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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JUSTIN BROWN,  
individually and on behalf of all other  
similarly situated aggrieved employees,

Plaintiffs,

v.

NOMAD HEALTH, INC. and DOES 1-50,  
inclusive

Defendants.

23-CIV-05748  
Case No.

**REPRESENTATIVE ACTION COMPLAINT  
FOR:**

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

1 Plaintiff Justin Brown (collectively with all other similarly situated aggrieved employees  
2 “Plaintiff”) bring this Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against  
3 Nomad Health, Inc. (“Nomad” or “Defendant”), in his representative capacity on behalf of the State  
4 of California for himself and all other similarly situated aggrieved employees. Plaintiff makes the  
5 following allegations based upon personal knowledge as to his own actions and upon information  
6 and belief as to all other matters.

7 **NATURE OF THE ACTION**

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

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

24 3. In addition, Nomad is underpaying its travel employees for overtime hours worked.  
25 By law, employers must pay their employees one-and-one-half the “regular rate” of pay for hours  
26 worked in excess of eight hours in one day, 40 hours in one week, or for the first eight hours worked  
27 on the seventh day of work, and must pay their employees overtime compensation at twice the  
28 regular rate of pay for hours worked in excess of 12 hours in a day or in excess of eight hours in a

1 day on the seventh day of work. Nomad has failed to use the correct regular rate to calculate  
2 overtime compensation owing. Nomad has treated employees' direct hourly cash wage as their  
3 regular rate, and has excluded, in violation of the law, other parts of its employees' compensation  
4 packages which must be included in the regular rate, thereby resulting in an unlawfully low rate of  
5 pay for overtime hours worked.

6 4. On December 19, 2022, and July 26, 2023, Plaintiff provided Nomad and the  
7 California Labor and Workforce Development Agency (LWDA) with the required notice of his  
8 intent to bring this PAGA action.<sup>1</sup> The requisite 65 days have passed, and LWDA has not notified  
9 Plaintiff that it intends to pursue Nomad for the violations alleged in Plaintiff's PAGA letters.  
10 Plaintiff now brings this PAGA action on behalf of the State of California and other current and  
11 former employees of Nomad for engaging in "bait and switch" practices, underpayment for  
12 overtime hours worked, and failure to reimburse reasonable business expenses, in violation of the  
13 Labor Code. Accordingly, Plaintiff seeks all penalties permitted under PAGA.

14 **JURISDICTION, VENUE, AND PARTIES**

15 5. Nomad is a Delaware corporation with a principal place of business located at 335  
16 Madison Ave., 3<sup>rd</sup> Floor, New York, NY 10017.

17 6. Plaintiff Justin Brown accepted a travel assignment from Nomad to work at a  
18 healthcare facility located in Redwood City, San Mateo County, California, and traveled to  
19 Redwood City for that assignment.

20 7. The true names of the persons or entities referred to herein as Defendants DOES 1-  
21 50 are unknown to Plaintiff, who therefore sues them under fictitious names. Plaintiff is informed  
22 and believes, and on that basis alleges, that each of the Defendants identified as DOES 1-50 is  
23 legally responsible in some manner for the unlawful acts alleged herein. Plaintiff will seek leave of  
24 Court to amend the complaint to substitute the true names of the fictitiously named defendants when  
25 their identities become known to Plaintiffs. Together, all Defendants are referred to herein as  
26 "Nomad" or "Defendant."

27  
28 <sup>1</sup> See Ex. 1 (Amended PAGA Notice).

8. Plaintiff brings this PAGA action in his representative capacity on behalf of the State of California and on behalf of all of Nomad’s current and former non-exempt employees who were employed in California, traveled to California for employment with Nomad, or traveled from within California to any place outside of California for employment with Nomad, and who suffered one or more Labor Code violations enumerated herein (“Aggrieved Employees”) between July 26, 2022 and present (“PAGA Period”).

9. IWC Wage Order No. 4-2001 applies to Plaintiff's and other Aggrieved Employees' employment with Nomad, and no exemptions apply.

