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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/06/2023 at 10:28:48 AM

Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

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

MARIA GALECIO-CRUZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHERN CALIFORNIA SPECIALTY
CARE, LLC and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00009287-CU-OE-CTL

CLASS ACTION

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Unfair Competition
9. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff MARIA GALECIO-CRUZ, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this CLASS
3 AND REPRESENTATIVE ACTION COMPLAINT against Defendants SOUTHERN CALIFORNIA
4 SPECIALTY CARE, LLC and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. This is a class action and representative brought under California Code of Civil
8 Procedure § 382 for Defendants’ violations of the California Labor Code and Business and Professions
9 Code.

10 2. This lawsuit concerns the Kindred Hospital locations within California.

11 **JURISDICTION & VENUE**

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

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

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

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

24 **PARTIES**

25 **A. Plaintiff Maria Galecio-Cruz**

26 7. Plaintiff Galecio-Cruz is an individual over 18 years of age who worked for Defendants
27 in California from about March 14, 2022 to August 31, 2022. Plaintiff worked as a Case Manager at
28 at a Kindred Hospital in California.

1 8. Though Plaintiff's job description states her position was non-exempt, Defendants
2 appear to have misclassified and paid Plaintiff (and other Case Managers) as exempt although Plaintiff
3 and other Case Managers did not engage in exempt tasks such that they would qualify under the
4 professional, administrative, or executive exemptions. Thus, for purposes of Plaintiff's employment
5 and this lawsuit, during her employment she was entitled to all the protections afforded under the
6 Labor Code for non-exempt employees.

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

11 **B. Defendants**

12 10. Defendant Southern California Specialty Care, LLC is a California limited liability
13 company that maintains operations and conducts business throughout the State of California, including
14 in this county.

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

21 12. Upon information and belief, Defendants in this action are employers, co-employers,
22 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
23 control over the wages, hours, and working conditions of the employees, suffered and permitted them
24 to work, and otherwise engaged them as employees under California law.

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

14. 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.

CLASS ALLEGATIONS

15. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees (including Case Managers who Defendants may have misclassified as exempt) who worked for Defendants in California at a Kindred Hospital at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

16. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

17. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members is ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no

1 interest antagonistic to other class members; and is represented by attorneys
2 who have substantial experience prosecuting, defending, resolving, and
3 litigating wage and hour class, collective, and representative actions in
4 California state and federal courts.

5 d. Superiority: A class action is superior to other means for adjudicating this
6 dispute. Individual joinder is impractical. Class treatment will allow for
7 common issues to be resolved in a single forum, simultaneously, and without
8 duplication of effort and expense.

9 e. Public Policy Considerations: Certification of this lawsuit as a class action
10 advances the State of California's strong public interest in ensuring its
11 approximately millions of employed residents are properly paid the wages they
12 earned for the hours they worked. Class actions provide a mechanism for
13 enforcement of labor laws and allow for vindication of employee rights by
14 unnamed class members.

15 18. Common questions of law and fact as to the class members predominate over questions
16 affecting only individual members. The common questions of law and fact exist as to whether the
17 employment policies and practices formulated by Defendants and applied to the class members
18 constitute violate California law.

19 **GENERAL ALLEGATIONS**

20 19. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
21 permitted to work in violation of Labor Code section 1197 and the applicable IWC Wage Order.

22 20. Plaintiff and Class Members worked off the clock without compensation. For example,
23 Plaintiff would often work shifts ranging in length from 9 to 10 hours, however, Defendants would
24 nonetheless pay her for only 8 hours of work each day (or 40 hours per workweek). Plaintiff is
25 informed and believes that Defendants engaged in the same practice with respect to the other Class
26 Members. Plaintiff is further informed and believes that Defendants non-exempt employees who
27 worked with patients were required to work off the clock as well.

