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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CARLOS BARAZZA, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

ALTA NEWPORT HOSPITAL, LLC DBA
FOOTHILL REGIONAL MEDICAL
CENTER; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 30-2023-01304199-CU-OE-CXC

[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT**

1. Penalties Pursuant to Labor Code §2699, et seq. for Violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5

1 Plaintiff CARLOS BARAZZA, an individual, on behalf of himself, and on behalf of the
2 people of the State of California and as an “aggrieved employee” under Labor Code Private
3 Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”), complains of Defendant ALTA
4 NEWPORT HOSPITAL, LLC DBA FOOTHILL REGIONAL MEDICAL CENTER
5 (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Representative Action, pursuant Labor Code §2699, *et seq.*, on behalf of
9 Plaintiff and the following group of individuals defined as:

10 All non-exempt employees who are employed or have been
11 employed by ALTA NEWPORT HOSPITAL, LLC DBA
12 FOOTHILL REGIONAL MEDICAL CENTER, in the State of
California who worked from January 26, 2022, through October 17,
2024 (“aggrieved employees”)

13 2. For at least one (1) year prior to the date of the letter send to the LWDA and
14 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
15 has failed to properly comply with §§ Labor Code 201, 202, 203, 204, 210, 221, 223, 226, 226.3,
16 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
17 1197.1, 1198, 1198.5, 2800, 2802, 2810.5.

18 3. Defendant has violated Labor Code §§ 510, 1194, 1194.2, 1198 and 1199. These
19 statutes require an employer to compensate its employees at the minimum wage rate for all hours
20 worked and at a rate of no less than one and one-half times the regular rate of pay for any work in
21 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.
22 Plaintiff and the aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week,
23 and therefore, were entitled to receive certain wages for overtime compensation, but they were not
24 paid for all overtime and double-time hours worked. Additionally, Plaintiff and other non-exempt
25 employees earn nondiscretionary remuneration, including, but not limited to, shift and other
26 differentials, nondiscretionary bonuses, and performance pay. Defendant, on occasion, failed to
27 include such nondiscretionary remuneration in the regular rate calculation, thereby underpaying
28 Plaintiff and other aggrieved employees when they worked overtime or double-time.

1 4. Defendant has had a consistent policy of failing to pay wages and/or overtime to
2 Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees were forced to work
3 on a regular and consistent basis without receiving compensation for all hours worked at the proper
4 rate, including performing work before scheduled shifts or after scheduled shifts without
5 compensation for this time, such as responding to work-related inquiries.

6 5. Defendant failed to maintain accurate records for Plaintiff and the aggrieved
7 employees as required by Labor Code §§ 1174, 1174.5, and 1175. Labor Code § 1174 requires
8 employers to maintain a record showing the names and addresses of all employees and payroll
9 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
10 units earned by, and any applicable piece rate paid to, employees employed at the respective plants
11 or establishments for a minimum period of three years. Here, Defendant fails to maintain accurate
12 payroll records that maintain the actual daily hours worked and the wages paid for Plaintiff and
13 the aggrieved employees, including earned and unpaid minimum, overtime, and premium wages
14 as discussed above.

15 6. Defendant failed to pay Plaintiff and other aggrieved employees at least the legal
16 minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510,
17 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Defendant's policy and practice of
18 requiring Plaintiff and aggrieved employees to work off-the-clock, failing to pay wages using the
19 appropriate regular rate of pay or the required minimum wage, and/or failing to pay for all recorded
20 time, among other reasons. Defendant failed to pay Plaintiff and other aggrieved employees all
21 minimum, regular, and overtime wages for these hours.

22 7. Defendant has had a consistent policy of requiring Plaintiff and the aggrieved
23 employees to report to work but failing to furnish them with work constituting half of their usual
24 shift. Defendant failed to pay Plaintiff and the aggrieved employees half the usual or scheduled
25 day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's
26 regular rate of pay for workdays in which Plaintiff and the aggrieved employees reported to work
27 and were furnished less than half the usual or scheduled days work. Defendant failed to pay
28 Plaintiff and the aggrieved employees for two (2) hours at the employee's regular rate of pay on

1 days in which Plaintiff and the aggrieved employees were required to report for work a second
2 time in one workday and were furnished less than two (2) hours of work upon the second reporting.
3 Defendant failed to pay reporting time pay in lieu thereof in violation of California law.

4 8. Defendant maintains a consistent policy of unlawfully deducting wages from
5 Plaintiff and all aggrieved employees in violation of Labor Code § 221. By making these
6 unauthorized deductions from Plaintiff and all aggrieved employees' earned wages, Plaintiff and
7 all aggrieved employees were paid less than the applicable minimum wage required under
8 California law.

9 9. Defendant violates Labor Code § 223 maintaining wages lower than the lawful
10 wage scale according to California law. As such, Plaintiff is an aggrieved employee within the
11 meaning of PAGA and Defendant violated Labor Code § 223 with respect to Plaintiff and all
12 aggrieved employees.

13 10. Defendant has had a consistent policy of failing to inform aggrieved employees of
14 their right to take meal periods by way of a lawful policy and requiring aggrieved employees within
15 the State of California, including Plaintiff, to work at least five (5) hours without a meal period
16 and failing to pay such employees one (1) hour of pay at the employees' regular rate of
17 compensation for each workday that the meal period is not provided or provided after five (5)
18 hours, as required by California state wage and hour laws.

