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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

23CV420659

SIDNEY SKINNER, on behalf of the State of
California, as a private attorney general,

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

Plaintiff,

vs.

INFUSION OF CARE, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2750.3 *et seq.*, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiff Sidney Skinner ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Infusion of Care, Inc. (referred
8 to as "DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 4. DEFENDANT, in order to service their customers, hires workers to aid
23 DEFENDANT in providing healthcare services. The cost, as proscribed by law, of the
24 personnel hired to work for DEFENDANT, includes not only the pay and overtime pay of these
25 employees but the cost of the employer's share of tax payments to the federal and state
26 governments for income taxes, social security taxes, medicare insurance, unemployment
27 insurance and payments for workers' compensation insurance ("Business Related Expenses").
28 To avoid the payment of these legally proscribed Business Related Expenses to the fullest extent

1 possible, DEFENDANT devised a scheme to place the responsibility for the payment of these
2 costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other Nurses. As
3 employer, DEFENDANT is legally responsible for the payment of all these Business Related
4 Expenses. This lawsuit is brought on behalf of the Certified Nurse Assistants, Licensed
5 Vocational Nurses, Registered Nurses and other similar job titles for persons who worked for
6 DEFENDANT in California and were classified as independent contractors.

7 8 **THE PARTIES**

9 5. DEFENDANT at all relevant times mentioned herein conducted and continues
10 to conduct substantial and regular business in the State of California.

11 6. DEFENDANT contracts with over 40 specialty pharmacies that provide
12 infusion therapies. DEFENDANT specializes in the coordination of equipment and medicine
13 delivery, while communicating with pharmacies, doctors, nurses, and health administrators
14 all information pertaining to their patients.

15 7. PLAINTIFF has been employed by DEFENDANT as a Registered Nurse and
16 other similar job titles since 2011 and has been classified by DEFENDANT as an
17 independent contractor during his entire employment with DEFENDANT.

18 8. California Labor Code Section 226.8 provides that “[i]t is unlawful for any
19 person or employer to engage in . . . [w]illful misclassification of an individual as an
20 independent contractor.” The penalty for willful misclassification of employees is a “civil
21 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
22 dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by
23 law.” It is further provided that, in the event that an employer is found to have engaged in
24 “a pattern or practice of these violations,” the penalties increase to “not less than ten
25 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
26 each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code
27 § 226.8.

28 9. Here, DEFENDANT has willfully misclassified PLAINTIFF and other

1 Certified Nursing Assistants, Licensed Vocational Nurses and Registered Nurses, and other
2 similarly situated persons with similar job titles collectively referred herein as “Nurses” as
3 described in Cal. Labor Code § 226.8 and Labor Code Section 2750.3 *et seq.*, and further,
4 that DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated
5 by the California Labor Code.

6 10. Upon hire, the position of a Nurse was represented by DEFENDANT to
7 PLAINTIFF and the other Nurses as an independent contractor position capable of paying
8 an hourly rate for time worked for DEFENDANT. PLAINTIFF and other Nurses were paid
9 an hourly rate to perform services on DEFENDANT’s behalf.

10 11. To perform their job duties, the PLAINTIFF and the other Nurses performed
11 work subject to the control of DEFENDANT in that DEFENDANT had the authority to
12 exercise complete control over the work performed and the manner and means in which the
13 work was performed. DEFENDANT provided the customers and DEFENDANT provided
14 the instructions as to how to perform their services.

15 12. California Labor Code § 3357 defines “employee” as “every person in the
16 service of an employer under any appointment or contract of hire or apprenticeship, express
17 or implied, oral or written, whether lawfully or unlawfully employed.” In addition to the
18 California Labor Code’s presumption that workers are employees, the California Supreme
19 Court has determined the most significant factor to be considered in distinguishing an
20 independent contractor from an employee is whether the *employer or principal has control*
21 *or the right to control the work both as to the work performed and the manner and means in*
22 *which the work is performed*. DEFENDANT heavily controlled both the work performed
23 and the manner and means in which PLAINTIFF and the other Nurses performed their work
24 in that:

25 (a) PLAINTIFF and other Nurses were not involved in a distinct business,
26 but instead were provided with instructions as to how to perform their work and the manner
27 and means in which the work was to be performed by means of DEFENDANT’s manuals
28 and written instructions;

1 (b) PLAINTIFF and other Nurses were continuously provided with training
2 and supervision, including following DEFENDANT's company documents and received
3 training from DEFENDANT as to how and in what way to perform services;