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

11. Venue is proper here because the acts and omissions complained of in this PAGA action took place, in part, within San Mateo County, and because Nomad does business in San Mateo County. Nomad provides services throughout California and staffs healthcare facilities in San Mateo County, where it underpays workers as set forth below.<sup>2</sup>

## **STATEMENT OF FACTS**

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

12. Nomad represents that it is “on a mission to remove every obstacle between providers and the patients they care for. Our goal is to create a self-service digital marketplace for healthcare jobs, and help clinicians discover rewarding opportunities without the pain points of using a traditional recruiter.”<sup>3</sup> On its website, Nomad touts “Industry-leading pay,” “Travel reimbursement,” “Stipend for housing and food,” and “Transparency,” stating that “Our job listings include pay rates, shift structure, and detailed lists of requirements, empowering you to make informed, confident decisions.”<sup>4</sup> Nomad also represents to travel nurses that it “offer[s] job

2  
[https://nomadhealth.com/jobs/search?selectedJobId=653adf0da03029b32f1adf1f&discipline=nurse&locations=California&ordering=highest\\_pay](https://nomadhealth.com/jobs/search?selectedJobId=653adf0da03029b32f1adf1f&discipline=nurse&locations=California&ordering=highest_pay).

<sup>3</sup> <https://nomadhealth.com/about>.

<sup>4</sup> <https://nomadhealth.com/why-nomad>.

opportunities in all 50 states” and that “Because [it] utilize[s] a digital, recruiter-free model, [it] save[s] on operational costs. These savings get passed to you via robust benefits and pay.” *Id.*

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

14. Nomad utilizes a form “travel assignment agreement” for its traveling employees that includes the following material terms: the facility name and address along with the start and end date for the assignment, the traveler’s hourly pay rate and scheduled hours per week, the traveler’s weekly meals and incidentals allowance, the traveler’s weekly lodging allowance, and an overtime rate that applies to all hours worked in excess of 40 hours per week and to overtime hours as defined by state law.

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

16. Nomad knows that travel employees, after accepting a travel assignment, must move to the location of the facility, secure short-term housing, and incur other travel and housing related costs at their own expense in order to comply with their obligations under the agreement.

17. Nomad routinely makes representations to travel nurses like Plaintiffs and other Aggrieved Employees concerning the kind or character of the work, the length of time the work will last, or the compensation therefor.

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

1           19. Plaintiff and Aggrieved Employees relied on Nomad's false representations in  
2 accepting the assignments and, among other things, relocating for the purpose of working for  
3 Nomad.

4           20. As a result of Nomad's misrepresentations, Plaintiff and other Aggrieved Employees  
5 were harmed, and their reliance on Nomad's misrepresentations was a substantial factor in causing  
6 such harm.

7 **Plaintiff Justin Brown**

8           21. On or before February 24, 2022 Nomad made an employment offer to Plaintiff  
9 Brown which included a fixed-term travel assignment in Redwood City, California.

10          22. The employment agreement offered him a position at the Kaiser Permanente  
11 Redwood Medical Center in Redwood City, California from March 15, 2022, until June 11, 2022,  
12 with the following compensation package: a base hourly pay rate of \$133.20 with a minimum of  
13 40 scheduled hours per week; an overtime hourly pay rate of \$199.80; and a weekly "Per Diem and  
14 Housing" payment of \$2,072.

15          23. In reliance on the foregoing material terms, he accepted Nomad's offer of  
16 employment by executing Nomad's form travel assignment agreement on February 24, 2022. To  
17 comply with his duties under the agreement, he traveled from Washington state to Redwood City,  
18 California largely at his own expense, secured short-term living arrangements, and forwent other  
19 employment opportunities.

20          24. On or about April 6, 2022, under one month into his 13-week assignment, Nomad  
21 made him a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Nomad  
22 demanded that he accept an over 50% reduction in his base hourly pay rate, from \$133.20 to \$63.62,  
23 and related reduction in his overtime hourly pay rate, from \$199.80 to \$85.89, in order to complete  
24 the previously agreed-upon assignment.

25          25. Having already spent substantial time and money securing the assignment and taking  
26 the steps necessary to ensure compliance with his obligations under the agreement, and unable to  
27 find comparable employment in such a short period of time, he had no choice but to continue the  
28

1 assignment at rates that Nomad ultimately lowered to \$80.35 and \$108.48 for base and overtime  
2 pay, respectively.

