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County of Alameda

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JEAN PAPPAS on behalf of all other
similarly situated aggrieved employees,

Plaintiff,

v.

AMN HEALTHCARE SERVICES, INC., and
DOES 1-50, inclusive,

Defendants.

Case No. **24CV072071**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004, SECTIONS 2698 ET
SEQ.

1 Plaintiff Jean Pappas brings this Labor Code Private Attorneys General Act of 2004
2 (“PAGA”) action against AMN Healthcare Services, Inc. (“AMN” or “Defendant”) in her
3 representative capacity on behalf of the State of California for all other similarly situated aggrieved
4 employees. Plaintiff makes the following allegations based upon personal knowledge as to her
5 own actions and upon information and belief as to all other matters.

6 **NATURE OF THE ACTION**

7 1. Travel nurses serve a valuable role in our nation’s healthcare system. Hospitals,
8 clinics, and other healthcare facilities rely on skilled travel employees to fill short-term nursing
9 employment gaps on a temporary basis. To fill these roles, healthcare facilities use intermediary
10 staffing agencies to employ the travelers, negotiate pay rates, and schedule assignments. Traveling
11 nurses have played an especially critical role since the start of the COVID-19 pandemic, as many
12 facilities experienced severe staffing shortages that required temporary assistance to continue
13 providing quality healthcare.

14 2. But a troubling practice has emerged. AMN is offering contracts to travel nurses
15 with a fixed-term assignment at an agreed-upon pay rate. After the nurse accepts the position and
16 starts the assignment, AMN makes a “take-it-or-leave-it” demand to accept less pay or be
17 terminated. Of course, most nurses have no choice but to continue working the assignment at the
18 lower rate because they have no reasonable alternatives for comparable employment: they have
19 already incurred travel expenses, secured short-term housing, and uprooted their lives to accept
20 the assignment. AMN is knowingly engaging in these “bait and switch” practices by inducing
21 travel nurses to travel to a location and then reducing their pay, to maintain the significant profit
22 margins AMN had become accustomed to during the COVID-19 pandemic.

23 3. On July 21, 2022, Plaintiff Pappas provided AMN and the California Labor and
24 Workforce Development Agency (LWDA) with the required notice of intent to bring a PAGA
25 action.¹ The requisite 65 days have passed, and LWDA has not provided notice that it intends to
26 pursue AMN for the violations alleged in the PAGA letter. Plaintiff now brings this PAGA action

27 ¹ See Ex. 1 (PAGA Letter).
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on behalf of the State of California and other current and former employees of AMN for engaging in “bait and switch” practices and failure to reimburse reasonable business expenses in violation of the Labor Code. Accordingly, Plaintiff seeks all penalties permitted under PAGA.

JURISDICTION, VENUE, AND PARTIES

4. AMN Healthcare Services, Inc. is a public company on the New York Stock Exchange (“NYSE”) and is a Delaware corporation with a dual-headquarters or principal place of business located at 12400 High Bluff Drive, Suite 100, San Diego, California 92130 and 8840 Cypress Waters Boulevard, Suite 300, Dallas, Texas 75019. AMN does business under numerous brands, including American Mobile, Nursefinders, NurseChoice, HealthSource Global Staffing, Onward Healthcare, O’Grady Peyton International, Med Travelers, Club Staffing, Staff Care, B.E. Smith, Merritt Hawkins, AMN Revenue Cycle Solutions, and AMN Language Services through its wholly owned subsidiaries: Advanced Medical Personnel Services, LLC, AMN Allied Services, LLC, AMN Healthcare, Inc., AMN Healthcare Language Services Inc., AMN Leadership Solutions, Inc., AMN Services, LLC, AMN Staffing Services, LLC, AMN Workforce Solutions, LLC, Avantas, LLC, B4Health, LLC, B. E. Smith Interim Services, LLC, B. E. Smith, LLC, HealthSource Global Staffing, Inc., Medefis, Inc., Merritt, Hawkins & Associates, LLC, Nursefinders, LLC, O’Grady-Peyton International (USA), Inc., ShiftWise, Inc., Silversheet Inc., Spectrum Insurance Company, Inc., Staff Care, Inc., Stratus Video Costa Rica, S.A., and Synzi, LLC. To the extent that any Aggrieved Employees received paychecks from, or were nominally employed by, any of AMN’s wholly owned subsidiaries, AMN was their true or joint employer. AMN and its wholly owned subsidiaries are not truly separate and distinct entities but are merely brands of one organization. The entities are integrated to such a degree that they are a single employer in that they exercised control over Plaintiff’s and Aggrieved Employees Claimant’s wages, hours, and working conditions, and they shared management, offices, human resources, payroll functions, and had common ownership and/or financial control. Thus, it is proper to treat AMN and any other wholly owned subsidiaries, brands or entities through which it employed travel nurses as one company, or joint employers, for the purposes of this PAGA action.