4 (c) DEFENDANT set the requirements as to what policies and procedures
5 all of the Nurses were to follow;

6 (d) PLAINTIFF and other Nurses had no opportunity for profit or loss
7 because DEFENDANT only paid these employees based on the hours they worked for
8 DEFENDANT and DEFENDANT controlled and assigned the weekly schedules
9 PLAINTIFF and other Nurses were required to work. DEFENDANT also controlled which
10 Nurses would receive a particular medical assignment;

11 (e) PLAINTIFF and other Nurses performed healthcare services which is
12 part of DEFENDANT's principal business and is closely integrated with and essential to the
13 employer's business of providing healthcare services to their customers;

14 (f) PLAINTIFF and other Nurses performed the work themselves and did
15 not hire others to perform their work for them;

16 (g) PLAINTIFF and other Nurses did not have the authority to make
17 employment-related personnel decisions;

18 (h) PLAINTIFF and other Nurses performed their work in a particular
19 order and sequence in accordance with DEFENDANT's company policy; and,

20 (i) DEFENDANT had the "right" to control every critical aspect of
21 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
22 PLAINTIFF and other Nurses as to the entire process of assisting clients. PLAINTIFF and
23 other Nurses provided services ONLY for DEFENDANT's customers.

24 13. As a result, stripped of all the legal fictions and artificial barriers to an honest
25 classification of the relationship between PLAINTIFF and all the other Nurses on the one
26 hand, and DEFENDANT on the other hand, PLAINTIFF and all the other Nurses are and
27 were employees of DEFENDANT and not independent contractors of DEFENDANT and
28 should therefore be properly classified as non-exempt, hourly employees.

1 14. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to himself and all individuals who worked for DEFENDANT in California as a
5 Nurse and who were classified as independent contractors (“AGGRIEVED EMPLOYEES”)
6 during the time period of January 31, 2022 until a date as determined by the Court (the
7 "PAGA PERIOD").

8
9 15. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES
10 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
11 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
12 DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
13 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2750.3 *et seq.*,
14 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
15 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and
16 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all
17 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
18 2699, *et seq.*

19 16. As a matter of company policy, practice and procedure, DEFENDANT has
20 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEE as
21 "independent contractors" in order to unlawfully avoid compliance with all applicable
22 federal and state laws that require payment for all time worked, business expenses, and the
23 employer's share of payroll taxes and mandatory insurance. As a result of the scheme to
24 defraud the federal and state governments and the AGGRIEVED EMPLOYEES,
25 PLAINTIFF and the AGGRIEVED EMPLOYEES were underpaid throughout their
26 employment with DEFENDANT.

27 17. The true names and capacities, whether individual, corporate, associate or
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1 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently
2 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names
3 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based
4 thereon, allege that each of the Defendants designated herein is legally responsible in some
5 manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to
6 amend this Complaint to reflect the true names and capacities of the Defendants when they
7 have been ascertained and become known.

8
9 18. The agents, servants and/or employees of the Defendants and each of them
10 acting on behalf of the Defendants acted within the course and scope of his, her or its
11 authority as the agent, servant and/or employee of the Defendants, and personally
12 participated in the conduct alleged herein on behalf of the Defendants with respect to the
13 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
14 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
15 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
16 conduct of the Defendants' agents, servants and/or employees.

17 **THE CONDUCT**

18
19 19. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES as defined by DEFENDANT was executed by them through the performance
21 of non-exempt labor.

22 20. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES performed
23 non-exempt labor subject to DEFENDANT's complete control over the manner and means
24 of performance, DEFENDANT instituted a blanket classification policy, practice and
25 procedure by which all of these AGGRIEVED EMPLOYEES were classified as
26 "independent contractors" exempt from compensation for overtime worked, meal breaks and
27 rest breaks, and reimbursement for business related expenses. By reason of this uniform
28 misclassification, the AGGRIEVED EMPLOYEES were also required to pay

1 DEFENDANT 's share of payroll taxes and mandatory insurance premiums. As a result of
2 this uniform misclassification practice, policy and procedure applicable to PLAINTIFF and
3 the other AGGRIEVED EMPLOYEES who performed this work for DEFENDANT,
4 DEFENDANT engaged in a company-wide policy, practice and procedure which uniformly
5 failed to properly classify PLAINTIFF and the other AGGRIEVED EMPLOYEES as
6 employees and thereby failed to pay them overtime wages for overtime worked,
7 reimbursement of business related expenses, failed to provide them with meal and rest
8 breaks, and failed to reimburse these employees for the employer's share of payroll taxes
9 and mandatory insurance. The proper classification of these employees is DEFENDANT's
10 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
11 burden, DEFENDANT violated the California Labor Code and regulations promulgated
12 thereunder as herein alleged. DEFENDANT did not have in place a policy, practice or
13 procedure that provided meal and/or rest breaks to PLAINTIFF and AGGRIEVED
14 EMPLOYEES as evidenced by DEFENDANT's business records which contain no record
15 of these breaks.