3 26. As described above, Plaintiff relied on the material terms of his employment  
4 agreement including: the fixed assignment term, the payment package, and the guaranteed hours or  
5 days in accepting the offer; as the assignment had to be worth foregoing other employment,  
6 relocating, and incurring the associated professional and personal costs of accepting the travel  
7 assignment. In addition, Plaintiff relied on the fact the foregoing material terms could not be  
8 changed without additional consideration and the reasonable expectation that Nomad would act in  
9 good faith and fair dealing and honor its promises or representations. Plaintiff would not have  
10 accepted the agreement had he known that Nomad would violate the terms and spirit of his  
11 agreements.

12 27. There is no legal justification for Nomad's conduct.

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

19 **B. Nomad's Miscalculation of Its Employees' Regular Rate of Pay and Resulting**  
20 **Failure to Lawfully Pay Overtime.**

21 29. Labor Code § 1198 provides that it is unlawful to employ persons for longer than  
22 the hours set by the IWC without just compensation.

23 30. Employers must pay their employees one-and-half times their "regular rate" for all  
24 overtime hours worked. Labor Code § 510 codifies the right to overtime compensation at one-and-  
25 one-half the regular rate of pay for hours worked in excess of 8 hours in one day, 40 hours in one  
26 week, or for the first 8 hours worked on the seventh day of work, and to overtime compensation at  
27 twice the regular rate of pay for hours worked in excess of 12 hours in a day or in excess of 8 hours  
28 in a day on the seventh day of work. In addition, pursuant to the IWC Wage Order(s), including

1 Wage Order 4-2001, Nomad is required to pay Plaintiff and Aggrieved Employees for all hours  
2 worked, meaning the time during which an employee is subject to the control of an employer,  
3 including all the time the employee is suffered or permitted to work, whether or not required to do  
4 so.

5 31. As a general matter, an employee's "regular rate" is "deemed to include all  
6 remuneration for employment paid to, or on behalf of, the employee," but excludes, inter alia,  
7 "reasonable payments for traveling expenses, or other expenses, incurred by an employee in the  
8 furtherance of his employer's interests and properly reimbursable by the employer; and other  
9 similar payments to an employee which are not made as compensation for his hours of  
10 employment." 29 U.S.C. § 207(e); *see also Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir.),  
11 *cert. denied*, 142 S. Ct. 710 (2021).

12 32. Plaintiff and Aggrieved Employees of Nomad worked in excess of 8 and 12 hours  
13 in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the  
14 seventh day of work. Indeed, Plaintiff and Aggrieved Employees of Nomad regularly worked time  
15 for which they were owed overtime or double time as provide by California law; however, Nomad  
16 paid Plaintiff and Aggrieved Employees for overtime worked based on an unlawful overtime rate  
17 of pay.

18 33. Nomad failed to pay all overtime compensation owing due to its failure to correctly  
19 calculate the regular rate of pay, on which the overtime rate of pay is based. Nomad violated  
20 California law, in relevant part, by failing to compensate Plaintiff and Aggrieved Employees of  
21 Nomad for overtime wages as required by Labor Code §§ 510, 1198; 8 C.C.R. § 11040; and IWC  
22 Wage Order 4-2001.

23 34. Nomad's regular rate of pay did not include weekly wages that Nomad referred to  
24 as "stipends" or allowances. In calculating the overtime rate paid to its employees, Nomad  
25 wrongfully excluded from their regular rate various stipends and allowances paid to its employees,  
26 including a "Per Diem and Housing" payment, even though these payments functioned as a form  
27 of compensation as part of its employees' pay package.

1           35. Plaintiff regularly worked overtime and was not properly compensated for it. For  
2 instance:

3           a. Plaintiff Justin Brown's initial contract provides for overtime at a rate of \$199.80  
4 per hour, or 1.5 times his initial base hourly pay rate of \$133.20. His weekly "Per  
5 Diem and Housing" payment of \$2,072 was not included in the calculation of his  
6 regular rate.

7           b. Plaintiff Justin Brown's reduced contract paid for overtime at a rate of \$108.48 per  
8 hour, or less than 1.5 times his reduced base hourly pay rate of \$80.35. His weekly  
9 "Per Diem and Housing" payment of \$2,072 was not included in the calculation of  
10 his regular rate.

