204, 226, 226(a), 226.7, 510, 512, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 4, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 *et seq.*

Facts and theories supporting the allegations: Ms. Holley was employed as a non-exempt employee for Prestera from approximately January 2023 through July 26, 2024.

Throughout the term of Ms. Holley’s employment, Prestera required Ms. Holley and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Prestera failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 204, 510, IWC Wage Order 4, and any other applicable wage orders. This illegal action is due, in part, to Prestera's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Prestera would instruct Ms. Holley to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Prestera would often require Ms. Holley to work extended hours (beyond scheduled hours), without compensation. Further, Prestera would regularly contact Ms. Holley outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.
- Additionally, among other issues, Prestera has notice of Ms. Holley, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Ms. Holley was frequently scheduled to be "On Call" outside of when her work shifts ended, but was never compensated for this time. Further, Prestera failed to properly calculate and pay overtime at the actual overtime rate of pay, as Prestera ignores certain compensation when calculating the Regular Rate of Pay. More specifically, Prestera failed to properly calculate the legal Overtime Rate of Pay, by (among other issues) failing to consider certain non-discretionary forms of compensation (including, but not limited to bonuses, commissions, and/or other non-discretionary compensation).

Failure to Provide Compliant Meal Periods

- Prestera failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, Prestera does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day.
- Prestera would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or patients at all times. Prestera has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums).

such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Prestera failed to pay Meal Period Premiums at the proper rate, as Prestera fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- Prestera required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Prestera would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.
- Prestera illegally retained control over its employees during Meal Periods. For example, Prestera required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Prestera failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, and any other applicable wage orders. For example, Prestera does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Prestera makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Prestera would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors and/or patients at all times. Ms. Holley often was required to work during Rest Periods in order to complete her daily duties before she ended her shift for the day. Prestera has never provided a compliant Rest Period penalty payment to any employee as to the above referenced

issues. Finally, on the rare occasions in which Prestera would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Prestera required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Prestera would interrupt, or cut short, its employees’ Rest Periods and require them to return to work.
- Finally, Prestera illegally retained control over its employees during Rest Periods. For example, Prestera required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Prestera violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Holley, and other employees were not compensated for all hours worked (due in part to Prestera requirement that employees list only *scheduled* work-times, not actual work-times.)
- Prestera violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Prestera (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Prestera would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Prestera violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Ms. Holley, and the other employees were not compensated for all hours worked (due in part to Prestera requiring employees to list only *scheduled* work-times, not actual work-times to include “on-call” hours). Prestera does not explain how its system describes “time worked” on the Wage Statement itself. As such, Ms. Holley cannot “readily ascertain” what these figures mean. This is because Prestera is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.71”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, Prestera failed to provide an

accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Prestera failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Holley, and other non-exempt employees, including expenses for cell-phone costs, necessary work supplies, and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

- Prestera failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Prestera failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

Failure to Comply with Personnel File Request

- Prestera failed to provide a copy of Ms. Holley’s personnel files. On August 29, 2024, October 4, 2024, and December 11, 2024, our office on behalf of Ms. Holley made requests for her personnel files. (Please see **Exhibit A-C**). As of the current date it has been **127 days** since Ms. Holley has requested a copy of her personnel files. Accordingly, Prestera is liable to Ms. Holley under Cal. Civ. Code section 1198.5.

To confirm, Prestera is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'E. Yaeckel', written over a horizontal line.

Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

LEGALZOOM.COM, INC.

Agent for Service of Process for

TORY PRESTERA, MD INC.

500 N. Brand Blvd.,

Glendale, CA 91203

LEGALZOOM.COM, INC.

Agent for Service of Process for

TORY PRESTERA, MD INC.

101 N. Brand Blvd., FL 11

Glendale, CA 91203

TORY PRESTERA, MD INC.

