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Heather M. Duffer

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Dareen Nassman

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

DAREEN NASSMAN, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

CEP AMERICA, LLC; CEP AMERICA-
CALIFORNIA; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

CIV SB 2301350

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)



1 Plaintiff DAREEN NASSMAN, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants CEP AMERICA, LLC; CEP
4 AMERICA-CALIFORNIA; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging
5 as follows:

6 **INTRODUCTION**

7 1. Defendants employed medical professionals at medical facilities throughout California
8 and subjected them to an unlawful “Agreement for On-Duty Meal Period” and second meal period
9 waiver. These policies deprived Plaintiff and aggrieved employees of meal periods and meal period
10 premiums when those meal periods were not provided. Equally, Defendants failed to provide rest
11 periods or rest period premiums to the aggrieved employees.

12 2. Plaintiff brings this action as a representative under the Private Attorneys General Act
13 to recover the civil penalties and correct the unlawful practices occurring at Defendants’ medical
14 facilities throughout the state. Plaintiff further seeks penalties for derivative Labor Code violations,
15 as addressed in this Complaint.

16 **JURISDICTION & VENUE**

17 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
18 California Constitution as the causes of action are premised upon violations of California law.

19 4. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
20 the Superior Court.

21 5. This Court has jurisdiction over Defendants because, upon information and belief,
22 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
23 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
24 over them by the California courts consistent with traditional notions of fair play and substantial
25 justice.

26 6. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
27 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
28 of the alleged violations in this county.

PARTIES

A. Plaintiff Dareen Nassman

7. Plaintiff Nassman is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2014 to July 2022. Plaintiff worked as a Physician Assistant.

8. Plaintiff worked for Defendants at Valley Medical Center, Inter-Community Hospital, Queen of the Valley Medical Center, and Foothill Presbyterian Hospital.

9. Other aggrieved employees worked at these and other of Defendants' locations throughout the State of California, including in San Bernardino County.

10. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

B. Defendants CEP America

11. Defendant CEP America, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant CEP America-California is a California general partnership that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendants do business as CEP America and Vituity.

14. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

18. Defendants required Plaintiff and other aggrieved employees sign an “Agreement for On-Duty Meal Period,” which is attached hereto as Exhibit 2. On the same document, Defendants included a “Waiver of 2nd Meal Period.” This On-Duty Meal Agreement and the corresponding waiver of the second meal period violate California law and subject Defendants to civil penalties for the underlying Labor Code violation.

19. The nature of the work performed by non-exempt staff did not prevent them from being relieved of duty. Defendants instead used the On Duty Meal Agreement and waiver to avoid the obligation to provide uninterrupted, duty free meal periods of at least 30 minutes in length for shifts exceeding 5 hours and second meal periods for those shifts exceeding 10 hours. Instead, Defendants simply paid Plaintiff and other aggrieved employees for the full 8 or 12 hour days, as applicable, without a first and/or second meal period and without payment of a meal period premium equal to one hour at their respective regular rate of compensation.

20. Furthermore, although the On Duty Meal Agreement is unlawful because it does not meet the requirements necessary for on-duty meal periods under California law, the policy and practice of Defendants remains unlawful and in violation of California law because no “on-duty” meal period was actually scheduled or provided. *L’Chaim House, Inc. v. Department of Industrial Relations* (2019) 38 Cal. App. 5th 141, 146-47 (“the statute’s plain terms required [defendant] to provide ‘a meal

period’—whether off duty or on duty—of at least 30 minutes any time an employee worked at least five hours”). Indeed, no “on duty” or proper “off duty” meal period was provided.

21. Additionally, the second meal period waiver is equally unlawful and results in an additional violation of the Labor Code. Because second meal periods can only be waived under California law by mutual consent of the employer and employee *if the first meal period is not waived*, the waiver results in a violation, as aggrieved employees under the On Duty Meal Agreement waived their first meals, did not receive them (whether on duty or off duty), and therefore could not subsequently waive the second meal period under California law.