11           c. In the workweek for March 20 to 26, 2022, Plaintiff Brown worked 40.25 hours for  
12 which Nomad paid him a base rate of \$133.20 for 32 hours and an overtime rate of  
13 \$199.80 for 8.25 hours. Given his stipends that week for \$2,072, he should have  
14 been compensated as follows: his regular rate was \$184.68, therefore, his overtime  
15 rate should have been \$277.02.

16           d. In the workweek for April 24 to 30, 2022, Plaintiff Brown worked 28.75 hours for  
17 which Nomad paid him a base rate of \$80.35 for 24.75 hours and an overtime rate  
18 of \$108.48 for 4 hours. Given his stipends that week for \$2,072, he should have been  
19 compensated as follows: his regular rate was \$152.42, therefore, his overtime rate  
20 should have been \$228.63.

21           36. Nomad's exclusion of the various stipends and allowances paid to its employees,  
22 including the weekly "Per Diem and Housing" payment, from said employees' "regular rate" in  
23 calculating overtime was wrongful and in violation of the law, in that:

24           a. Said payments functioned as compensation for the employees' hours of  
25 employment;

26           b. Said payments were tied to the number of hours worked, rather than the amount of  
27 expenses actually incurred;  
28

- 1 c. Said payments varied with the number of hours worked per week, such that if an  
2 employee missed one or more shifts, said payments would be reduced a  
3 corresponding amount;
- 4 d. Said payments did not vary with the amount of expenses an employee actually  
5 incurred, nor were they calculated to approximate actual expenses. Employees were  
6 not required to document expenses, nor provide any attestation that he or she actually  
7 incurred a particular amount of expenses in a given period;
- 8 e. Upon information and belief, said payments were not limited to employees who  
9 were actually traveling, but instead could be received by local employees who  
10 worked proximate to their residence; and
- 11 f. Upon information and belief, employees could roll over extra shifts worked in a  
12 previous week to avoid a pro rata reduction in said payments occasioned by having  
13 missed one or more shifts in a given week.

14 37. Nomad violated California law, in relevant part, by willfully failing to compensate  
15 Plaintiff and Aggrieved Employees for overtime hours as required by law. Nomad has acted neither  
16 in good faith nor with reasonable grounds to believe that its actions and omissions were not a  
17 violation of California law. Nomad's unlawful conduct was willful because, among other reasons  
18 described herein, Nomad knew or should have known that it was not correctly calculating the  
19 regular rate of pay or overtime wages of Plaintiff and Aggrieved Employees.

20 38. Nomad classified this form of Plaintiff's compensation as expense reimbursement  
21 to avoid paying payroll taxes on these wages and to avoid paying materially increased overtime  
22 rates, particularly given that many travel nurses (including Plaintiff) are guaranteed more than 8  
23 hours in a single workday and more than 40 hours per week.

24 39. Nomad's course of conduct described herein violated the Labor Code and applicable  
25 Wage Orders by improperly excluding from its employees' regular rate certain forms of  
26 compensation, including stipends and allowances, thereby resulting in unpaid overtime owed to  
27 Plaintiff and Aggrieved Employees. Nomad maintains a uniform, company-wide policy and  
28

1 practice of miscalculating the overtime rate of Plaintiff and Aggrieved Employees, and said policy  
2 is willful in nature and not the result of a good faith mistake.

3 **C. Nomad's Other Violations of Labor Code**

4 40. Labor Code § 204 establishes the fundamental right of all employees in the State of  
5 California to be paid all wages due in a timely fashion for their work. And under Labor Code § 201  
6 (discharge or lay-off) and/or § 202 (resignation), Plaintiff and Aggrieved Employees who are  
7 former Nomad employees are entitled to timely payment of all wages earned and unpaid,  
8 immediately upon the conclusion of their contracts (discharge), termination of their contracts (lay-  
9 off), or within 72 hours of notice (resignation).

10 41. Nomad's failure to pay Plaintiff and Aggrieved Employees the contracted-for wages  
11 for each hour worked, and proper overtime compensation of 1.5 or 2 times the correctly-calculated  
12 regular rate for every hour worked, means that Nomad also fails to make timely payment of the  
13 wages earned on regular paydays, in violation of Labor Code § 204, and fails to make timely  
14 payment of the wages earned when Plaintiff and Aggrieved Employees stop working for Nomad  
15 due to discharge, layoff or resignation, in violation of Labor Code §§ 201 and 202.