5. The true names of the persons or entities referred to herein as Defendants DOES 1-50 are unknown to Plaintiff, who therefore sues them under fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants identified as DOES 1-50 is legally responsible in some manner for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the complaint to substitute the true names of the fictitiously named defendants when their identities become known to Plaintiff. Together, all Defendants are referred to herein as “Defendants.”

6. Plaintiff Pappas brings this PAGA action in her representative capacity on behalf of the State of California and on behalf of all of AMN’s current and former non-exempt employees who were employed in California, traveled to California for employment with AMN, or traveled from within California to any place outside of California for employment with AMN, and who suffered one or more Labor Code violations enumerated herein (“Aggrieved Employees”) between July 21, 2021 and present (“PAGA Period”).

7. IWC Wage Order No. 4-2001 applies to the employment of Plaintiff and Aggrieved Employees with AMN, and no exemptions apply.

8. This Court has jurisdiction over this PAGA action because this is a civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the Court and the acts and omissions complained of took place in California.

9. Venue is proper here because the acts and omissions complained of in this action took place, in part, within Alameda County, and because AMN does business here. AMN staffs healthcare facilities in Alameda County, and all Defendants provide services throughout California.

STATEMENT OF FACTS

A. AMN's Bait-and-Switch Tactics and Improper Pay Rate Reductions

1 10. AMN claims that “People are at the heart of everything we do.”² In its 2022 public
2 filings with the United States Securities and Exchange Commission (“SEC”), AMN represented
3 that it is “the leader and innovator in total talent solutions for the healthcare sector in the United
4 States” and that it has “the nation’s largest network of quality healthcare professionals.”³ Touting
5 its “COVID-19 response in 2020 and 2021,” AMN asserted that “[t]hroughout the pandemic,
6 caring for the well-being of our team members and healthcare professionals has been a primary
7 focus. We are working hard every day to ensure that all of our team members and healthcare
8 professionals have the resources available to help them navigate the continued challenges and
9 stresses associated with the pandemic.”⁴ But these statements are inconsistent with AMN’s actions,
10 which are geared towards maximizing its profits no matter the impact on its own employees.

11 11. To fill temporary positions, healthcare facilities in need of temporary employment
12 offer staffing agencies like AMN a “bill rate,” which is a total amount they are willing to pay the
13 staffing agency for every hour worked by a traveling nurse. The staffing agency then deducts costs,
14 overhead, and profit margin from the bill rate and advertises the hourly rate it is willing to pay a
15 traveling nurse to accept the facility assignment.

16 12. AMN competes with other staffing agencies to contract with healthcare facilities to
17 staff open positions. As AMN notes in its public filings, “[t]he healthcare staffing and workforce
18 solutions industry is highly competitive.”⁵ For example, AMN contracts with Kaiser, which
19 comprised approximately 17% of AMN’s consolidated revenue in 2021.⁶ These relationships,
20 particularly those as significant as AMN’s with Kaiser, are critical to AMN’s business. As AMN

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22 ² <https://www.amnhealthcare.com/>.

23 ³ [https://www.sec.gov/ix?doc=/Archives/edgar/data/0001142750/000114275022000010/amn-](https://www.sec.gov/ix?doc=/Archives/edgar/data/0001142750/000114275022000010/amn-20211231.htm)
24 [20211231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/0001142750/000114275022000010/amn-20211231.htm) at 1.