22. The time records maintained by Defendants for the aggrieved employees confirm the violations.

23. Moreover, due to the same staffing defects, hospital work demands, and company policy and practice, Defendants committed the same violations with respect to the 10-minute rest periods. When Plaintiff and other aggrieved employees worked through their 10-minute rest periods, they did not receive a rest period premium equal to one hour at their regular rate of compensation, in violation of California law.

24. These failures to pay premiums on time each pay period and upon separation of employment for terminated employees resulted in derivative violations of California Labor Code § 204 and 201 through 203, as detailed in the accompanying PAGA notice.

25. Finally, because Defendants failed to pay all premiums owed, the wage statements issued to Plaintiff and the aggrieved employees stated the incorrect gross and net wages earned in violation of Labor Code § 226(a)(1) and (5), respectively, and further violated Labor Code § 226(a)(9) by failing to state those premiums earned and the hourly rate for each premium.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

26. All outside paragraphs of this Complaint are incorporated into this section.

1 27. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
2 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
3 codified as Labor Code section 2698 *et seq.*:

4 a. All current and former non-exempt employees who worked for Defendants in
5 California at any time from one year prior to the postmark date of the initial
6 PAGA notice through date of trial who signed any version or rendition of the
7 “Agreement for On-Duty Meal Period” policy.

8 28. Plaintiff reserves the right to amend, supplement, or add to this description of the
9 aggrieved employees, according to proof.

10 29. The State of California, via the Labor and Workforce Development Agency
11 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
12 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
13 files suit is always the real party in interest.”])

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

20 31. Labor Code section 2699(f) provides: “For all provisions of this code except those for
21 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
22 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
23 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
24 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
25 each subsequent violation.”

26 32. Any allegations regarding violations of the IWC Wage Orders are enforceable as
27 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

33. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

34. On or about **October 27, 2022**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

35. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

36. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

37. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

38. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

39. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- b. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

- d. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- e. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- f. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

40. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For this action to be maintained as a representative action under the PAGA;
- e. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- f. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- g. For restitution and injunctive relief;
- h. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 2699, and Code of Civil Procedure section 1021.5; and
- i. For such other relief the Court deems just and proper.

Dated: January 4, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Dareen Nassman

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

October 27, 2022

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

CEP America, LLC
dba Vituity
2100 Powell Street, Suite 400
Emeryville, CA 94608

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

CEP America-California
dba Vituity
2100 Powell Street, Suite 400
Emeryville, CA 94608

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DAREEN NASSMAN** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

CEP AMERICA, LLC;
CEP AMERICA-CALIFORNIA
dba Vituity

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows

an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Physician Assistant from about October 2014 to July 2022. She worked at Inter-Community Hospital, Queen of the Valley Medical Center and Foothill Presbyterian Hospital. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt medical staff employees who signed any version or rendition of the Vituity “Agreement for On-Duty Meal Period” document and who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Here, Defendants required Plaintiff and other aggrieved employees sign an "Agreement for On-Duty Meal Period." Furthermore, on the same document, Defendants included a provision called "Waiver of 2nd Meal Period." The Agreement for On-Duty Meal Period and the second meal period waiver contained thereon violate California law.

First, the nature of the work performed by nonexempt medical staff did not prevent them from being relieved of all duty. The medical staff were regularly scheduled with other employees who, had they been instructed to do so, could have afforded the ability to take compliant meal periods. Furthermore, Defendants did not schedule meal periods or take

adequate staffing precautions to ensure meal periods were provided, authorized, and taken. Instead, Defendants relied on an on duty meal period agreement to avoid the obligation to provide meal periods or premiums when those breaks were late, short, interrupted or missed. At the core of the practice, Plaintiff and other aggrieved employees worked long days without compliant lunch breaks. Defendants failed to maintain a record of meal periods for Plaintiff and other aggrieved employees, and instead simply paid Plaintiff and other aggrieved employees for full 8 or 12 hour days, as examples, without first or second lunch breaks and without premium payments.