1 21. Additionally, Plaintiff and the Class Members were not provided with the opportunity
2 to take meal periods due to severe understaffing and the need for them to care for patients and complete
3 various tasks such as patient charting, documentation, and review of patient files. Defendants did not
4 provide any employees to relieve Plaintiff and lass Members duty-free meal periods. To the extent
5 Defendants recorded unpaid meal period(s) without Plaintiff or Class Members' knowledge, this results
6 in unpaid minimum and overtime wages for Plaintiff and the Class Members.

7 22. When Plaintiff and the Class Members worked overtime, Defendants failed to pay the
8 overtime at the "regular rate of pay" in violation of Labor Code section 510 and the IWC Wage Orders.

9 23. Defendants failed to pay Plaintiff and the Class Members overtime wages and the lawful
10 rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to pay
11 overtime to Plaintiff and the aggrieved employees for the same reasons discussed above (*e.g.*, off the
12 clock work and working during unpaid meal periods). Despite working shifts ranging 9-10 hours,
13 Defendants never paid Plaintiff overtime. Plaintiff is informed and believes that other employees
14 experienced the same underpayments.

15 24. Furthermore, Defendants maintained invalid alternative workweek schedules ("AWS")
16 with respect to certain groups of aggrieved employees. Under these schedules, the aggrieved employees
17 purportedly agreed that they would not be paid overtime for work performed beyond 8 hours in a shift.
18 Some of Defendants' AWS were invalid because they did not follow the requirements of Labor Code
19 section 511 for the adoption of an AWS, including but not limited to, registering the AWS with the
20 California Department of Industrial Relations.

21 25. To the extent Defendants paid employees additional remuneration, such as shift
22 differentials and bonuses, Plaintiff is informed and believes that Defendants failed to include these
23 payments in the "regular rate of pay" for the purposes of paying overtime.

24 26. Additionally, Defendants failed to provide compliant first and second meal periods to
25 Plaintiff and the Class Members in violation of Labor Code sections 226.7, 512 and section 11 of the
26 applicable IWC Wage Orders.

27 27. Plaintiff and the Class Members were not provided with the opportunity to take meal
28 periods due to severe understaffing and the need for them to care for patients and complete various

tasks such as patient charting, documentation, and review of patient files. As a result, Plaintiff and the Class Members experienced missed, short, late, and interrupted meal periods.

28. “[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.

29. When Defendants did not provide fully compliant meal periods, Defendants failed to pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“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”).

30. Defendants failed to authorize or permit Plaintiff and the Class Members take ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order.

31. Plaintiff and the Class Members were not authorized and permitted to take rest periods due to work pressures, including severe understaffing and the need for them to care for patients and complete various tasks such as patient charting, documentation, and review of patient files.

32. Moreover, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

33. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to Plaintiff and Class Members, which would have factored in employees’ additional compensation that they received each pay period.

34. On information and belief, in pay periods where Defendants provided aggrieved employees with remuneration in addition to their respective base hourly rate for hours worked—excluding any forms of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor Code § 246. Plaintiff is informed and believes that Defendants paid sick leave at

employees' base hourly rate instead of one of the methods authorized by statute, which required Defendants to factor in employees' additional remuneration, such as shift differentials, and/or other forms of remuneration.

35. Furthermore, on information and belief, Defendants also failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute because when paying such leave, Defendants failed to factor in employees' shift differentials and other compensation. On information and belief, Defendants instead paid Supplemental Sick Leave at employees' straight time hourly rate rather than by one of the methods authorized by Labor Code sections 248.1, 248.2, and 248.6.

36. With respect to the unpaid minimum and regular wages, overtime wages, and meal and rest period premiums owed to Plaintiff and Class Members, Defendants failed to pay those wages on time each pay period or upon separation of employment. *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.

37. Because Defendants did not pay Plaintiff and the Class for all wages/premiums wages owed each pay period of their employment, Defendants failed to timely pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

38. Defendants equally failed in their affirmative obligation to provide accurate itemized wage statements each pay period to Plaintiff and Class Members.

39. Defendants issued wage statements to Plaintiff and, on information and belief, other Class Members, which contain at least four distinct types of violations.