25 ⁴ *Id.*

26 ⁵ *Id.* at 7.

27 ⁶ *Id.* at 10; *see also id.* at 6 (“No other client healthcare system or single client facility comprised
28 more than 5% of our consolidated revenue for the fiscal year ended December 31, 2021.”).

acknowledges, “If we were to lose Kaiser as a client or were unable to provide a significant amount of services to Kaiser, whether directly or as a subcontractor, such loss may have a material adverse effect on our revenue, results of operations and cash flows.”⁷ Indeed, AMN’s “business depends upon our ability to maintain our existing contracts and secure new, profitable contracts.”⁸

13. To win contracts and attract nurses away from competitors to fill these roles, AMN advertises attractive pay packages for assignments across the country intended to entice registered nurses to sign on as an employee of AMN and accept a fixed-term assignment: “Our process to attract and retain healthcare professionals . . . depends on . . . creating competitive compensation packages. . . . The attractive compensation package that we provide our temporary healthcare professionals includes a competitive wage, professional development opportunities, professional liability insurance, 401(k) plan and health insurance.”⁹

14. AMN hires a team of “recruiters” whose job is to sell potential nurses on accepting a travel position and then serving as the primary point of contact between the employee and agency. AMN “recruit[s] our healthcare professionals, depending on the particular service line, under the following brands: American Mobile, Nursefinders, NurseChoice, HealthSource Global Staffing, Onward Healthcare, O’Grady Peyton International, Med Travelers, Club Staffing, Staff Care, B.E. Smith, Merritt Hawkins, AMN Revenue Cycle Solutions and AMN Language Services. Our multi-brand recruiting strategy is supported by innovative and effective marketing programs that focus on lead management, including our digital presence on websites, social media, and mobile applications. Word-of-mouth referrals from the thousands of current and former healthcare professionals we have placed enhance our effectiveness at reaching healthcare professionals.”¹⁰

⁷ *Id.* at 10.

⁸ *Id.* at 11.

⁹ *Id.* at 6.

¹⁰ *Id.*

1 15. AMN utilizes form employment agreements (“Professional Services Agreements”)
2 for its traveling employees that include the following material terms: the facility name and address,
3 the start and end date for the assignment, the traveler’s hourly pay rate, including on-call and
4 charge adjustments, scheduled hours per week, and the traveler’s daily meals, incidentals, and
5 housing stipends.

6 16. Labor Code § 970 prohibits employers from influencing or persuading an employee
7 to relocate from one place to another for work, by means of knowingly false misrepresentations
8 regarding, among other things, the kind, character, or existence of such work; the length of time
9 such work will last; or the compensation therefor.

10 17. AMN knows that in order to accept these assignments, many nurses must give up
11 their current employment, move to the location of the facility (oftentimes out-of-state), secure
12 short-term housing, and incur other travel and housing related costs at their own expense.

13 18. AMN also knows that the process of signing on as an AMN employee and accepting
14 a new travel assignment can take weeks or months of preparation. Among other things, it may
15 require filling out forms, securing licensing, passing a physical, getting vaccinations, taking drug
16 tests, satisfying continuing education requirements, and completing training modules.

17 19. AMN routinely makes representations to travel nurses like Plaintiff and Aggrieved
18 Employees concerning the kind or character of the work, the length of time the work would last,
19 or the compensation therefor.

20 20. AMN’s representations of this kind were false, in whole or in part, and AMN knew
21 when the representations were made that they were false and intended that Plaintiff and Aggrieved
22 Employees would rely on the false representations in accepting assignments and, among other
23 things, relocating for the assignments.

24 21. Plaintiff and Aggrieved Employees relied on AMN’s false representations in
25 accepting the assignments and, among other things, relocating for the purpose of working for
26 AMN.

22. But AMN knows that its agreements are premised on false promises and that it does not intend to pay its travel employees the hourly rate AMN agreed to pay. AMN bets on the fact that after a nurse has spent weeks or months procuring an assignment—and taking all the steps necessary to accept that assignment, such as procuring housing, moving, and leaving a current employment—it will not be economically feasible for them to walk away from the assignment after AMN unilaterally cuts their pay.