Human Resources Director

100 North Rancho Santa Fe Road, Suite 126

San Marcos, CA 92069

Exhibit A

SULLIVAN & YAECKEL
LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

August 29, 2024

LEGALZOOM.COM, INC.
Agent for Service of Process for
TORY PRESTERA, MD INC.
101 N. Brand Blvd., FL 11
Glendale, CA 91203

Via Certified U.S. Mail

Re: **BRIANA HOLLEY**
Our File No.: 7439

Dear Human Resources Director:

Please allow this correspondence to serve as a request for personnel records in possession of Tory Prestera, MD Inc. (Hereinafter "Prestera"). Our client, Briana Holley, requests (a) to inspect her personnel files and records, (b) to copy payroll records pertaining to her employment, and (c) that produce copies of all instruments Ms. Holley signed relating to her employment. Thank you for your assistance in this matter.

Please find attached a copy of an Authorization to Disclose Information, signed by Ms. Holley.

The instant request is made pursuant to, among others, California Labor Code section 1198.5:

- (a) Every employee has **the right to inspect the personnel records** that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records **available to the employee at reasonable intervals and at reasonable times**. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.

(c) The employer **shall** do one of the following:

(1) Keep a copy of each employee's personnel records at the place where the employee reports to work.

(2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.

(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

Additionally, Ms. Holley requests that Pretera make her payroll records available for copying, pursuant to California Labor Code sections 226(a)-(b):

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her 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 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) **An employer that is required** by this code or any regulation adopted pursuant to this code to **keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee**, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the

employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

Further, Ms. Holley requests that Prestera make her time records available for copying, pursuant to California Code of Regulations, title 8, section 11040(7)(A)-(C):

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) **Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.** Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) **Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.**

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. **An employee's records shall be available for inspection by the employee upon reasonable request.**

Ms. Holley also requests that Prestera produce copies of any instrument she signed relating to her employment with Prestera pursuant to California Labor Code section 432:

If an employee or applicant signs any instrument relating to the obtaining or holding of employment, **he shall be given a copy of the instrument upon request.**

Finally, please be aware of Labor Code sections 226, 432, and 1198.5. Section 226(c) states:

An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but **no later than 21 calendar days** from the date of the request. A violation of this subdivision is an infraction.

Given the above, we respectfully request that you provide Ms. Holley's personnel files and Time Records for her inspection, and produce copies of all instruments signed by her relating to her employment with Prestera. Please understand that unless we receive a formal reply by **Thursday, September 19, 2024** we will have no option but to proceed formally, seeking all available remedies.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K Kitlowski', written over a horizontal line.

Karoline D. Kitlowski, Esq.

AUTHORIZATION TO DISCLOSE INFORMATION

This will authorize all employers, attorneys, government agencies, including the California Department of Motor Vehicles and the City of San Diego, credit bureaus, credit grantors, debt collection agencies and any and all persons to whom it may be presented to disclose to my attorneys Sullivan & Yaeckel Law Group, APC or to any authorized representative; any and all information records and reports concerning me, or any matter in which I am interested, including any and all debts, collections, employment, credit, debts, or any other matters, all as fully and as freely as you would disclose the same to me personally, it being my intent that this authorization is to serve as my consent to a full disclosure in any circumstances where my consent may be requested or required.

A copy of this authorization shall be accepted as the original. This authorization shall expire one year from the date of signature.

DATED: 8/08/24


Briana Holley

Exhibit B

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

October 4, 2024

LEGALZOOM.COM, INC.
Agent for Service of Process for
TORY PRESTERA, MD INC.
500 N. Brand Blvd., ste 1850
Glendale, CA 91203

Via Certified U.S. Mail

Re: **BRIANA HOLLEY**
Our File No.: 7439

Dear Human Resources Director:

Please allow this correspondence to serve as (1) a **second** request for personnel records in possession of Tory Prestera, MD Inc., (hereinafter "Prestera"), (2) notice that Prestera is in violation of California Labor Code sections 1174, 1174.5, 1198.5, 1199, and (3) notice that Prestera could be liable for **\$600.00** as a result of said violations. Thank you for your assistance in this matter.