40. First, on each wage statement furnished, Defendants failed to accurately state the "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and Class Members were underpaid for regular and overtime wages and premiums, resulting in an inaccurate and depreciated itemization of gross and net wages earned on those wage statements.

41. Second, Defendants violated Labor Code section 226(a)(2) by failing to list employees' "total hours worked," as aggrieved employees worked off-the-clock (including during unpaid meal periods), rendering the total hours listed as an inaccurate reflection of hours worked.

1 42. Third, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding
2 hours worked at those rates are incorrectly listed on Plaintiff's and Class Members' wage statements.
3 The hourly rates on the wage statement are inaccurate with respect to unpaid overtime hours (as a result
4 of off the clock work) that were not paid at the "regular rate of pay."

5 43. Defendants' wage statement issues described above rendered the wage statements
6 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and presenting
7 a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class Members as the
8 sole documentary evidence of their respective earnings.

9 44. Plaintiff and Class Members suffered injury in the form of confusion regarding amounts
10 paid for hours worked, and in the form of concealment of the common payroll practices causing the
11 violations and underpayment of wages and wage statement deficiencies as addressed in this Complaint.

12 45. Indeed, Plaintiff and, on information and belief, Class Members were misinformed and
13 misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies on the
14 wage statements, Plaintiff and, on information and belief, Class Members were led to believe that the
15 hourly rates and net and gross wages reflected were a complete and accurate reflection of the wages
16 actually earned under California law.

17 46. Defendants' wage statement violations were knowing and intentional as a matter of law
18 with respect to Plaintiff and Class Members given that the legal obligation was not disputed, the wage
19 statement and wage laws are clear and unambiguous as written, and because Defendants nevertheless
20 failed to comply despite the means and ability to do so.

21 47. Because of the violations set forth in this Complaint, including Defendants' failure to
22 accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay (*i.e.*,
23 unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC Wage
24 Orders by failing to maintain records showing accurate daily hours worked at the corresponding
25 wage rate, and the wages paid to each employee.

26 48. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
27 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes, and
28 alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders

1 by maintaining practices, policies, and customs that are inconsistent with their obligations under
2 California law.

3 **FIRST CAUSE OF ACTION**

4 **MINIMUM WAGE VIOLATIONS**

5 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

6 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

7 49. All outside paragraphs of this Complaint are incorporated into this section.

8 50. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
10 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
11 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
12 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
13 liquidated damages).

14 51. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
15 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
16 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
17 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
18 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
19 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
20 Code § 1194.2.

21 52. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
22 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
23 members are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an
24 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
25 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

59. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

60. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

61. Plaintiff and class members are entitled to recover to the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7

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

63. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

64. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

65. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

67. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

68. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

69. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

1 71. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
2 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
3 pay period, and which further provide a private right of action for an employer's failure to comply
4 with this obligation.

5 72. Defendants knowingly and intentionally failed in their affirmative obligation provide
6 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
7 class members. Specifically, the wage statements issued to Plaintiff and class members did not
8 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

9 73. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
10 accurate itemized wage statements, causing confusion and concealing wage and premium
11 underpayments.

12 74. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
13 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
14 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
15 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
16 Code section 226(e).

17 **SEVENTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **Violation of Labor Code §§ 201 *et seq.***

20 75. All outside paragraphs of this Complaint are incorporated into this section.

21 76. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
22 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
23 employment, and which further provide a private right of action to recover statutory waiting time
24 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
25 wages.

26 77. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
27 wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
28 termination of employment or within 72 hours thereafter for employees who did not provide at least

1 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
2 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

3 78. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
4 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
5 by law.

6 **EIGHTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **Violation of Business and Professions Code §§ 17200 *et seq.***

9 79. All outside paragraphs of this Complaint are incorporated into this section.

10 80. Defendants have engaged and continue to engage in unfair and/or unlawful business
11 practices in the State of California in violation of California Business and Professions Code § 17200
12 by committing the foregoing wage and hour violations alleged throughout this Complaint.