23. Time and again AMN employees report a similar story: after an employee is committed to an assignment—for example the employee has completed pre-job training or already moved across the country and started the assignment—an AMN recruiter sends the employee a communication titled “adjusted rate” that asserts that the facility (*e.g.*, Kaiser), not AMN, unexpectedly adjusted its rates due to “census normalization” and “cost savings” in a manner that will require AMN to decrease the employee’s pay and/or hours. This message reads as follows:

Hey [insert name], I have some news to share that is not fun to deliver. But keep in mind, this is still amazing pay and a great result rather than having a cancel as we move out of a pandemic market. Your facility [insert name] has made the decision to move travelers from [original rate/hours] to [reduced rate/hours] effective [insert date]. This decision was driven by census normalization and cost savings measures to keep the majority of travelers on assignment rather than cancels. Facility has set a deadline for [insert date] on final decision. If you do not want to proceed on the new pay package[,] this will result in a cancel, effective [insert date].

24. It is likely that hundreds or thousands of AMN employees have received this communication or ones like it. In almost every instance, AMN blames the rate decrease on the *facility* supposedly changing its bill rate (*i.e.*, the amount AMN is being paid hourly for the employee’s work) in response to a lower census.

25. Even if a facility did change the bill rate, however, nothing in AMN’s contract permits it to pass along those decreases onto their unsuspecting employees. After all, *AMN and the employee* agreed upon a set rate of pay that was not in any way dependent on the actions of a third party or AMN making a pre-determined margin.

1 26. In instances where AMN's employees refuse to sign a "revised" employment
2 agreement decreasing their pay, AMN simply proceeds with unilateral pay reductions. Hundreds
3 if not thousands of traveling nurses and other healthcare workers employed by AMN have reported
4 experiencing similar "take-it-or-leave it" pay cuts in the middle of their contracts.

5 27. AMN's pervasive fraud also enables it to manipulate competition in the healthcare
6 staffing marketplace. For example, when AMN competes with other staffing agencies to fill a
7 travel position, it advertises higher pay packages that are more likely to entice travel employees,
8 knowing that it does not intend to pay that amount after the employees begin the assignment.

9 28. In other instances, AMN positions itself to be the exclusive staffing agency for
10 hospitals and other healthcare providers by marketing its ability to successfully fill positions of
11 need at a lower cost, a value proposition that hinges on its "bait-and-switch" business model. In
12 certain parts of the country, like California, AMN's reach is becoming so great (through use of
13 exclusive contracts and other means) that if a travel employee refuses to complete an assignment
14 at a reduced rate, the employee will be blacklisted from working at facilities in the region.

15 29. Nurses employed by AMN across the country report feeling demoralized and taken
16 advantage of by the company's fraudulent pay practices but fear blacklisting and potential
17 retaliation if they do not complete their assignment.

18 30. As a result of AMN's misrepresentations, Plaintiff and Aggrieved Employees were
19 harmed, and their reliance on AMN's misrepresentations was a substantial factor in causing such
20 harm.

21 **Plaintiff Jean Pappas**

22 31. On or before March 3, 2022, AMN made an employment offer to Plaintiff Jean
23 Pappas which included a fixed-term travel assignment in San Leandro, California to fulfill Kaiser's
24 purported needs.

25 32. At the time, Plaintiff Pappas was working for another travel nurse staffing agency
26 on assignment in Santa Rosa, California and had been offered a 13-week extension to continue
27 working there for a pay package totaling approximately \$4,500 per week.
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1 33. AMN’s employment agreement offered her a position at Kaiser – San Leandro –
2 Critical Need in San Leandro, California from April 12, 2022, until July 7, 2022, with the following
3 compensation package: a base hourly pay rate of \$100 with a minimum of 48 scheduled hours per
4 week; an overtime hourly pay rate of \$150; a holiday hourly pay rate of \$150; an hourly call-back
5 rate of \$150; a daily meals and incidentals stipend of \$50; and a daily housing stipend of \$164.38,
6 resulting in a weekly combined stipend of \$1,500.66. AMN’s offer amounted to a per-week pay
7 package of more than \$7,000—substantially more than Plaintiff Pappas’ other offer.