16 21. DEFENDANT, as a matter of law, has the burden of proving that employees
17 are properly classified and that DEFENDANT otherwise complies with applicable laws.
18 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
19 AGGRIEVED EMPLOYEES as independent contractors.

20 22. PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were uniformly
21 classified and treated by DEFENDANT as independent contractors at the time of hire and
22 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF
23 and the AGGRIEVED EMPLOYEES are properly classified under the applicable Industrial
24 Welfare Commission Wage Order and Cal. Lab. Code § 510 as exempt from applicable
25 labor laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and
26 the AGGRIEVED EMPLOYEES in compliance with California labor laws,
27 DEFENDANT's practices violated and continue to violate California law. In addition,
28 DEFENDANT acted deceptively by falsely and fraudulently classifying PLAINTIFF and

1 each AGGRIEVED EMPLOYEE as independent contractors when DEFENDANT knew or
2 should have known that this classification was false and not based on known facts.
3 DEFENDANT also acted deceptively by violating the California labor laws, and as a result
4 of this policy and practice, DEFENDANT cheated the competition by paying the
5 AGGRIEVED EMPLOYEES less than the amount competitors paid who complied with the
6 law and cheated the AGGRIEVED EMPLOYEES by not paying them in accordance with
7 California law.

8 23. As a result of their rigorous work schedules, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks
10 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were required from time to time to perform work as ordered by
12 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
13 break. Further, DEFENDANT failed to provide PLAINTIFF and AGGRIEVED
14 EMPLOYEES with a second off-duty meal period from time to time in which these
15 employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF
16 and the other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
17 additional compensation and in accordance with DEFENDANT's strict corporate policy and
18 practice.

19 24. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES were also required from time to time to work in excess of four (4) hours
21 without being provided ten (10) minute rest periods. Further, these employees were denied
22 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
23 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
24 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
25 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
26 hours or more from time to time. PLAINTIFF and other AGGRIEVED EMPLOYEES were
27 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
28

1 schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
2 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

3 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
5 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
6 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
7 2802, employers are required to indemnify employees for all expenses incurred in the course
8 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
9 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
10 employee in direct consequence of the discharge of his or her duties, or of his or her
11 obedience to the directions of the employer, even though unlawful, unless the employee, at
12 the time of obeying the directions, believed them to be unlawful."

13 26. In the course of their employment PLAINTIFF and other AGGRIEVED
14 EMPLOYEES as a business expense, are required by DEFENDANT to use personal cellular
15 phones and their home offices as a result of and in furtherance of their job duties as
16 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
17 the cost associated with the use of the personal cellular phones and personal vehicles for
18 DEFENDANT's benefit. In order to work as a Nurse for DEFENDANT, PLAINTIFF and
19 other AGGRIEVED EMPLOYEES are required to communicate with DEFENDANT and as
20 such it is mandatory to have a cell phone that is compatible to remain in constant contact
21 with DEFENDANT and DEFENDANT's customers. As a result, in the course of their
22 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
23 incurred unreimbursed business expenses which include, but are not limited to, costs related
24 to the use of their personal cellular phones and personal vehicle expenses all on behalf of
25 and for the benefit of DEFENDANT.

26 27. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which
28 failed to show, among other things, the correct amount of time worked, including, work

1 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
2 workweek, and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226
3 provides that every employer shall furnish each of his or her employees with an accurate
4 itemized wage statement in writing showing, among other things, gross wages earned and all
5 applicable hourly rates in effect during the pay period and the corresponding amount of time
6 worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

8 28. In violation of the applicable sections of the California Labor Code and the
9 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
10 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
11 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES suitable seating when the nature of these employees' work reasonably
13 permitted sitting.

14 29. DEFENDANT knew or should have known that PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
16 when it did not interfere with the performance of their duties, and that DEFENDANT did
17 not provide suitable seating and/or did not allow them to sit when it did not interfere with
18 the performance of their duties.