13 81. Defendants' dependence on these unfair and/or unlawful business practices deprived
14 Plaintiff and continue to deprive other class members of compensation to which they are legally
15 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
16 Defendants over competitors who have been and/or are currently employing workers in compliance
17 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
18 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

19 82. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
20 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
21 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
22 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

23 83. Plaintiff does not have an adequate remedy at law for past or future violations, to the
24 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
25 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
26 violations do not provide a private right of action.

27 84. Plaintiff and class members are entitled to injunctive relief against Defendants,
28 restitution, and other equitable relief to return all funds over which Plaintiff and class members have

1 an ownership interest and to prevent future damage and the public interest under Business and
2 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
3 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
4 § 1021.5.

5 **NINTH CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

9 85. All outside paragraphs of this Complaint are incorporated into this section.

10 86. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
11 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
12 codified as Labor Code section 2698 *et seq.*:

13 a. All current and former non-exempt employees (including Case Managers who
14 Defendants may have misclassified as exempt) who worked for Defendants at
15 a Kindred Hospital in California at any time from one year prior to the postmark
16 date of the initial PAGA notice through the date of trial.

17 87. Plaintiff reserves the right to amend, supplement, or add to this description of the
18 aggrieved employees, according to proof.

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

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

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

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

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

12 93. On or about , Plaintiff paid the requisite PAGA filing fee and provided written notice
13 (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’
14 alleged Labor Code violations, including the facts and theories to support the alleged violations.

15 94. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
16 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
17 forth herein (the “PAGA notice”).

18 95. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
19 written PAGA notice from the LWDA.

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

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

98. 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 Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

99. 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).

PRAAYER

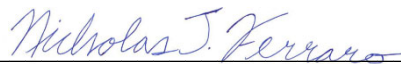
Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- 1 d. For division of class members into appropriate classes and/or subclasses according to
2 proof;
- 3 e. For recovery of damages in amount according to proof;
- 4 f. For all recoverable pre- and post-judgment interest;
- 5 g. For recovery of all civil and statutory penalties and liquidated damages;
- 6 h. For disgorgement of all amounts wrongfully obtained;
- 7 i. For this action to be maintained as a representative action under the PAGA;
- 8 j. For Plaintiff and counsel of record to be provided with all enforcement capability as if
9 the action were brought by the State of California or the California Division of Labor
10 Enforcement;
- 11 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 12 l. For restitution and injunctive relief;
- 13 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
14 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
15 1194, 2699, and Code of Civil Procedure section 1021.5; and
- 16 n. For such other relief the Court deems just and proper.

17
18 Dated: March 6, 2023

Ferraro Vega Employment Lawyers, Inc.

19
20 

Nicholas J. Ferraro

Attorneys for Plaintiff Maria Galecio-Cruz

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
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San Diego, California 92108

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619-350-6855 fax
ferrarovega.com

December 20, 2022

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

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

ScionHealth
680 South Fourth Street
Louisville, Kentucky 40202

Southern California Specialty Care,
LLC
680 South Fourth Street
Louisville, Kentucky 40202

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

Dear LWDA Officer and Company Representatives:

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

**SCIONHEALTH; SOUTHERN CALIFORNIA SPECIALTY CARE, LLC
DBA KINDRED HEALTHCARE**

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 Case Manager from about March 2022 to September 2022. Though Plaintiff’s job description states her position was non-exempt, Defendants appear to have misclassified and paid Plaintiff (and other Case Managers) as exempt although Plaintiff and other Case Managers did not engage in exempt tasks such that they would qualify under the professional, administrative, or executive exemptions. Thus, for purposes of Plaintiff’s employment and this Notice, during her employment she was entitled to all the protections afforded under the Labor Code for non-exempt employees.