8 34. In reliance on the foregoing material terms, Plaintiff Pappas accepted AMN’s offer
9 of employment by executing AMN’s form employment agreement on March 21, 2022.

10 35. To comply with her duties under the agreement, Plaintiff Pappas incurred expenses
11 continuing to travel away from her home in Florida to San Leandro, California, secured short-term
12 living arrangements, and forwent other employment opportunities.

13 36. On April 13, 2022, the second day of her agreed-upon 13-week assignment, AMN
14 made Jean Pappas a “take-it-or-leave-it” demand to accept less pay or be terminated. Specifically,
15 AMN demanded that she accept a 35% reduction of her base hourly pay rate from \$100 to \$65 and
16 corresponding cuts in her OT, holiday, and call-back hourly pay rates from \$150 to \$97.50, as well
17 as a reduction in her guaranteed hours from 48 to 36 hours per week, in order to complete the
18 previously agreed-upon assignment. This reduction decreased Plaintiff Pappas’ weekly pay
19 package below \$4,500—less than she was making with the agency she left for AMN.

20 37. AMN blamed the pay reduction on the hospital. AMN texted Plaintiff Pappas
21 indicating that the hospital determined the pay reduction, based on what its budget allows for low
22 census and rate normalization, and that AMN had no say in what was offered:

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Unfortunately I don't have a say in what was offered. That was determined by the facility as what they could afford. They would love to keep you and all the travelers there, but this is what the budget allows for with how census has been changing and rates normalizing.

9 38. Plaintiff Pappas refused to sign the revised agreement. AMN unilaterally cut her
10 pay rate anyway. Having already spent substantial time and money securing the assignment and
11 taking the steps necessary to ensure compliance with her obligations under the agreement, and
12 unable to find comparable employment in such a short period of time, Plaintiff Pappas had no real
13 choice but to continue working the assignment even though AMN was paying her less than her
14 contracted-for rate.

15 39. Plaintiff Pappas completed her assignment in accordance with her duties, until she
16 was forced to leave her assignment as a result of the stress and anxiety associated with the bait-
17 and-switch. As a result, Plaintiff Pappas suffered monetary losses. At a minimum, the difference
18 between the value of the original agreement and the unilateral pay reduction was more than
19 \$30,000.

20 40. As set forth above, Plaintiff and Aggrieved Employees relied on the material terms
21 of their agreements including: the fixed assignment term, the payment package, and the guaranteed
22 hours or days in accepting their offers. They believed the assignment was worth foregoing other
23 employment, relocating, and incurring the associated professional and personal costs of accepting
24 the travel assignment. In addition, they relied on the fact the foregoing material terms could not be
25 changed without additional consideration and the reasonable expectation that AMN would act in
26 good faith and fair dealing and honor its promises or representations. Plaintiff and Aggrieved
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1 Employees would not have accepted the agreement had they known that AMN would violate the
2 terms and spirit of the agreement.

3 41. By making the take-it-or-leave-it demands described above, after Plaintiff and
4 Aggrieved Employees relied on AMN's representations and undertook obligations under their
5 agreements, AMN breached its contracts with Plaintiff and Aggrieved Employees—specifically
6 the promises of employment at a specified rate of pay for a fixed-term assignment. AMN made
7 this take-it-or-leave-it-demand in breach of the express terms of the contracts and implied duty of
8 good faith and fair dealing.

9 42. There is no legal justification for AMN's conduct. Even if AMN's client no longer
10 needed as much staff or decided to reduce the bill rate, for example, nothing in the terms of the
11 form agreement authorizes AMN to unilaterally adjust pay rates to account for new circumstances,
12 whether foreseeable or not.

13 43. The "revised" agreements that Plaintiff and Aggrieved Employees were requested
14 or coerced to sign are not enforceable because an effective contract modification or accord requires
15 the exchange of new consideration. As alleged herein, there was no exchange of new consideration
16 because Plaintiff and Aggrieved Employees were compelled to undertake the same obligations for
17 less pay. Consequently, AMN cannot relieve itself of its contractual obligations under one contract
18 by coercing acceptance of a second contract with less favorable terms.