19 11. Defendant has had a consistent policy of failing to inform aggrieved employees of
20 their right to take second meal periods by way of a lawful policy and of requiring all aggrieved
21 employees to work at least ten (10) hours without a second meal period. Additionally, Defendant
22 has failed to pay such employees one (1) hour of pay at the employee's regular rate of
23 compensation for each workday that the second meal period is not provided or provided after ten
24 (10) hours, as required by California state wage and hour laws. Additionally, Defendant, on
25 occasion, failed to include nondiscretionary remuneration, including, but not limited to, shift and
26 other differentials, in the regular rate calculation, thereby underpaying Plaintiff and other
27 aggrieved employees when they were paid meal period premiums.

28 12. Defendant has had a consistent policy of failing to inform aggrieved employees of

1 their right to take rest periods by way of a lawful policy and of failing to provide aggrieved
2 employees within the State of California, including Plaintiff, rest periods of at least ten (10)
3 minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one
4 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
5 period was not provided, as required by California state wage and hour laws. Additionally,
6 Defendant, on occasion, failed to include nondiscretionary remuneration, including, but not limited
7 to, shift and other differentials, in the regular rate calculation, thereby underpaying Plaintiff and
8 other aggrieved employees when they were paid rest break premiums.

9 13. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of
10 using their personal cell phones for business related purposes, the purchasing and maintenance of
11 supplies, and COVID-related expenses. Defendant required that Plaintiff and the aggrieved
12 employees be available by cell phone and answer/use their cell phones while working and this was
13 necessary to perform their job duties. These cell phones and vehicles were not provided by
14 Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs
15 associated with using these personal cell phones. Defendant also required Plaintiff and all
16 aggrieved employees to travel between job sites to perform work tasks. Because Defendant did not
17 provide buses or other transportation to workers so that they could travel from job sites to job sites
18 in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel
19 from job site to job site. Defendant did not reimburse Plaintiff and the aggrieved employees for
20 their vehicle use for travel between Defendant's job sites during the course of a work shift, in
21 violation of California law.

22 14. Defendant failed to pay Plaintiff and all aggrieved employees all wages due to them
23 within any time period specified by California Labor Code § 204, including earned and unpaid
24 minimum, overtime, and premium wages as discussed above. Defendant failed to pay Plaintiff and
25 all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days
26 following the close of the payroll period in violation of Labor Code §§ 204(d) and 210. Plaintiff
27 and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll
28 period in violation of these statutes.

1 15. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
2 Wage Order 5-2001 and Labor Code § 226(a) by failing to maintain time records accurately
3 reporting total hours worked by Plaintiff and the aggrieved employees and the appropriate rate of
4 pay and failing to issue itemized wage statements that accurately show total hours work and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

7 16. Additionally, in each pay period during the relevant period, Defendant has violated
8 IWC Wage Order 5 by failing to record accurate information with respect to, among other things,
9 when Plaintiff and the aggrieved employees have begun and ended each work shift and the total
10 hours worked.

11 17. Defendant has failed to set forth the amount of sick leave available, or paid time off
12 leave an employer provides in lieu of sick leave, on the itemized wage statements described in
13 Section 226 that it issues to Plaintiff and all aggrieved employees. Defendant underpaid sick pay
14 wages to Plaintiff and the aggrieved employees by failing to pay such wages at the regular rate of
15 pay in violation of Cal. Lab. Code Section 246. Specifically, Plaintiff and other non-exempt
16 employees earn nondiscretionary remuneration. Rather than pay sick pay at the regular rate of pay,
17 Defendant underpaid sick pay to Plaintiff and the aggrieved employees at their base rates of pay.
18 Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay.
19 Plaintiff and the aggrieved employees routinely earned nondiscretionary incentive wages which
20 increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate
21 of pay for Plaintiff and the aggrieved employees, as opposed to the correct, higher regular rate of
22 pay, as required under Cal. Lab. Code Section 246.

23 18. Defendant has had a consistent policy of failing to pay its employees for their vested
24 vacation wages at the time of the employee’s separation from the company, in violation of Labor
25 Code Section 227.3.

26 19. Defendant has failed to pay all wages due at the time of termination or resignation
27 to the aggrieved employees.

28 20. Pursuant to Labor Code §§ 551 and 552 Defendant failed to provide Plaintiff and

1 the aggrieved employees with one (1) day of rest in seven (7). Defendant failed to provide this day
2 of rest. Here, Plaintiff and the aggrieved employees worked seven days a week on a regular and
3 consistent basis with no day off.

4 21. Defendant failed to provide Plaintiff and the aggrieved employees notice of
5 material terms of employment in violation of Labor Code § 2810.5.

6 22. As a result of these allegations, Plaintiff requests that Defendant pay back any
7 wages owed from one year prior to the date of this letter to the present, pursuant to Labor Code §
8 558.

9 23. Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code
10 §§226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by
11 sending a letter to Defendant. Defendant refused to provide the requested documentation in
12 violation of the statutes. Plaintiff is seeking penalties and injunctive relief.

13 24. Plaintiff, on behalf of himself and all aggrieved employees brings this
14 representative action pursuant to Labor Code § 2699 *et seq.* seeking penalties for Defendant's
15 violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 245-249,
16 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5., 2800,
17 2802, 2810.5; and Wage Order 5-2001. .

18 **II.**

19 **JURISDICTION AND VENUE**

20 25. This Court has subject matter jurisdiction over all causes of action asserted herein
21 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
22 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
23 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
24 State of California or is subject to adjudication in the courts of the State of California.