16 42. Nomad willfully refused to pay Aggrieved Employees all wages earned and unpaid  
17 at the time of their termination/resignation or within 72 hours thereafter in violation of its  
18 obligations under Labor Code §§ 201 and 202 and continues to refuse to pay Aggrieved Employees  
19 all wages earned, including overtime compensation.

20 43. Labor Code § 226 requires employers to provide employees, on each payday,  
21 itemized statements showing, among other things: (1) gross wages earned, (2) total hours worked  
22 by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the  
23 employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive  
24 dates of the period for which the employee is paid, (7) the name of the employee, (8) the name and  
25 address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during  
26 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

27 44. Nomad's failure to pay Plaintiff and Aggrieved Employees the contracted-for wages  
28 for each hour worked, and the proper overtime rate for each hour worked, means that Nomad

1 violated Labor Code § 226 by failing to provide proper itemized statements; in particular, the  
2 itemized statements failed to set forth all applicable hourly rates in effect during the pay period and  
3 the corresponding number of hours worked at each hourly rate.

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

14 46. Nomad violated Labor Code §§ 1174 and 1175 by knowingly, intentionally,  
15 willfully, and unlawfully failing to provide Plaintiff and Aggrieved Employees with timely and  
16 accurate wage statements in violation of Labor Code § 226.

17 47. As a direct and proximate result, Plaintiff and Aggrieved Employees have suffered  
18 damages. Among other things, Nomad's failure to provide accurate wage statements required for  
19 employees was in furtherance of Nomad's above-described scheme to pay overtime to Plaintiff and  
20 Aggrieved Employees at unlawfully low rates that did not include all compensation in calculating  
21 the regular rate. Nomad's wage statement failures caused and will cause Plaintiff and Aggrieved  
22 Employees extra work and effort to determine their true wages.

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

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

**FIRST CAUSE OF ACTION:**  
**ENFORCEMENT OF THE LABOR CODE**  
**PRIVATE ATTORNEYS GENERAL ACT OF 2004**

50. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

53. Plaintiff bring this PAGA action on behalf of the State of California with respect to himself and all Aggrieved Employees employed by Nomad during the PAGA Period.

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

55. Under Cal. Lab. Code § 2699.3, Plaintiff gave written notice by online submission to the LWDA on December 19, 2022, and July 26, 2023, and by certified mail to Nomad of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories

1 to support the alleged violations,<sup>5</sup> and the LWDA did not provide notice to Plaintiff that it intends  
2 to investigate the alleged violations.

3 56. Under Cal. Lab. Code §§ 2698-2699.5, Plaintiff, as representative of the State of  
4 California and on behalf of himself and all other similarly Aggrieved Employees, seeks to recover  
5 civil penalties, including but not limited to penalties under §§ 210, 558, 1197.1, and 2699 for  
6 Nomad's violation of the following Labor Code sections:

- 7 a. Unlawful solicitation of employees by misrepresentation in violation of Cal. Lab.  
8 Code § 970;
- 9 b. Unlawful failure to pay overtime in violation of Cal. Lab. Code § 510;
- 10 c. Unlawful failure to make timely payment of all wages in violation of Cal. Lab. Code  
11 §§ 201, 202, and/or 204;
- 12 d. Unlawful failure to furnish accurate wage statements in violation of California Labor  
13 Code §§ 226, 1174, and 1175;
- 14 e. Unlawful failure to indemnify employees for expenses and losses in violation of Cal.  
15 Lab. Code § 2802; and
- 16 f. Unlawful failure to indemnify employees for want of ordinary care in violation of  
17 Cal. Lab. Code § 2800.

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

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

27  
28 <sup>5</sup> See Ex. 1 (Amended PAGA Notice).