19 **B. AMN's Other Labor Code Violations**

20 44. Labor Code § 204 establishes the fundamental right of all employees in the State
21 of California to be paid all wages due in a timely fashion for their work. And under Labor Code §
22 201 (discharge or lay-off) and/or § 202 (resignation), Plaintiff and Aggrieved Employees who are
23 former AMN employees are entitled to timely payment of all wages earned and unpaid,
24 immediately upon the conclusion of their contracts (discharge), termination of their contracts (lay-
25 off), or within 72 hours of notice (resignation).

26 45. AMN's failure to pay Plaintiff and Aggrieved Employees the contracted-for wage
27 means that AMN also fails to make timely payment of the wages earned on regular paydays, in
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1 violation of Labor Code § 204, and fails to make timely payment of the wages earned when
2 Plaintiff and Aggrieved Employees stop working for AMN due to discharge, layoff or resignation,
3 in violation of Labor Code §§ 201 and 202.

4 46. AMN willfully refused to pay Plaintiff and Aggrieved Employees all wages earned
5 and unpaid at the time of their termination/resignation or within 72 hours thereafter in violation of
6 its obligations under Labor Code §§ 201 and 202 and continues to refuse to pay Plaintiff and
7 Aggrieved Employees all wages earned, including overtime compensation.

8 47. In committing such violations, AMN has acted neither in good faith nor with
9 reasonable grounds to believe that its actions and omissions were not a violation of California law.
10 AMN's unlawful conduct was willful because, among other reasons described herein, AMN
11 purposefully and knowingly reduced the contracted-for pay after inducing Plaintiff and Aggrieved
12 Employees to travel to, from, or within California as a travel nurse for AMN. AMN's
13 compensation system clearly violates the California Labor Code such that any belief by AMN that
14 wages were not owed to Plaintiff and Aggrieved Employees would be objectively unreasonable
15 and in bad faith. Despite the ability to make such payment, AMN maintained customs, policies,
16 practices, procedures, and routines incompatible with the requirements of the Labor Code.

17 48. AMN has also required Plaintiff and Aggrieved Employees to cover – out of their
18 own pockets – certain expenses flowing directly from their duties as travel nurses. For instance,
19 Plaintiff and Aggrieved Employees were required to pay out-of-pocket for lodging, traveling,
20 mileage, etc. Pursuant to Labor Code § 2802, employers must indemnify their employees for “all
21 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
22 of his or her duties.” AMN did not do so, and is therefore liable for civil penalties pursuant to
23 Labor Code § 2698 et seq.

24 49. In addition, pursuant to Labor Code § 2800, “[a]n employer shall in all cases
25 indemnify his employee for losses caused by the employer's want of ordinary care.” AMN here
26 failed to use ordinary care in, inter alia, breaching material terms in Plaintiff's and other Aggrieved
27 Employees' employment agreements, failing to exercise good faith and fair dealing pursuant to a
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1 contractual agreement, and engaging in negligent misrepresentation. These failures resulted in
2 losses to Plaintiff and Aggrieved Employees, which AMN has not indemnified. AMN is therefore
3 liable for civil penalties pursuant to Labor Code § 2698 et seq.

4 **FIRST CAUSE OF ACTION:**

5 **ENFORCEMENT OF THE CALIFORNIA LABOR CODE**

6 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

7 **By Plaintiff Pappas on Behalf of the State of California Against AMN**

8 50. Plaintiff hereby repeats, reiterates, and incorporates by reference each of the
9 foregoing allegations with the same force and effect as if set forth herein.

10 51. Under Labor Code § 2699(a), any provision of the Labor Code “that provides for a
11 civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
12 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of
13 this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
14 employee on behalf of himself or herself and other current or former employees pursuant to the
15 procedures specified in 2699.3.”

16 52. At all relevant times, Plaintiff and Aggrieved Employees are aggrieved employees
17 within the meaning of Labor Code § 2699(c) because they were employed by AMN and suffered
18 one or more of the alleged Labor Code violations committed by AMN.

19 53. Plaintiff brings this PAGA action on behalf of the State of California with respect
20 to all Aggrieved Employees employed by AMN during the PAGA Period.