25 26. This Court has personal jurisdiction over Defendant because Defendant has caused
26 injuries in the County of Orange and the State of California through their acts, and by their
27 violation of the California Labor Code and California state common law.

28 27. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

Civil Procedure § 395. Defendant operates within California and does business within Orange County. The unlawful acts alleged herein have a direct effect on Plaintiff and all aggrieved employees within the State of California and the county of Orange.

28. Plaintiff files this amended complaint for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

III.

PARTIES

A. PLAINTIFF

29. Plaintiff CARLOS BARAZZA is a resident of California. Plaintiff was employed by Defendant as a non-exempt employee in California.

30. Upon information and belief, Plaintiff and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code of Regs. § 11050).

31. Additionally, Plaintiff requested copies or an opportunity to copy his personnel file and his pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226 and 1198.5.

32. Plaintiff and all aggrieved employees as defined in his amended notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

B. DEFENDANTS

33. Defendant ALTA NEWPORT HOSPITAL, LLC DBA FOOTHILL REGIONAL MEDICAL CENTER is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 3415 S. Sepulveda Blvd., 9th Floor, Los Angeles, CA 90034. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

34. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
2 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
4 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

6 35. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
9 legally attributable to the other Defendants.

10 36. Furthermore, Defendants acted in all respects as the employers or joint employers
11 of the aggrieved employees. Defendants, and each of them, exercised control over the wages, hours
12 or working conditions of the aggrieved employees, or suffered or permitted the aggrieved
13 employees to work, or engaged, thereby creating a common law employment relationship, with
14 the aggrieved employees. Therefore, Defendants, and each of them, employed or jointly employed
15 the aggrieved employees.

16 IV.

17 FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

18 37. Plaintiff and the aggrieved employees are, and at all times pertinent hereto, have
19 been classified as non-exempt employees by Defendant. Defendant hires employees who work as
20 hourly employees who are paid on an hourly basis.

21 38. Upon information and belief, Plaintiff and the Proposed Class are covered by
22 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
23 Code of Regs. § 11050).

24 39. On a regular and consistent basis, for all aggrieved employees employed by
25 Defendants, Defendants have failed to comply with Labor Code §§ 201, 202, 203, 204, 210, 221,
26 223, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194,
27 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5.

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1 V.

2 FIRST CAUSE OF ACTION

3 PLAINTIFF ON BEHALF OF HIMSELF AND ALL AGGRIEVED EMPLOYEES FOR
4 PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR VIOLATIONS OF
5 LABOR CODE §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 245-249, 510,
6 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800,
7 2802, AND 2810.5.

8 40. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 41. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
10 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
11 present, Defendant has violated Labor Code §§ 510, 1194, 1194.2, 1198, and 1199. These statutes
12 require an employer to compensate its employees at the minimum wage rate for all hours worked
13 and at a rate of no less than one and one-half times the regular rate of pay for any work in excess
14 of eight hours in one workday and any work in excess of 40 hours in any one workweek. Plaintiff
15 and the aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week, and
16 therefore, were entitled to receive certain wages for overtime compensation, but they were not paid
17 for all overtime and double-time hours worked. Additionally, Plaintiff and other non-exempt
18 employees earn nondiscretionary remuneration, including, but not limited to, shift and other
19 differentials, nondiscretionary bonuses, and performance pay. Defendant, on occasion, failed to
20 include such nondiscretionary remuneration in the regular rate calculation, thereby underpaying
21 Plaintiff and other aggrieved employees when they worked overtime or double-time.

22 42. Here, Defendant has had a consistent policy of failing to pay wages and/or overtime
23 to Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees were forced to work
24 on a regular and consistent basis without receiving compensation for all hours worked at the proper
25 rate, including performing work before scheduled shifts or after scheduled shifts without
26 compensation for this time, such as responding to work-related inquiries. Labor Code §1194.2
27 provides that in any action to recover wages because of the payment of a wage less than the
28 minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal

1 to the wages unlawfully unpaid and interest thereon. Thus, Plaintiff is an aggrieved employee
2 within the meaning of PAGA and Defendant has violated Labor Code §§ 510, 1194, 1194.2, 1198,
3 and 1199 with respect to Plaintiff and all aggrieved employees.

4 43. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
5 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
6 present, Defendant failed to maintain accurate records for Plaintiff and the aggrieved employees
7 as required by Labor Code §§ 1174, 1174.5, and 1175. Labor Code § 1174 requires employers to
8 maintain a record showing the names and addresses of all employees and payroll records showing
9 the hours worked daily by and the wages paid to, and the number of piece-rate units earned by,
10 and any applicable piece rate paid to, employees employed at the respective plants or
11 establishments for a minimum period of three years. Labor Code § 1174.5 further provides that an
12 employer who fails to maintain these records is subject to a \$500 civil penalty. Here, Defendant
13 fails to maintain accurate payroll records that maintain the actual daily hours worked and the wages
14 paid for Plaintiff and the aggrieved employees, including earned and unpaid minimum, overtime,
15 and premium wages as discussed above. Thus, Plaintiff is an aggrieved employee within the
16 meaning of PAGA and Defendant has violated Labor Code §§ 1174, 1174.5, and 1175 with respect
17 to Plaintiff and all aggrieved employees.

18 44. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
19 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
20 present, Defendant failed to pay Plaintiff and other aggrieved employees at least the legal
21 minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510,
22 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Defendant's policy and practice of
23 requiring Plaintiff and aggrieved employees to work off-the-clock, failing to pay wages using the
24 appropriate regular rate of pay or the required minimum wage, and/or failing to pay for all recorded
25 time, among other reasons. Defendant failed to pay Plaintiff and other aggrieved employees all
26 minimum, regular, and overtime wages for these hours.