1 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)  
2 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

3 59. Cal. Lab. Code § 558(a)(1)-(3) provides “[a]ny employer or other person acting on  
4 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
5 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
6 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
7 underpaid employee for each pay period for which the employee was underpaid in addition to an  
8 amount sufficient to recover underpaid wages[;] (2) [f]or each subsequent violation, one hundred  
9 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
10 underpaid in addition to an amount sufficient to recover underpaid wages[; and] (3) [w]ages  
11 recovered pursuant to this section shall be paid to the affected employee.” See also Cal. Lab. Code  
12 § 558(d) (“The civil penalties provided for in this section are in addition to any other civil or  
13 criminal penalty provided by law.”).

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

16 **REQUEST FOR RELIEF**

17 61. Plaintiff, individually and on behalf of all others similarly situated, respectfully  
18 requests that the Court enter judgment in their favor and against Nomad as follows:

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

21 63. That the Court award to Plaintiff the costs and disbursements of the action, along  
22 with reasonable attorneys’ fees, costs, and expenses as provided by law;

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

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

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1 Dated: December 5, 2023

Respectfully submitted,

2 ALTSHULER BERZON LLP

3 Eve H. Cervantez

4 Robin S. Tholin

5 STUEVE SIEGEL HANSON LLP

6 George A. Hanson

7 J. Austin Moore

Alexander T. Ricke

8 K. Ross Merrill

9 By: /s/ Eve H. Cervantez

10 *Attorneys for Plaintiff Brown*

# EXHIBIT 1



July 26, 2023

**VIA ELECTRONIC SUBMISSION**

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

**VIA CERTIFIED MAIL**

Nomad Health, Inc.  
335 Madison Ave., 3<sup>rd</sup>. Floor  
New York, NY 10017

**Re: Amended PAGA Notice Pursuant to California Labor Code § 2699.3**

Dear PAGA Administrator,

The law firm of Stueve Siegel Hanson LLP represents Justin Brown, who has worked within California as a travel nurse for Nomad Health, Inc. (“Employer”). Pursuant to California Labor Code § 2699.3(a) and (c), this letter shall serve as an amended notice of Employer’s violations of the California Labor Code and related regulations arising out of Employer’s unlawful conduct with respect to its employment of Mr. Brown and other aggrieved employees. These violations give rise to civil penalties under California Labor Code § 2698, *et seq.*

Mr. Brown previously submitted a PAGA Notice detailing some of these issues on December 19, 2022. The Labor and Workforce Development Agency (“LWDA”) may pursue legal redress, including civil and statutory penalties, against Employer for its violations of California’s labor laws. The LWDA did not do so with respect to Mr. Brown’s earlier PAGA Notice. If the LWDA elects not to pursue its own action, Mr. Brown, on behalf of himself and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 (“PAGA”). Mr. Brown respectfully requests that the LWDA notify undersigned counsel as to whether it intends to investigate Employer’s alleged violations so that he can include the LWDA’s findings in his action should the Agency decline to proceed.

**FACTS, THEORIES, AND ALLEGED VIOLATIONS**

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

away from their homes to an unfamiliar location and work environment, securing short-term housing, and bearing significant moving-related expenses.

To induce nurses to take on these roles, staffing agencies like Employer offer guaranteed hourly rates, along with minimum hours during a specified date range. Employer offered Mr. Brown a contract providing that he would be paid \$133.20 per hour plus a weekly stipend amount, for a guaranteed 40 hours per week at Kaiser Permanente Redwood City Medical Center in Redwood City, California. The assignment was scheduled to commence on March 15, 2022, and end on June 11, 2022. In reliance on Employer's contractual promises, Mr. Brown forwent other employment opportunities, traveled from Washington state to California largely at his own expense, and secured short-term living arrangements for the duration of his assignment. But Employer had no intention of honoring its commitment. Employer intended to implement, or is in the pattern and practice of implementing, mid-contract rate or hour reductions—that is, Employer, after an aggrieved employee signs their contract and acts in reliance on it, gives a take-it-or-leave-it demand to accept less pay or be terminated. Partway through the assignment, on or about April 6, 2022, Employer informed Mr. Brown that it intended to reduce his hourly rate by more than \$50 from \$133.20 per hour to \$80.35 per hour – a 40 percent reduction. Mr. Brown had little choice but to continue the assignment at the lower rate.