21 54. This action involves allegations of violations of provisions of the Labor Code that
22 provide for a civil penalty to be assessed and collected by the LWDA.

23 55. Under Cal. Lab. Code § 2699.3, Plaintiff gave written notice by online submission
24 to the LWDA on July 21, 2022, and by certified mail to AMN of the specific provisions of the
25 Labor Code alleged to have been violated, including the facts and theories to support the alleged
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1 violations,¹¹ and the LWDA did not provide notice to Plaintiff that it intends to investigate the
2 alleged violations.

3 56. Under Cal. Lab. Code §§ 2698-2699.5, Plaintiff, as representative of the State of
4 California and on behalf all other similarly Aggrieved Employees, seeks to recover civil penalties,
5 including but not limited to penalties under §§ 210, 972, and 2699 for AMN's violation of the
6 following Labor Code sections:

- 7 a. Unlawful solicitation of employees by misrepresentation in violation of Cal.
8 Lab. Code § 970;
- 9 b. Unlawful failure to make timely payment of all wages in violation of Cal.
10 Lab. Code §§ 201, 202, and/or 204;
- 11 c. Unlawful failure to indemnify employees for expenses and losses in
12 violation of Cal. Lab. Code § 2802; and
- 13 d. Unlawful failure to indemnify employees for want of ordinary care in
14 violation of Cal. Lab. Code § 2800.

15 57. Cal. Lab. Code § 2699(f)(2) provides a general penalty “[f]or all provisions of this
16 code except those for which a civil penalty is specifically provided, there is established a civil
17 penalty for a violation of these provisions” of “one hundred dollars (\$100) for each aggrieved
18 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
19 employee per pay period for each subsequent violation.”

20 58. Cal. Lab. Code § 210(a)(1)-(2) provides for § 204 violations, that “[i]n addition to,
21 and entirely independent and apart from, any other penalty provided in this article, every person
22 who fails to pay the wages of each employee . . . shall be subject to a penalty as follows: (1) For
23 any initial violation, one hundred dollars (\$100) for each failure to pay each employee[; and] (2)
24 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
25 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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28 ¹¹ See Ex. 1 (PAGA Notice).

59. Plaintiff and Aggrieved Employees are entitled to an award of costs and reasonable attorney's fees under PAGA and additional relief as described herein and permitted by law.

REQUEST FOR RELIEF

Plaintiff, on behalf of all others similarly situated, respectfully requests that the Court enter judgment in their favor and against AMN as follows:

A. That the Court award Aggrieved Employees and the State of California PAGA penalties to the extent permitted by law and in an amount to be determined at trial;

B. That the Court award to Plaintiff and her counsel the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses as provided by law;

C. That the Court award pre-and post-judgment interest at the maximum legal rate;

D. That the Court grant all such other relief as it deems just and proper.

Dated: April 16, 2024

Respectfully Submitted,

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By: /s/ Eve H. Cervantez

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EXHIBIT 1



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July 21, 2022

VIA ELECTRONIC SUBMISSION

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

VIA CERTIFIED MAIL

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

Re: PAGA Notice Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator,

The law firms of Hartley LLP and Stueve Siegel Hanson LLP represent Jean Pappas, who has worked within California as a travel nurse for AMN Healthcare Services, Inc. ("Employer"). Pursuant to California Labor Code § 2699.3(a) and (c), this letter shall serve as notice of Employer's violations of the California Labor Code and related regulations arising out of Employer's unlawful conduct with respect to its employment of Ms. Pappas and other aggrieved employees. These violations give rise to civil penalties under California Labor Code § 2698, *et seq.* The Labor and Workforce Development Agency ("LWDA") may pursue legal redress, including civil and statutory penalties, against Employer for its violations of California's labor laws. If the LWDA elects not to pursue its own action, Ms. Pappas, on behalf of herself and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 ("PAGA"). Ms. Pappas respectfully requests that the LWDA notify undersigned counsel as to whether it intends to investigate Employer's alleged violations so that she can include the LWDA's findings in her action should the Agency decline to proceed.