27 45. Labor Code § 1198 provides that "The employment of any employee . . . under
28 conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Industrial Welfare

Commission (“IWC”) Wage Orders 4-2001 and 5-2001 requires that an employer pay an employee for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work. This compensation shall not be less than the minimum wage. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay. Defendant has had a consistent policy of requiring Plaintiff and the aggrieved employees to report to work but failing to furnish them with work constituting half of their usual shift. Defendant failed to pay Plaintiff and the aggrieved employees half the usual or scheduled day’s work in an amount no less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay for workdays in which Plaintiff and the aggrieved employees reported to work and were furnished less than half the usual or scheduled days work. Defendant failed to pay Plaintiff and the aggrieved employees for two (2) hours at the employee’s regular rate of pay on days in which Plaintiff and the aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting. Defendant failed to pay reporting time pay in lieu thereof in violation of California law. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 with respect to Plaintiff and all aggrieved employees.

46. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code § 221. Labor Code § 221 states that it is “unlawful for any employer to collect or receive from an employee any part of wages.” Moreover, Labor Code § 226.3 provides for heightened penalties where “the employer fails to provide the employee a wage deduction statement or fails to keep [required] records.” Defendant maintains a consistent policy of unlawfully deducting wages from Plaintiff and all aggrieved employees in violation of Labor Code § 221. By making these unauthorized deductions from Plaintiff and all aggrieved

employees' earned wages, Plaintiff and all aggrieved employees were paid less than the applicable minimum wage required under California law. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 221 with respect to Plaintiff and all aggrieved employees.

47. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code § 223. Labor Code § 223 requires an employer to maintain a designated wage scale and that "it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Defendant violates Labor Code § 223 maintaining wages lower than the lawful wage scale according to California law. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code § 223 with respect to Plaintiff and all aggrieved employees.

48. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code §§ 226.7 and 512. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of these rights. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday

1 that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or
2 was not provided in a timely manner.

3 49. Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their
4 rights associated with meal periods and failed to provide timely meal periods. Defendant has had
5 a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take short meal
6 breaks; (2) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred
7 after the first five hours of each shift; (3) failing to provide meal periods entirely on some shifts;
8 (4) requiring Plaintiff and the aggrieved employees, on occasion, to perform work during their off-
9 duty meal periods; (5) requiring Plaintiff and the aggrieved employees to work shifts over ten (10)
10 hours without providing a second meal period of thirty minutes in length altogether; and (6) failing
11 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
12 workday that a meal period was not provided within the first (5) hours of the shift, was short, or
13 was not provided at all. Defendant also required aggrieved employees to stay on work premises
14 during meal periods. As such, Plaintiff is an aggrieved employee and Defendant failed to provide
15 compliant meal periods in violation of Labor Code §§ 226.7 and 512. Additionally, Defendant, on
16 occasion, failed to include nondiscretionary remuneration, including, but not limited to, shift and
17 other differentials, in the regular rate calculation, thereby underpaying Plaintiff and other
18 aggrieved employees when they were paid meal period premiums. Thus, Plaintiff is an aggrieved
19 employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226.7 and 512
20 with respect to Plaintiff and all aggrieved employees.

21 50. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
22 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
23 present, Defendant has violated Labor Code § 226.7. Pursuant to Labor Code § 226.7 and Wage
24 Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks
25 of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant
26 also maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on
27 the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
28 257, 269 (2016) (an employer that limits where an employee can take a break does not “relinquish

control over how employees spend their time”). Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. Further, Defendant required Plaintiff and the aggrieved employees, on occasion, to perform work during their off-duty rest breaks. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Additionally, Defendant, on occasion, failed to include nondiscretionary remuneration, including, but not limited to, shift and other differentials, in the regular rate calculation, thereby underpaying Plaintiff and other aggrieved employees when they were paid rest break premiums. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226.7 with respect to Plaintiff and all aggrieved employees.

51. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code §§ 2800 and 2802. Labor Code § 2800 provides, in pertinent part, that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.” In addition, § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes, the purchasing and maintenance of supplies, and COVID-related expenses. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones and vehicles were

1 not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved
2 employees for the costs associated with using these personal cell phones.

3 52. Defendant also required Plaintiff and all aggrieved employees to travel between job
4 sites to perform work tasks. Because Defendant did not provide buses or other transportation to
5 workers so that they could travel from job sites to job sites in the middle of their shifts, Plaintiff
6 and the aggrieved employees used their own vehicles to travel from job site to job site. Defendant
7 did not reimburse Plaintiff and the aggrieved employees for their vehicle use for travel between
8 Defendant's job sites during the course of a work shift, in violation of California law. Thus,
9 Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor
10 Code §§ 2800 and 2802 with respect to Plaintiff and all aggrieved employees.