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 non-exempt employees (including Case Managers who Defendants misclassified as exempt) 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 Hours Worked/Minimum Wage **Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” 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 California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and other aggrieved employees worked off the clock without compensation. For example, Plaintiff would often work shifts ranging in length from 9 to 10 hours, however, Defendants would nonetheless pay her for only 8 hours of work each day (or 40 hours per workweek). Plaintiff is informed and believes that Defendants engaged in the same practice with respect to the other aggrieved employees who were misclassified as exempt. Plaintiff is further informed and believes that Defendants non-exempt employees who worked with patients were required to work off the clock as well. Additionally, Plaintiff and the aggrieved employees were not provided with the opportunity to take meal periods due to severe understaffing and the need for them to care for patients and complete various tasks such as patient charting, documentation, and review of patient files. Defendants did not provide any employees to relieve Plaintiff and the aggrieved employees so that they could take duty-free meal periods. To the extent Defendants recorded unpaid meal period(s) without Plaintiff or aggrieved employees’ knowledge, this results in unpaid minimum wages for Plaintiff and the aggrieved employees.

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 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. 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 further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to pay overtime to Plaintiff and the aggrieved employees for the same reasons discussed above in the minimum wage section (*e.g.*, off the clock work and working during meal periods). Despite working shifts ranging 9-10 hours, Defendants never paid Plaintiff overtime. Plaintiff is informed and believes that other employees experienced the same underpayments. To the extent Defendants paid employees additional remuneration, such as shift differentials and bonuses, Plaintiff is informed and believes that Defendants failed to include these payments in the “regular rate of pay” for the purposes of paying overtime.

Furthermore, Defendants maintained invalid alternative workweek schedules (“AWS”) with respect to certain groups of aggrieved employees. Under these schedules, the aggrieved employees purportedly agreed that they would not be paid overtime for work performed beyond 8 hours in a shift. Some of Defendants’ AWS were invalid because they did not follow the requirements of Labor Code section 511 for the adoption of an AWS, including registering the AWS with the California Department of Industrial Relations. Defendant is liable for civil

penalties for unpaid overtime wages for the aggrieved employees who worked pursuant to an invalid AWS.

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 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.5**

Defendants violated Labor Code sections 246 through 248.5 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.”

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. On information and belief, Defendants failed to pay sick leave at the rate required by Labor Code section 246 because Defendants failed to pay the sick leave wages at a rate that factored in all forms of remuneration paid.

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 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.

Plaintiff and the aggrieved employees were not provided with the opportunity to take meal periods due to severe understaffing and the need for them to care for patients and complete various tasks such as patient charting, documentation, and review of patient files. As a result, Plaintiff and the aggrieved employees experienced missed, short, late, and interrupted meal periods. When the aggrieved employees missed a meal period or experienced non-compliant meal periods, Defendants failed to pay employees a meal period premium at the regular rate of compensation, in violation of Labor Code section 226.7. To the extent Defendants paid meal period premiums, Plaintiff is informed and believes that Defendants failed to pay the

premium at the regular rate of compensation, which should have included all forms of remuneration paid to employees.

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.

Plaintiff and the aggrieved employees were not authorized and permitted to take all the rest periods to which they were entitled during their shifts for many of the same reasons that prevented them from taking their meal periods. Specifically, Plaintiff and the aggrieved employees were not authorized and permitted to take rest periods due to work pressures, including severe understaffing and the need for them to care for patients and complete various tasks such as patient charting, documentation, and review of patient files.

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.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ minimum, regular, overtime, sick, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

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.

Because Defendants failed to pay sick leave pay and premiums at the correct rate and failed to properly pay all regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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 regular and overtime wages, sick leave, and premiums that were not fully paid, resulting in an inaccurate reflection, and recording of “gross 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 wages, sick leave, and premiums owed to employees and also failed to pay employees for all hours worked. The hours and amounts stated on the wage statements are

instead depreciated and underpaid, resulting in an inaccurate reflection on the wage statement. In violation of Labor Code section 226(a)(2), Defendants' wage statements also failed to accurately list total hours worked as employees were required to work off the clock such that the total hours worked on the wage statement are depreciated.

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,



Nicholas J. Ferraro

Cc Plaintiff Maria Galecio-Cruz
Lauren N. Vega, Esq.

Counsel for Defendants
Jyoti Mittal, Esq.
Elizabeth Staggs Wilson, Esq.
James Payer, Esq.