A. **NOTICE OF VIOLATION OF CALIFORNIA LABOR CODE**

Please note that on **August 19, 2024**, this office sent - *via Certified Mail* - Ms. Holley's original request for documents and information to Prestera, **including a request for Ms. Holley's Time Records and Personnel Records**. The current date is October 4, 2024. Prestera has yet to produce her Time Records and Personnel Records. Since Prestera has failed to produce her Time Records and Personnel Records, Prestera is in violation of Labor Code sections 1174(d), 1174.5, 1198.5, and 1199.

Section 1174(d) specifically states:

Every person employing labor in this state shall:

(d) Keep. at a central location in the state or at the plants or establishments at which employees are employed. **payroll records**

showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Moreover, Pretera has not made Ms. Holley's Time Records and Personnel Records available upon request, and as such is in violation of Labor Code Section 1199 and 1174.5.

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is **guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:**

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) **Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.**

Any person violating this article is guilty of a misdemeanor.

Further, Labor Code section 1174.5(k) states:

Any person employing labor who **willfully fails to maintain the records** required by subdivision (c) of Section 1174 or **accurate and complete records** required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division

to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of **five hundred dollars (\$500)**.

B. DEMAND FOR LABOR CODE COMPLIANCE

Ms. Holley, once again, requests that Prester make her Time Records available for copying, pursuant to California Code of Regulations, title 8, section 11040(7)(A)-(C):

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) **Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.** Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) **Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.**

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. **An employee's records shall be available for inspection by the employee upon reasonable request.**

Additionally, Ms. Holley further requests that Prestera make her Personnel Records available for copying, pursuant to California Labor Code section 1198.5.

California Labor Code section 1198.5 states:

- (a) Every employee has **the right to inspect the personnel records** that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records **available to the employee at reasonable intervals and at reasonable times**. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.
- (c) The employer **shall** do one of the following:
 - (1) Keep a copy of each employee's personnel records at the place where the employee reports to work.
 - (2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.
 - (3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

Given the above, we respectfully request that you provide Ms. Holley's Time Records and Personnel Records for her inspection, relating to her employment with Prestera. Please understand that unless we receive a formal reply by **Friday, October 18, 2024**, we will have no option but to proceed formally, seeking all available remedies.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



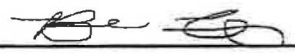
Karoline D. Kitlowski, Esq

AUTHORIZATION TO DISCLOSE INFORMATION

This will authorize all employers, attorneys, government agencies, including the California Department of Motor Vehicles and the City of San Diego, credit bureaus, credit grantors, debt collection agencies and any and all persons to whom it may be presented to disclose to my attorneys Sullivan & Yaeckel Law Group, APC or to any authorized representative; any and all information records and reports concerning me, or any matter in which I am interested, including any and all debts, collections, employment, credit, debts, or any other matters, all as fully and as freely as you would disclose the same to me personally, it being my intent that this authorization is to serve as my consent to a full disclosure in any circumstances where my consent may be requested or required.

A copy of this authorization shall be accepted as the original. This authorization shall expire one year from the date of signature.

DATED: 8/08/24



Briana Holley

Exhibit C

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

December 11, 2024

LEGALZOOM.COM, INC.
Agent for Service of Process for
TORY PRESTERA, MD INC.
101 N. Brand Blvd., FL 11
Glendale, CA 91203

Via Certified U.S. Mail

TORY PRESTERA, MD INC.
Human Resources Director
100 North Rancho Santa Fe Road, Suite 126
San Marcos, CA 92069

Re: BRIANA HOLLEY
Our File No.: 7439

Dear Human Resources Director:

Please allow this correspondence to serve as (1) a **third** request for personnel records in possession of Tory Prestera, MD Inc., (hereinafter "Prestera"), (2) notice that Prestera is in violation of California Labor Code sections 1174, 1174.5, 1198.5, 1199, and (3) notice that Prestera could be liable for **\$600.00** as a result of said violations. Thank you for your assistance in this matter.