11 53. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
12 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
13 present, Defendant has violated Labor Code § 204. Labor Code § 204 requires that all wages earned
14 by any person in any employment between the 1st and the 15th days, inclusive, of any calendar
15 month, other than those wages due upon termination of an employee, are due and payable between
16 the 16th and the 26th day of the month during which the labor was performed, and that all wages
17 earned by any person in any employment between the 16th and the last day, inclusive, of any
18 calendar month, other than those wages due upon termination of an employee, are due and payable
19 between the 1st and the 10th day of the following month. California Labor Code § 204 also requires
20 that all wages earned for labor in excess of the normal work period shall be paid no later than the
21 payday for the next regular payroll period. Defendant failed to pay Plaintiff and all aggrieved
22 employees all wages due to them within any time period specified by California Labor Code §
23 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.
24 Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll
25 period within seven (7) calendar days following the close of the payroll period in violation of
26 Labor Code §§ 204(d) and 210. Plaintiff and all aggrieved employees were paid after the seventh
27 (7th) day following the close of the payroll period in violation of these statutes. Thus, Plaintiff is
28 an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §

1 204 with respect to Plaintiff and all aggrieved employees.

2 54. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
3 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
4 present, Defendant has violated Labor Code § 226(a). Defendant engaged in a practice of failing
5 to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires
6 that every employer shall, semimonthly or at the time of each payment of wages, furnish each of
7 his or her employees, an accurate itemized statement in writing showing total hours worked and
8 all applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9).) Defendant failed
10 to issue Plaintiff and the aggrieved employees accurate and complete itemized wage statements
11 showing total hours worked, including time spent working off-the-clock and during meal and rest
12 periods as discussed above, and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee in violation of Labor
14 Code § 226(a)(2) and (9). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA
15 and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and all aggrieved
16 employees.

17 55. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
18 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
19 present, Defendant has violated IWC Wage Order 5. In pertinent part, IWC Wage Order 5,
20 paragraph 7(A) provides that every employer shall keep accurate information with respect to each
21 employee including time records showing when the employee begins and ends each work period
22 and total hours worked in the payroll period. When a piece rate or incentive plan is in operation,
23 piece rates or an explanation of the incentive plan formula shall be provided to employees. Here,
24 in each pay period during the relevant period, Defendant has violated IWC Wage Order 5 by failing
25 to record accurate information with respect to, among other things, when Plaintiff and the
26 aggrieved employees have begun and ended each work shift and the total hours worked. Thus,
27 Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated IWC
28 Wage Order 5 with respect to Plaintiff and all aggrieved employees.

1 56. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
2 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
3 present, Defendant has violated Labor Code §§ 245, 246, 247-249. Labor Code §245, 246, and
4 247-249 provide that “[a]n employer shall provide an employee with written notice that sets forth
5 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
6 leave, for use on either the employee’s itemized wage statement described in Section 226 or in a
7 separate writing provided on the designated pay date with the employee’s payment of wages.”
8 Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave
9 an employer provides in lieu of sick leave, on the itemized wage statements described in Section
10 226 that it issues to Plaintiff and all aggrieved employees. Defendant underpaid sick pay wages to
11 Plaintiff and the aggrieved employees by failing to pay such wages at the regular rate of pay in
12 violation of Cal. Lab. Code Section 246. Specifically, Plaintiff and other non-exempt employees
13 earn nondiscretionary remuneration. Rather than pay sick pay at the regular rate of pay, Defendant
14 underpaid sick pay to Plaintiff and the aggrieved employees at their base rates of pay. Cal. Lab.
15 Code Section 246(1)(2) requires that paid sick time for nonexempt employees be calculated by
16 dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
17 hours worked in the full pay periods of the prior 90 days of employment. Defendant violated Cal.
18 Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. Plaintiff and the
19 aggrieved employees routinely earned nondiscretionary incentive wages which increased their
20 regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for
21 Plaintiff and the aggrieved employees, as opposed to the correct, higher regular rate of pay, as
22 required under Cal. Lab. Code Section 246. Therefore, Defendant has violated Labor Code §245.5
23 and 246 with respect to our client and all aggrieved employees. Thus, Plaintiff is an aggrieved
24 employee within the meaning of PAGA.

25 57. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
26 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
27 present, Defendant has violated Labor Code § 203. Labor Code § 203 provides that if “an employer
28 willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the

1 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
2 an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here,
3 all aggrieved employees were not paid all wages due upon their separation from Defendant’s
4 employ or within seventy-two (72) hours of their resignation and Defendant has failed to pay those
5 sums for thirty (30) days thereafter in violation of Labor Code §§ 201, 202, and 203. See *Huff v.*
6 *Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745, 754 (2018), reh’g denied (June 13,
7 2018), review denied (Aug. 8, 2018), allowing named plaintiff to pursue PAGA penalties for
8 violations that he may not have personally suffered. Defendant failed to pay Plaintiff and other
9 aggrieved employees all wages due to them within any time period specified by California Labor
10 Code §§ 201 and 202, including earned and unpaid minimum, overtime, and premium wages as
11 discussed above. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
12 Defendant has violated Labor Code § 203 with respect to Plaintiff and all aggrieved employees.

13 58. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
14 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
15 present, Defendant has violated Labor Code §§ 551 and 552. Pursuant to Labor Code §§ 551 and
16 552 Defendant failed to provide Plaintiff and the aggrieved employees with one (1) day of rest in
17 seven (7). Labor Code § 551 states: “Every person employed in any occupation of labor is entitled
18 to one day's rest therefrom in seven. Moreover, Labor Code § 552 states: “No employer of labor
19 shall cause his employees to work more than six days in seven.” Defendant failed to provide this
20 day of rest. Here, Plaintiff and the aggrieved employees worked seven days a week on a regular
21 and consistent basis with no day off. As such, Plaintiff is an aggrieved employee and Defendant
22 failed to provide Plaintiff and all aggrieved employees with one day’s rest therefrom in seven in
23 violation of Labor Code §§ 551 and 552.