19 30. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
20 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and California
21 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
22 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
23 behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
24 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
25 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
26 California Labor Code and regulations promulgated thereunder as herein alleged.

27 31. By reason of this conduct applicable to PLAINTIFF and all the AGGRIEVED
28 EMPLOYEES, DEFENDANT engaged in a company-wide policy, practice and procedure

1 which failed to correctly classify PLAINTIFF and the AGGRIEVED EMPLOYEES as
2 employees. The proper classification of these employees is DEFENDANT's burden. As a
3 result of DEFENDANT's intentional disregard of the obligation to meet this burden,
4 DEFENDANT failed to pay all required overtime compensation for work performed by
5 PLAINTIFF and other AGGRIEVED EMPLOYEES and violated the California Labor Code
6 and regulations promulgated thereunder as herein alleged.

7 32. All of the conduct and violations alleged herein occurred during the PAGA
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
9 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
10 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
11 2018 AJDAR 12157 (Certified for Publication 12/19/18).

12
13 **JURISDICTION AND VENUE**

14 33. This Court has jurisdiction over this Action pursuant to California Code of
15 Civil Procedure, Section 410.10.

16 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
18 employs AGGRIEVED EMPLOYEES across California, including in this County, and
19 committed the wrongful conduct herein alleged in this County against AGGRIEVED
20 EMPLOYEES.

21
22 **FIRST CAUSE OF ACTION**

23 **For Violation of the Private Attorneys General Act**

24 **[Cal. Lab. Code §§ 2698, *et seq.*]**

25 **(By PLAINTIFF and Against All Defendants)**

26 35. PLAINTIFF realleges and incorporates by this reference, as though fully set
27 forth herein, the prior paragraphs of this Complaint.
28

1 36. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
3 the state's labor law enforcement agencies. An action to recover civil penalties under
4 PAGA is fundamentally a law enforcement action designed to protect the public and not to
5 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
6 but to create a means of "deputizing" citizens as private attorneys general to enforce the
7 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
8 public interest to allow aggrieved employees, acting as private attorneys general to recover
9 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
10 claims cannot be subject to arbitration.

11 37. PLAINTIFF, and such persons that may be added from time to time who
12 satisfy the requirements and exhaust the administrative procedures under the Private
13 Attorney General Act, brings this Representative Action on behalf of the State of California
14 with respect to himself and all individuals who worked for DEFENDANT in California as a
15 Nurse and who were classified as independent contractors ("AGGRIEVED EMPLOYEES")
16 during the time period of January 31, 2022 until a date as determined by the Court (the
17 "PAGA PERIOD").

18 38. On January 31, 2023, PLAINTIFF gave written notice by electronic mail to
19 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated as required by
21 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
22 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
23 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
24 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
25 pursuant to Section 2699 as the proxy of the State of California with respect to all
26 AGGRIEVED EMPLOYEES as herein defined.

27 39. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the

1 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
2 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
3 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
4 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
5 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
6 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
7 1197.1, 1198, 2750.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040,
8 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
9 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
10 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
11 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
12 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
13 and the AGGRIEVED EMPLOYEES.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

18 1. On behalf of the State of California and with respect to all AGGRIEVED
19 EMPLOYEES:

20 A) Recovery of civil penalties as prescribed by the Labor Code Private
21 Attorneys General Act of 2004; and,

22 B) An award of attorneys' fees and cost of suit, as allowable under the

23 ///

24 ///

25 ///

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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: August 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
3 LLP

4
5 By: /s/ Nicholas De Blouw
6 Norman B. Blumenthal
7 Kyle R. Nordrehaug
8 Nicholas J. De Blouw

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Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

January 31, 2023
CA2818

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Infusion of Care, Inc.
Certified Mail #70222410000247761205
ILEENE CRANE-FRANKS
5455 GARDEN GROVE BLVD SUITE 250
WESTMINSTER, CA 92683

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who worked for Infusion of Care, Inc. in California as Certified Nursing Assistants, Licensed Vocational Nurses and Registered Nurses, and other similarly situated persons with similar job titles and who were classified as independent contractors during the time period of January 31, 2022 until a date as determined by the Court. Our offices represent Plaintiff Sidney Skinner (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Infusion of Care, Inc. (“Defendant”). Plaintiff is presently employed with Defendant as a Registered Nurse and has been classified as an independent contractor for his entire employment with Defendant. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A)

by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.