FACTS, THEORIES, AND ALLEGED VIOLATIONS

Employer is a travel nursing agency, whose business involves placing nurses on short-term assignments at various work sites throughout the country. Hospitals and other healthcare facilities use travel nurses as a remedy to staff shortages, which have been severely exacerbated by the COVID-19 pandemic and its aftermath. In that way, travel nurses have played a vital role in keeping the healthcare system afloat. But traveling requires significant sacrifices from the

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nurses themselves, including leaving existing employment, traveling hundreds or thousands of miles away from their homes to an unfamiliar location and work environment, securing short-term housing, and bearing significant moving-related expenses.

To induce nurses to take on these roles, staffing agencies like Employer offer guaranteed hourly rates, along with minimum hours during a specified date range. Employer offered Ms. Pappas a contract providing that she would be paid \$95.00 per hour for up to 48 hours per week at Kaiser Permanente San Leandro Medical Center in San Leandro, California. In reliance on Employer's contractual promises, Ms. Pappas forwent other employment opportunities, traveled from another assignment to San Leandro, California, largely at her own expense, and secured short-term living arrangements for the duration of her assignment. But Employer had no intention of honoring its commitment. Shortly after moving and starting the assignment, Employer informed Ms. Pappas that it intended to reduce her pay rate from \$95.00 per hour to \$65.00 per hour and reduce her hours from 48 to 36 per week. Ms. Pappas had little choice but to continue the assignment at the lower rate.

Employer knew that, once Ms. Pappas had moved away from her home and systems of support, it held all the cards in forcing a pay rate reduction in violation of its contractual obligations. This sort of fraudulent inducement is endemic in the travel nursing industry and serves as a means for companies like Employer to reduce labor costs and increase their own profits. Upon information and belief, Employer has subjected thousands of other aggrieved employees to similar misconduct.

Unlawful Solicitation of Employees By Misrepresentation in Violation of California Labor Code § 970

Under California Labor Code § 970, it is unlawful for an employer to “influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations” concerning . . . “[t]he length of time such work will last, or the compensation therefor.” As described above, Employer made knowingly false representations concerning the compensation for nursing assignments to Ms. Pappas and other aggrieved employees, thereby inducing them to travel for work. This violation of California Labor Code § 970 gives rise to civil penalties pursuant to California Labor Code § 2698, *et seq.*

Unlawful Failure to Make Timely Payment of All Wages Due Upon Termination in Violation of California Labor Code §§ 201, 202, 203, and/or 204

Employer's failure to pay Ms. Pappas and other aggrieved employees for every hour worked at the agreed-upon hourly rate stated in their written employment contracts resulted in Employer failing to make timely payment of the wages aggrieved employees earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages aggrieved

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employees earned when they stopped working for Employer due to discharge, layoff or resignation, in violation of California Labor Code §§ 201, 202, and/or 203. These violations give rise to civil penalties pursuant to California Labor Code § 2698, *et seq.*

**Failure to Indemnify Employees for Expenses and Losses
in Violation of California Labor Code § 2802**

Employer required Ms. Pappas and other aggrieved employees to pay Employer's business expenses, each of which flow directly from the nurses' work on behalf of the Employer and which inure to the benefit of the Employer. For instance, Ms. Pappas was required to pay more than \$900 in travel expenses, which was not reimbursed by Employer. Pursuant to California Labor Code § 2802, employers must indemnify their employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

**Failure to Indemnify Employees for Want of Ordinary Care
in Violation of California Labor Code § 2800**

Pursuant to Labor Code § 2800, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care." As noted above, Ms. Pappas asserts that Employer's failure to honor the contract was purposeful and fraudulent. However, in the alternative, it was at least negligent. For example, Employer failed to use ordinary care in, *inter alia*, omitting material terms in proffering employment agreements, failing to exercise good faith and fair dealing pursuant to a contractual agreement, and engaging in negligent misrepresentation. These failures resulted in losses to Ms. Pappas and other aggrieved employees, which Employer has not indemnified. Employer is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

Should the LWDA decline to proceed in this matter, Ms. Pappas intends to seek all civil penalties, interest, and attorney's fees permitted under the California Labor Code for these violations. Should you require anything further or have additional questions, please do not hesitate to contact us.

Very truly yours,



Jason S. Hartley