24 59. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
25 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
26 present, Defendant has violated Labor Code § 2810.5. Labor Code § 2810.5(a) requires that
27 employers provide employees at the time of hire a written notice, in the language the employer
28 normally uses to communicate employment-related information, that contains the following

1 information: (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day,
2 week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (B)
3 Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
4 (C) The regular payday designated by the employer in accordance with the requirements of this
5 code; (D) The name of the employer, including any “doing business as” names used by the
6 employer; (E) The physical address of the employer's main office or principal place of business,
7 and a mailing address, if different; (F) The telephone number of the employer; (G) The name,
8 address, and telephone number of the employer's workers' compensation insurance carrier; (H)
9 That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick
10 leave; may not be terminated or retaliated against for using or requesting the use of accrued paid
11 sick leave; and has the right to file a complaint against an employer who retaliates; (I) Any other
12 information the Labor Commissioner deems material and necessary. Defendant failed to provide
13 Plaintiff and the aggrieved employees notice of material terms of employment in violation of Labor
14 Code § 2810.5. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA.

15 60. Given these allegations, Plaintiff requests that Defendant pay back any wages owed
16 from one year prior to the date of this letter to the present, pursuant to Labor Code § 558.

17 61. Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code
18 §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by
19 sending a letter to Defendant. Defendant refused to provide the requested documentation in
20 violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA
21 and Defendant has violated Labor Code §§ 226 and 1198.5.

22 62. Defendants’ violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226,
23 226.3, 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
24 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5 was all done on a regular and consistent basis.

25 63. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
26 §2699, et seq. because of Defendants’ violation of Labor Code §§ 201, 202, 203, 204, 210, 221,
27 223, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194,
28 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5.

64. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

a. \$100 for the initial violation per employee per pay period; and

b. \$200 for each subsequent violation per employee per pay period.

65. These penalties will be allocated 75% to the Labor & Workforce Development Agency and 25% to the affected employees.

66. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to each of the Defendant's entity address, which is 3415 S. Sepulveda Blvd., 9th Floor, Los Angeles, CA 90034, as proscribed by the Code on January 26, 2023, describing Defendants' conduct in violation of Labor Code §§201, 202, 203, 226(a), 226.7, 512, and IWC 5-2001. (*see* Exhibit "1.") Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2"). Plaintiff received a signed green return receipt from Defendant, indicating it received Plaintiff's letter (*see* Exhibit "3"). On July 11, 2024, Plaintiff submitted a supplemental notice to LWDA regarding Defendant's violation of §§204, 210, 221, 223, 226.3, 227.3, 245-249, 510, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2699, 2800, 2802, and 2810.5 (*see* Exhibit "4").

67. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the Second Amended Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff seeks judgment against Alta Newport Hospital, LLC dba Foothill Regional Medical Center and Does 1 to 50, Inclusive, and each of them, as follows for Plaintiff and all aggrieved employees:

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

1 1. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Defendants’
2 violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 245-249,
3 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800,
4 2802, and 2810.5.

5 2. An award of prejudgment and post judgment interest;

6 3. An award providing for payment of costs of suit;

7 4. An award of attorneys’ fees; and

8 5. Such other and further relief as this Court may deem proper and just.

9
10 DATED: September 25, 2024

KINGSLEY SZAMET & LY

11
12 By: 

Kelsey M. Szamet

Attorneys for Plaintiff and the aggrieved employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 26, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Alta Newport Hospital, LLC dba Foothill Regional Medical Center
3415 S. Sepulveda Blvd., 9th Floor
Los Angeles, CA 90034
Via Certified Mailing # 7022 3330 0002 1335 5706

Re: Carlos Barraza v. Alta Newport Hospital, LLC dba Foothill Regional Medical Center
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Carlos Barraza (“Plaintiff”) and a proposed group of current and former employees working for Alta Newport Hospital, LLC dba Foothill Regional Medical Center (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Alta Newport Hospital, LLC dba Foothill Regional Medical Center, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitations for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 26, 2023

Page 2 of 3

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of these rights. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred after the first five hours of each shift; (2) failing to provide meal periods entirely on some shifts; (3) requiring Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (4) failing to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that a meal period was not provided within the first (5) hours of the shift, was short, or was not provided at all. As such, Plaintiff is an aggrieved employee and Defendant failed to provide compliant meal periods in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant also maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a break does not “relinquish control over how employees spend their time”). Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 26, 2023

Page 3 of 3

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9).) Defendant failed to issue Plaintiff and the aggrieved employees accurate itemized wage statements showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(2) and (9).

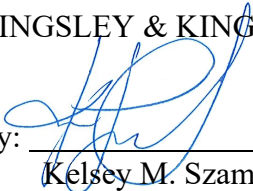
Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ or within seventy-two (72) hours of their resignation and Defendant has failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiff to pursue PAGA penalties for violations that he may not have personally suffered.

Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226 and 1198.5.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 512, and 1198.5, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

[KMS/tg]

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, , Los Angeles, CA90010-2513

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Carlos Barraza

Plaintiff/Aggrieved Employee Occupation *

Emergency Registered Nurse

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Alta Newport Hospital, LLC dba Foothill Regi

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

3415 S. Sepulveda Blvd., 9th Floor	Los Angeles
Employer State * California	Employer Zip/Postal Code * 90034
Employer Industry * Other	Employer Industry for "Other" * Hospital

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

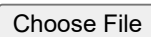
91436

Credit Card Type ***Credit Card Number *****CVV Number *****Credit Card Expiration Month ***

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *** PAGA Letter –...I Hospital.pdf**Other Attachment – (if any) (must be a .pdf)** No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAIInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

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Thank you for submission of your PAGA Case.