Moreover, Defendants' Agreement for On-Duty Meal Period is facially non-compliant because it does not in fact provide an on-duty meal period at all—it simply calls for aggrieved employees to “voluntarily agree to work during my scheduled meal period.” As discussed, meal periods were not scheduled. Additionally, on-duty meal periods were not provided. Nor were any purported working breaks scheduled for at least 30 minutes in length. *L'Chaim House, Inc. v. Department of Industrial Relations* (2019) 38 Cal. App. 5th 141, 146-47 (“the statute's plain terms required [defendant] to provide ‘a meal period’—whether off duty or on duty—of at least 30 minutes any time an employee worked at least five hours”). Aggrieved employees worked through their first and second meal periods, and were paid for it, but were not paid a meal period premium.

Second, the second meal period waiver is invalid. Under California law, “the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” *See* Labor Code § 512(a). However, Defendants by virtue of the same agreement call for Plaintiff and other aggrieved employees to effectively waive their first meal period. Therefore, on shifts of 10 hours or more, Defendants' second meal period waiver results in a separate and distinct labor code violation, to the extent meal period premiums were not duly paid.

The time records provided and maintained by Defendants confirm Plaintiff did not receive meal periods on shifts exceeding five or six hours per day, or second duty-free meal periods on workdays exceeding ten hours per day. Defendants did not utilize valid meal period waivers for the aggrieved employees. Defendants did not pay meal period premiums. Defendants are liable for the corresponding civil penalties.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Indeed, due to the same work demands alleged with respect to the meal period practices, Defendants committed the same violation with respect to rest periods. By virtue of Defendants' staffing, scheduling and work demand practices, Plaintiff and other aggrieved employees were not authorized or permitted to take 10 minutes of uninterrupted, duty free rest each four hour period worked (or major fraction). Plaintiff alleges Defendants failed to pay rest period premiums as a matter of practice. As a result, Defendants are liable for the corresponding civil penalties.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor

within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Specifically, Defendants owed meal and rest period premiums to aggrieved employees like Plaintiff but failed to provide them each pay period. As a result, those wages were untimely and Defendants are liable for the associated civil penalties.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Specifically, Defendants owed meal and rest period premiums to aggrieved employees like Plaintiff but failed to provide them. As a result, those wages were not paid upon separation of employment and Defendants are liable for the associated civil penalties.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned meal and rest period premiums that were not paid, resulting in an inaccurate reflection and recording of “gross wages earned” and “net wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all meal and rest period premiums earned by and owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Dareen Nassman

CEP America, LLC / CEP America-California (dba Vituity)

Kim Huerta

kim.huerta@vituity.com

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EXHIBIT 2
On Duty Meal Period Agreement



Agreement for On-Duty Meal Period

I and my Company agree that the nature of my work may prevent me from being relieved of all duties during my meal period. In accordance with the requirements of state law, I understand and hereby voluntarily agree to work during my scheduled meal period. I understand and agree that:

- 1) I will be paid for all working time
- 2) My Company or I may revoke this "Agreement" at any time by providing written notice of the decision to do so. This "Agreement" will remain in effect until I exercise, or my Company exercises, the option to revoke it.

I acknowledge that I have read this agreement, understand it, and agree to its provisions.

Dareen Nassman

Printed Name

DocuSigned by:

Dareen Nassman

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Signature

Waiver of 2nd Meal Period

This will certify that I may be scheduled to work more than 10 hours in a day and wish to waive one of the two meal periods to which I would otherwise be entitled to receive under state law on those days in which I am scheduled to work more than 10 hours. In accordance with the requirements of state law, I understand and hereby voluntarily agree to waive the second meal period to which I would otherwise be entitled for each day of work that I am scheduled to work more than 10 hours. I also understand and further agree that:

- 1) I will be paid for all working time.
- 2) I cannot waive the second meal period on any day in which I have already waived my first

meal period.

- 3) My Company or I may revoke this "Second Meal Period Waiver" at any time by providing

written notice of the decision to do so. This waiver will remain in effect until I exercise, or my Company exercises, the option to revoke it.

I acknowledge that I have read this waiver, understand it, and voluntarily agree to its provisions.

Dareen Nassman

Printed Name

DocuSigned by:

Dareen Nassman

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Signature