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

In addition, Employer is underpaying its travel employees for overtime hours worked. By law, employers like Employer must pay their employees one-and-a-half times their “regular rate” for all hours worked over forty in a workweek or over eight or 12 hours in single workday. But in determining this “regular rate,” Employer has only included its employees’ direct hourly base wage among other items and has excluded, in violation of the law, other parts of its employees’ compensation packages (for example, compensation styled as “stipends” that are not true stipends but rather payments tied to hours worked), thereby resulting in an artificially low rate of pay for overtime hours worked.

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

Under California Labor Code § 970, it is unlawful for an employer to “influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations” concerning . . . “[t]he length of time such work will last, or the compensation therefor.” As described above, Employer made knowingly false representations concerning the

compensation for nursing assignments to Mr. Brown and other aggrieved employees, thereby inducing them to travel for work. This violation of California Labor Code § 970 gives rise to civil penalties pursuant to California Labor Code § 2698, *et seq.*

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

Employer required Mr. Brown and other aggrieved employees to pay Employer's business expenses, each of which flow directly from the nurses' work on behalf of the Employer and which inure to the benefit of the Employer. For instance, Mr. Brown was required to pay more than \$1,000 in travel expenses to and from his assignment, only about \$500 of which was reimbursed by Employer. Pursuant to California Labor Code § 2802, employers must indemnify their employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

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

**Failure to Pay Overtime Premium  
in Violation of California Labor Code §§ 510, 1194**

IWC Wage Order No. 4-2001 applies to Mr. Brown's employment with Employer, and no exemptions apply. California Labor Code § 1198 provides that it is unlawful to employ persons for longer than the hours set by the IWC without just compensation. Mr. Brown worked in excess of 8 and 12 hours in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the seventh day of work. Mr. Brown regularly worked time for which he was owed overtime or double time as provide by California law; however, Employer paid him based on an unlawful regular rate of pay. The regular rate of pay did not include weekly wages that Employer referred to as "stipends." Employer violated California law, in relevant part, by failing to compensate Mr. Brown for overtime wages as required by California Labor Code §§ 510, 1194; 8 C.C.R. § 11040; and IWC Wage Order 4-2001. Employer violated California law, in relevant part, by willfully failing to compensate Mr. Brown for overtime hours as required by law. Employer has acted neither in good faith nor with reasonable grounds to believe that its actions

and omissions were not a violation of California law. Employer's unlawful conduct was willful because, among other reasons described herein, Employer knew or should have known that it was not correctly calculating the regular rate of pay or overtime wages of Mr. Brown. *See, e.g., Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir.), *cert. denied*, 211 L. Ed. 2d 400, 142 S. Ct. 710 (2021).

**Failure to Furnish Accurate Wage Statements  
in Violation of California Labor Code §§ 226, 1174, 1175**

California Labor Code § 226 requires employers to provide employees, on each payday, itemized statements showing, among other things: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Employer willfully violated its obligations under California law, including those under California Labor Code §§ 226(a), *et seq.*, by knowingly and intentionally failing to provide Mr. Brown with timely and accurate wage statements. Employer violated California Labor Code §§ 1174 and 1175 by knowingly, intentionally, and unlawfully failing to provide Mr. Brown with timely and accurate wage statements in violation of California Labor Code § 226. As a direct and proximate result, Mr. Brown has suffered damages. Among other things, Employer's failure to provide accurate wage statements required for employees was in furtherance of Employer's above-described scheme to pay overtime to Mr. Brown at unlawfully low rates that did not include all necessary wages. Employer's wage statement failures caused and will cause Mr. Brown extra work and effort to determine his true wages.

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

Employer's failure to pay Mr. Brown and other aggrieved employees for every hour worked or contracted for at the agreed-upon hourly rate stated in their written employment contracts, as well as Employer's failure to pay Mr. Brown the proper rate of overtime pay, resulted in Employer failing to make timely payment of the wages aggrieved employees earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages aggrieved employees earned when they stopped working for Employer due to discharge, layoff or resignation, in violation of California Labor Code §§ 201, 202, and/or 203. These violations give rise to civil penalties pursuant to California Labor Code § 2698 *et seq.*

**Conclusion**

Should the LWDA decline to proceed in this matter, Mr. Brown intends to seek all civil penalties, interest, and attorney's fees permitted under the California Labor Code for these

July 26, 2023

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violations. Should you require anything further or have additional questions, please do not hesitate to contact us.

Sincerely,



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