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on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Thu 1/26/2023 9:12 AM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

1/26/2023

LWDA Case No. LWDA-CM-931824-23

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Carlos Barraza

Employer: Alta Newport Hospital, LLC dba Foothill Regional Medical Center

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate Attorneys General Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Cf7f9473bd9ad40e3fd0c08daffc08d9f%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638103499728063319%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=7uw009AluHeY0dsRmqxMikcCH9Ju64uJgMLKnvF07aU%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate%20Attorneys%20General%20Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Cf7f9473bd9ad40e3fd0c08daffc08d9f%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638103499728063319%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=7uw009AluHeY0dsRmqxMikcCH9Ju64uJgMLKnvF07aU%3D&reserved=0)

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

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on behalf of

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Thu 1/26/2023 9:13 AM

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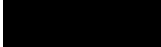
Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-931824-23

Order Number: ORD-000208027

Total:\$75.00

Card Type: 

Date: 1/26/2023

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436

EXHIBIT "3"

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

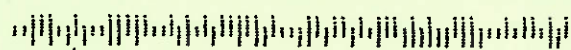
9590 9402 7019 1225 1746 32

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Ltr.
Foothill Regional



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Alta Newport Hospital, LLC dba
Foothill Regional Medical Center
3415 S. Sepulveda Blvd., 9th Floor
Los Angeles, CA 90034



9590 9402 7019 1225 1746 32

2. Article Number (Transfer from service label)

7022 3330 0002 1335 5706

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent☐ Addressee

B. Received by (Printed Name)

Fennell

C. Date of Delivery

1-30-23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

(over \$500)

EXHIBIT "4"

KINGSLEY & KINGSLEY

| L A W Y E R S |

July 11, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, CA 94612

Via Electronic Submission: <https://dir.tfaforms.net/310>

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Attorneys for Defendant Alta Newport Hospital, LLC dba Foothill Regional Medical Center

Via Electronic Mail Transmission

Re: Carlos Barraza v. Alta Newport Hospital, LLC dba Foothill Regional Medical Center
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Carlos Barraza (“Plaintiff”) and a proposed group of current and former employees working for Alta Newport Hospital, LLC dba Foothill Regional Medical Center (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* This is an amended notice letter which shall serve to incorporate and supplement the letter from our office on January 26, 2023. We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Alta Newport Hospital, LLC dba Foothill Regional Medical Center, in the State of California who worked from January 26, 2022, through October 17, 2024. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2, 1198 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight

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California Labor Code §2699 Penalties

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hours in one workday and any work in excess of 40 hours in any one workweek. Plaintiff and the aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week, and therefore, were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime and double-time hours worked. Additionally, Plaintiff and other non-exempt employees earn nondiscretionary remuneration, including, but not limited to, shift and other differentials, non-discretionary bonuses, and performance pay. Defendant, on occasion, failed to include such nondiscretionary remuneration in the regular rate calculation, thereby underpaying Plaintiff and other aggrieved employees when they worked overtime or double-time.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate, including performing work before scheduled shifts or after scheduled shifts without compensation for this time, such as responding to work-related inquiries. Labor Code §1194.2 provides that in any action to recover wages because of the payment of a wage less than the minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Defendant failed to maintain accurate records for Plaintiff and the aggrieved employees as required by Labor Code §§ 1174, 1174.5, and 1175. Labor Code § 1174 requires employers to maintain a record showing the names and addresses of all employees and 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 for a minimum period of three years. Labor Code § 1174.5 further provides that an employer who fails to maintain these records is subject to a \$500 civil penalty. Here, Defendant fails to maintain accurate payroll records that maintain the actual daily hours worked and the wages paid for Plaintiff and the aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Defendant failed to pay Plaintiff and other aggrieved employees at least the legal minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Defendant's policy and practice of requiring Plaintiff and aggrieved employees to work off-the-clock, failing to pay wages using the appropriate regular rate of pay or the required minimum wage, and/or failing to pay for all recorded time, among other reasons. Defendant failed to pay Plaintiff and other aggrieved employees all minimum, regular, and overtime wages for these hours.

Labor Code § 1198 provides that "The employment of any employee . . . under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Industrial Welfare Commission ("IWC") Wage Orders 4-2001 and 5-2001 requires that an employer pay an employee for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay for each workday an employee is required to report for work

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California Labor Code §2699 Penalties

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and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work. This compensation shall not be less than the minimum wage. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. Defendant has had a consistent policy of requiring Plaintiff and the aggrieved employees to report to work but failing to furnish them with work constituting half of their usual shift. Defendant failed to pay Plaintiff and the aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Plaintiff and the aggrieved employees reported to work and were furnished less than half the usual or scheduled days work. Defendant failed to pay Plaintiff and the aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting. Defendant failed to pay reporting time pay in lieu thereof in violation of California law.

Labor Code § 221 states that it is "unlawful for any employer to collect or receive from an employee any part of wages." Moreover, Labor Code § 226.3 provides for heightened penalties where "the employer fails to provide the employee a wage deduction statement or fails to keep [required] records." Defendant maintains a consistent policy of unlawfully deducting wages from Plaintiff and all aggrieved employees in violation of Labor Code § 221. By making these unauthorized deductions from Plaintiff and all aggrieved employees' earned wages, Plaintiff and all aggrieved employees were paid less than the applicable minimum wage required under California law.