A. NOTICE OF VIOLATION OF CALIFORNIA LABOR CODE

Please note that on **August 29, 2024** and **October 4, 2024**, this office sent - *via Certified Mail* - Ms. Holley's original request for documents and information to Prestera, **including a request for Ms. Holley's Time Records and Personnel Records**. The current date is December 11, 2024. Prestera has yet to produce her Time Records and Personnel Records. Since Prestera has failed to produce her Time Records and Personnel Records. Prestera is in violation of Labor Code sections 1174(d), 1174.5, 1198.5, and 1199.

Section 1174(d) specifically states:

Every person employing labor in this state shall:

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, **payroll records showing the hours worked daily** by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Moreover, Pretera has not made Ms. Holley's Time Records and Personnel Records available upon request, and as such is in violation of Labor Code Section 1199 and 1174.5.

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is **guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:**

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) **Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.**

Any person violating this article is guilty of a misdemeanor.

Further, Labor Code section 1174.5(k) states:

Any person employing labor who **willfully fails to maintain the records** required by subdivision (c) of Section 1174 or **accurate and complete records required by subdivision (d) of Section 1174**, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of **five hundred dollars (\$500)**.

B. DEMAND FOR LABOR CODE COMPLIANCE

Ms. Holley, once again, requests that Prestera make her Time Records available for copying, pursuant to California Code of Regulations, title 8, section 11040(7)(A)-(C):

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) **Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.** Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) **Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.**

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of

employment or at a central location within the State of California. **An employee's records shall be available for inspection by the employee upon reasonable request.**

Additionally, Ms. Holley further requests that Prestera make her Personnel Records available for copying, pursuant to California Labor Code section 1198.5.

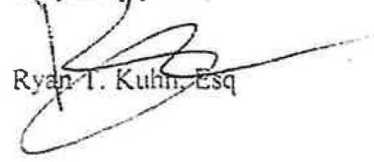
California Labor Code section 1198.5 states:

- (a) Every employee has **the right to inspect the personnel records** that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records **available to the employee at reasonable intervals and at reasonable times**. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.
- (c) The employer **shall** do one of the following:
 - (1) Keep a copy of each employee's personnel records at the place where the employee reports to work.
 - (2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.
 - (3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

Given the above, we respectfully request that you provide Ms. Holley's Time Records and Personnel Records for her inspection, relating to her employment with Prestera. Please understand that unless we receive a formal reply by **Wednesday, January 1, 2025**, we will have no option but to proceed formally, seeking all available remedies.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,


Ryan T. Kuhn, Esq

AUTHORIZATION TO DISCLOSE INFORMATION

This will authorize all employers, attorneys, government agencies, including the California Department of Motor Vehicles and the City of San Diego, credit bureaus, credit grantors, debt collection agencies and any and all persons to whom it may be presented to disclose to my attorneys Sullivan & Yaeckel Law Group, APC or to any authorized representative; any and all information records and reports concerning me, or any matter in which I am interested, including any and all debts, collections, employment, credit, debts, or any other matters, all as fully and as freely as you would disclose the same to me personally, it being my intent that this authorization is to serve as my consent to a full disclosure in any circumstances where my consent may be requested or required.

A copy of this authorization shall be accepted as the original. This authorization shall expire one year from the date of signature.

DATED: 8/08/24

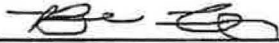

Briana Holley

Exhibit 2

3/18/24, 10:04 AM | secure.timesheets.com/default.cfm?page=HourlyPrePayrollReports&ReportUUID=65f87409319c3310c48f7d63&PrintMode=true&AddPageB...

PRESTERA EYE MEDICAL GROUP

Mar 03, 2024 - Mar 17, 2024

Report Generated March 18 2024 10:04 PDT
Grouped By Employee
Status Open, Paid, Archived
Signed Unsigned, Signed
Approved Alert, Unapproved, Approved
Time Classes 8 Time Classes
Users Briana Holley
Total Hours 40.25
Records With Alerts 0

Hours Summary			
Standard:	40.25	Holiday:	0
Unpayable/Salaried:	0	HOLIDAY:	0
Sick:	0	Request time of:	0
Vacation:	0	Other2:	0

Legend

 User Signed

 Approved

 Paid

 Split Paid

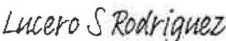
 Archived

 Pending Alert

Briana Holley - Back Office, Tech, Scribe

		\$	Date	In	Break	Out	TZ	Account Code	Time Class	Hours
			Mar 04, 2024	08:25 AM		01:45 PM	PDT	Regular Time	Standard	5.33
			Mar 04, 2024	02:17 PM		04:47 PM	PDT	Regular Time	Standard	2.50
			Mar 06, 2024	08:24 AM	10:30 AM	12:11 PM	PDT	Regular Time	Standard	3.78
			Mar 06, 2024	12:48 PM	03:07 PM	05:02 PM	PDT	Regular Time	Standard	4.23
			Mar 11, 2024	08:23 AM	10:14 AM	11:29 AM	PDT	Regular Time	Standard	3.10
			Mar 11, 2024	12:06 PM	02:53 PM	05:06 PM	PDT	Regular Time	Standard	5.00
			Mar 13, 2024	08:30 AM	10:09 AM	11:43 AM	PDT	Regular Time	Standard	3.22
			Mar 13, 2024	12:20 PM	03:35 PM	04:59 PM	PDT	Regular Time	Standard	4.65
			Mar 15, 2024	08:21 AM		11:01 AM	PDT	Regular Time	Standard	2.67
			Mar 15, 2024	11:38 AM	03:35 PM	05:24 PM	PDT	Regular Time	Standard	5.77
Totals										40.25


Briana Holley (Mar 18, 2024 12:06 PDT)
Employee Signature: Briana Holley Date
By signing above I acknowledge and certify that the information contained on this document is true and accurate.


Lucero S Rodriguez 03/18/2024
Supervisor Signature: Lucero Rodriguez Date Supervisor Signature Date
Charin Prestera

Tory Prestera MD INC
100 N Rancho Santa Fe Rd Ste 126
San Marcos CA 92069

Pay Stub Detail
PAY DATE: 03/21/2024
NET PAY: \$865.86

*Briana Holley
44845 Potestas Dr
Temecula CA 92592

EMPLOYER
Tory Prestera MD INC
100 N Rancho Santa Fe Rd Ste 126
San Marcos CA 92069

PAY PERIOD
Period Beginning 03/04/2024
Period Ending: 03/17/2024
Pay Date: 03/21/2024
Total Hours: 40.25

EMPLOYEE
*Briana Holley
44845 Potestas Dr
Temecula CA 92592

SS#: ...5097

BENEFITS	Accrued	Used	Available		
Sick	0.00	0.00	-24.00	NET PAY:	\$865.86
Vacation	0.00	0.00	0.00	Acct#.....7278:	\$865.86

MEMO:

PAY	Hours	Rate	Current	YTD	DEDUCTIONS	Current	YTD
Regular Pay	39.70	25.00	992.50	7,012.00			
Overtime Pay	0.55	37.50	20.63	180.40			
Sick Pay	-	25.00	0.00	600.00			
Holiday Pay	-	25.00	0.00	400.00			

TAXES	Current	YTD
Federal Income Tax	45.27	525.25
Social Security	62.82	507.93
Medicare	14.69	118.79
CA Income Tax	13.35	162.48
CA State Disability Ins	11.14	90.12

SUMMARY	Current	YTD
Total Pay	\$1,013.13	\$8,192.40
Taxes	\$147.27	\$1,404.57
Deductions	\$0.00	\$0.00

Net Pay \$865.86

Exhibit 3

7/22/24, 10:32 AMsecure.timesheets.com/default.cfm?page=HourlyPrePayrollReports&ReportUID=669e97bd319c3303cc48f1c3&PrintMode=true&AddPageBre...