Labor Code § 223 requires an employer to maintain a designated wage scale and that "it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Defendant violates Labor Code § 223 maintaining wages lower than the lawful wage scale according to California law. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code § 223 with respect to Plaintiff and all aggrieved employees.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of these rights. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual

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consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take short meal breaks; (2) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred after the first five hours of each shift; (3) failing to provide meal periods entirely on some shifts; (4) requiring Plaintiff and the aggrieved employees, on occasion, to perform work during their off-duty meal periods; (5) requiring Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (6) failing to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that a meal period was not provided within the first (5) hours of the shift, was short, or was not provided at all. Defendant also required aggrieved employees to stay on work premises during meal periods. As such, Plaintiff is an aggrieved employee and Defendant failed to provide compliant meal periods in violation of Labor Code §§ 226.7 and 512. Additionally, Defendant, on occasion, failed to include nondiscretionary remuneration, including, but not limited to, shift and other differentials, in the regular rate calculation, thereby underpaying Plaintiff and other aggrieved employees when they were paid meal period premiums.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant also maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer that limits where an employee can take a break does not "relinquish control over how employees spend their time"). Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. Further, Defendant required Plaintiff and the aggrieved employees, on occasion, to perform work during their off-duty rest breaks. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Additionally, Defendant, on occasion, failed to include nondiscretionary remuneration, including, but not limited to, shift and other differentials, in the regular rate calculation, thereby underpaying Plaintiff and other aggrieved employees when they were paid rest break premiums.

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Labor Code § 2800 provides, in pertinent part, that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.” In addition, § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes, the purchasing and maintenance of supplies, and COVID-related expenses. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones and vehicles were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Defendant also required Plaintiff and all aggrieved employees to travel between job sites to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from job sites to job sites in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel from job site to job site. Defendant did not reimburse Plaintiff and the aggrieved employees for their vehicle use for travel between Defendant’s job sites during the course of a work shift, in violation of California law.

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Defendant failed to pay Plaintiff and all aggrieved employees all wages due to them within any time period specified by California Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages as discussed above. Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§ 204(d) and 210. Plaintiff and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9).) Defendant failed to issue Plaintiff and the aggrieved employees

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accurate and complete itemized wage statements showing total hours worked, including time spent working off-the-clock and during meal and rest periods as discussed above, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(2) and (9).

In pertinent part, IWC Wage Order 5, paragraph 7(A) provides that every employer shall keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period and total hours worked in the payroll period. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. Here, in each pay period during the relevant period, Defendant has violated IWC Wage Order 5 by failing to record accurate information with respect to, among other things, when Plaintiff and the aggrieved employees have begun and ended each work shift and the total hours worked.

Labor Code §245, 246, and 247-249 provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and all aggrieved employees. Defendant underpaid sick pay wages to Plaintiff and the aggrieved employees by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, Plaintiff and other non-exempt employees earn nondiscretionary remuneration. Rather than pay sick pay at the regular rate of pay, Defendant underpaid sick pay to Plaintiff and the aggrieved employees at their base rates of pay. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt employees be calculated 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 of employment. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. Plaintiff and the aggrieved employees routinely earned nondiscretionary incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for Plaintiff and the aggrieved employees, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246. Therefore, Defendant has violated Labor Code §245.5 and 246 with respect to our client and all aggrieved employees. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA.

Labor Code §227.3 provides: “...whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served...” Defendant has had a consistent policy of failing to pay its employees for their vested vacation wages at the time of the employee’s separation from the company.

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Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ or within seventy-two (72) hours of their resignation and Defendant has failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§ 201, 202, and 203. *See Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745, 754 (2018), reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named plaintiff to pursue PAGA penalties for violations that he may not have personally suffered. Defendant failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by California Labor Code §§ 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Pursuant to Labor Code §§ 551 and 552 Defendant failed to provide Plaintiff and the aggrieved employees with one (1) day of rest in seven (7). Labor Code § 551 states: “Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven. Moreover, Labor Code § 552 states: “No employer of labor shall cause his employees to work more than six days in seven.” Defendant failed to provide this day of rest. Here, Plaintiff and the aggrieved employees worked seven days a week on a regular and consistent basis with no day off. As such, Plaintiff is an aggrieved employee and Defendant failed to provide Plaintiff and all aggrieved employees with one day’s rest therefrom in seven in violation of Labor Code §§ 551 and 552.

Labor Code § 2810.5(a) requires that employers provide employees at the time of hire a written notice, in the language the employer normally uses to communicate employment-related information, that contains the following information: (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (C) The regular payday designated by the employer in accordance with the requirements of this code; (D) The name of the employer, including any “doing business as” names used by the employer; (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different; (F) The telephone number of the employer; (G) The name, address, and telephone number of the employer's workers' compensation insurance carrier; (H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates; (I) Any other information the Labor Commissioner deems material and necessary. Defendant failed to provide Plaintiff and the aggrieved employees notice of material terms of employment in violation of Labor Code § 2810.5. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA.

Given these allegations, Plaintiff requests that Defendant pay back any wages owed from one year

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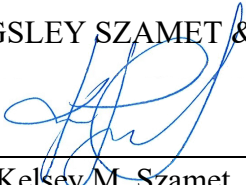
prior to the date of this letter to the present, pursuant to Labor Code § 558.

Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226 and 1198.5.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2699, 2800, 2802, 2810.5, and the applicable IWC Wage Orders, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 

Kelsey M. Szamet

[KMS/tg]

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, , Los Angeles, CA90010-2513