PRESTERA EYE MEDICAL GROUP

Jul 07, 2024 - Jul 21, 2024

Report Generated July 22 2024 10:32 PDT
Grouped By User
Status Open,Paid,Archived
Signed Unsigned,Signed
Approved Alert,Unapproved,Approved
Time Classes 8 Time Classes
Users Briana Holley
Total Hours 48.44
Records With Alerts 0

Hours Summary			
Standard:	48.44	Holiday:	0
Unpayable/Salaried:	0	HOLIDAY:	0
Sick:	0	Requesttimeof:	0
Vacation:	0	Other2:	0

Legend

User Signed

Approved

\$ Paid

Split Paid

Archived

Pending Alert

Briana Holley - Back Office, Tech, Scribe

		\$	Date	In	Break	Out	TZ	Account Code	Time Class	Hours
			Jul 08, 2024	08:27 AM	10:34 AM	11:19 AM	PDT	Regular Time	Standard	2.87
			Jul 08, 2024	11:57 AM		04:39 PM	PDT	Regular Time	Standard	4.70
			Jul 10, 2024	08:35 AM	10:12 AM	11:46 AM	PDT	Regular Time	Standard	3.18
			Jul 10, 2024	12:24 PM	03:15 PM	05:19 PM	PDT	Regular Time	Standard	4.92
			Jul 12, 2024	08:23 AM		01:39 PM	PDT	Regular Time	Standard	5.27
			Jul 12, 2024	02:11 PM		05:23 PM	PDT	Regular Time	Standard	3.20
			Jul 15, 2024	08:51 AM	10:34 AM	11:40 AM	PDT	Regular Time	Standard	2.82
			Jul 15, 2024	12:16 PM	03:45 PM	05:31 PM	PDT	Regular Time	Standard	5.25
			Jul 17, 2024	08:31 AM	10:05 AM	11:01 AM	PDT	Regular Time	Standard	2.50
			Jul 17, 2024	11:39 AM	02:33 PM	05:15 PM	PDT	Regular Time	Standard	5.60
			Jul 19, 2024	08:29 AM	10:21 AM	11:46 AM	PDT	Regular Time	Standard	3.28
			Jul 19, 2024	12:22 PM	03:28 PM	05:13 PM	PDT	Regular Time	Standard	4.85
Totals										48.44

Briana Holley (Jul 22, 2024 13:25 PDT)
Employee Signature: Briana Holley Date
By signing above I acknowledge and certify that the information contained on this document is true and accurate.

Lucero S Rodriguez 07/22/2024
Supervisor Signature: Lucero Rodriguez Date Supervisor Signature Date
Charin Prestera

Tory Prestera MD INC
100 N Rancho Santa Fe Rd Ste 126
San Marcos CA 92069

Pay Stub Detail
PAY DATE: 07/25/2024
NET PAY: \$1,025.26

*Briana Holley
44845 Potestas Dr
Temecula CA 92592

EMPLOYER
Tory Prestera MD INC
100 N Rancho Santa Fe Rd Ste 126
San Marcos CA 92069

PAY PERIOD
Period Beginning 07/08/2024
Period Ending: 07/21/2024
Pay Date: 07/25/2024
Total Hours: 48.44

EMPLOYEE
*Briana Holley
44845 Potestas Dr
Temecula CA 92592

SS#: ...5097

BENEFITS	Accrued	Used	Available		
Sick	0.00	0.00	-24.00	NET PAY:	\$1,025.26
Vacation	0.00	0.00	-12.00	Acct#.....7278:	\$1,025.26

MEMO:

PAY	Hours	Rate	Current	YTD	DEDUCTIONS	Current	YTD
Regular Pay	47.57	25.00	1,189.25	16,624.00	Retirement Savings Deduction Plan	0.00	0.00
Overtime Pay	0.87	37.50	32.63	449.30			
Sick Pay	-	25.00	0.00	600.00			
Vacation Pay	-	25.00	0.00	300.00			
Holiday Pay	-	25.00	0.00	400.00			

TAXES	Current	YTD
Federal Income Tax	70.32	1,060.52
Social Security	75.75	1,139.14
Medicare	17.71	266.41
CA Income Tax	19.40	312.81
CA State Disability Ins	13.44	202.10

SUMMARY	Current	YTD
Total Pay	\$1,221.88	\$18,373.30
Taxes	\$196.62	\$2,980.98
Deductions	\$0.00	\$0.00

Net Pay \$1,025.26