**FALAKASSA LAW, P.C.**
Joshua S. Falakassa, CA Bar No. 295045
*josh@falakassalaw.com*
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

**BOKHOUR LAW GROUP, P.C.**
Mehrdad Bokhour, Esq., CA Bar No. 285256
*mehrdad@bokhourlaw.com*
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff, on behalf of the State of California

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

JULIE OJEDA, on behalf of herself and all others similarly situated,

Plaintiff,

v.

ION INTERMEDIATE HOLDINGS, LLC, a Delaware Limited Liability Corporation; INTEGRATED ONCOLOGY NETWORK, LLC., a Delaware Limited Liability Corporation; CALIFORNIA CANCER ASSOCIATES FOR RESEARCH AND EXCELLENCE, INC., a California Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 37-2023-00042603-CU-OE-CTL

**PAGA REPRESENTATIVE ACTION COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)**

Plaintiff Julie Ojeda ("Plaintiff") on behalf of the State of California hereby brings this PAGA Representative Action Complaint ("Complaint") against Defendants Ion Intermediate Holdings, LLC, Integrated Oncology Network, LLC, and California Cancer Associates for Research and Excellence, Inc. and DOES 1 to 50 (collectively "Defendants") and each of them, as follows:

## INTRODUCTION

1. Defendants are a provider of cancer research and comprehensive cancer treatment services with over 30 providers across 6 centers in the Fresno and San Diego, CA markets. The Company provides an integrated cancer care offering including medical oncology, radiation oncology, diagnostic imaging, and other ancillary services. The combination of ION and cCARE creates one of the largest oncology providers in the U.S. with 57 centers across 14 states.

2. Plaintiff brings this PAGA representative action solely on behalf of the State of California against Defendants for alleged violations of the California Labor Code and applicable Wage Orders of the IWC.

3. As set forth below, Plaintiff alleges that Defendants deprived Plaintiff and other similarly aggrieved employees of all overtime and sick pay wages by failing to properly calculate the "regular rate of pay." Moreover, Plaintiff alleges that Defendants' meal and rest period policies and practices failed to provide him and all other similarly situated employees with compliant meal and rest periods or pay premium pay at the "regular rate of pay" in lieu thereof. Plaintiff further alleges that Defendants failed to reimburse her and other aggrieved employees for all necessary business expenditures. Finally, Plaintiff alleges that Defendants failed to provide aggreived employees with accurate written itemized wage statements and failed to timely pay all final wages upon separation of employment.

## JURISDICTION

4. This is a representative action brought pursuant to Labor Code § 2698 *et seq*. on behalf of the State of California and the group of aggrieved employees defined as follows: "All individuals who are or were employed as hourly, non-exempt employees by Defendants, or their predecessors or merged entities, in the State of California from June 16, 2022, and continuing to the present ("aggrieved employees")."

5. Plaintiff, of behalf of the State of California brings this representative action pursuant to Labor Code § 2698, *et seq*. seeking penalties for Defendants' violation of California Labor Code §§ 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, and 2802-2804, and all applicable IWC Wage Orders.

6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2698, *et seq*.

7. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

## **VENUE**

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of San Diego. Defendants own, maintain offices, transact business, have an agent or agents within the County of San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

9. In determining proper venue for a PAGA Action, a Plaintiff is not limited to the county/counties in which he or she suffered Labor Code violations, but instead may file suit in any county in which an allegedly aggrieved employee suffered a Labor Code violation. (*See Crestwood Behavioral Health v. Superior Court* (2021) 60 Cal.App.5th 1069.

## **PARTIES**

10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California.

11. Plaintiff is informed and believes and thereon alleges that Defendant GameStop, Inc., is a Minnesota corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226(a),

226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, and 2802-2804, and applicable Wage Orders.

12. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of San Diego.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices alleged herein.

14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

15. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise.

16. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees.

## PAGA REPRESENTATIVE ACTION ALLEGATIONS

17. Defendants are a provider of cancer research and comprehensive cancer treatment

services with over 30 providers across 6 centers in the Fresno and San Diego, California markets. Defendants provide an integrated cancer care offering including medical oncology, radiation oncology, diagnostic imaging, and other ancillary services. The combination of ION and cCARE creates one of the largest oncology providers in the U.S. with 57 centers across 14 states.

18. Plaintiff was employed by Defendants as a non-exempt employee with the title of Medical Assistant from approximately June 2020 until her separation from employment on May 25, 2023.

19. Plaintiff and other aggrieved employees (including, but not limited to chemo scheduled, new patient coordinator, medical assistant, front office medical receptionist, and all other non-exempt positions) were responsible for all aspects of Defendants' business in the State of California.

20. At all relevant times, Plaintiff and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which she was subjected during her employment.

21. First, at all relevant times, Plaintiff and other aggrieved employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees regularly worked overtime hours, they were not compensated at one and one-half times their "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, non-discretionary bonuses, shift differentials, incentive pay, and other forms of remuneration when calculating the "regular rate of pay" used for payment of overtime wages.

22. Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News*, Inc. 435 F.

Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"].) see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").)

23. By their policy of requiring Plaintiff and other aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

24. Accordingly, to the extent permitted by law, Plaintiff and other aggrieved employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510, 1197.1.

25. Similarly, at all relevant times, Defendants also failed in its obligation to provide Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

26. Additionally, Labor Code § 246(l)(2) states that the paid sick time must 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." Finally, Labor Code §246(i) requires employers to "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."

27. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code § 246(a),(b). As such, Defendants paid sick time below their base rate of pay, rather than the "regular rate of pay" as required by Labor Code § 246(l)(1-2).

28. Next, at all relevant times, Plaintiff and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants' uniform meal period policies/practices operational requirements, and work demands, Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt employees worked more than 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

29. Additionally, for each missed or non-compliant meal period, Defendants failed to maintain a mechanism by which non-exempt employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7. Accordingly, due to Defendants' uniform meal period practices, Plaintiff and other non-exempt employees were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

30. Moreover, at all relevant times, Plaintiff and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due to Defendants' uniform rest period policies/practices, operational requirements and work demands. As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-minute duty free rest periods for every major fraction of four hours worked. This includes a second

rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday. To the extent non-exempt were permitted allowed and permitted to take rest periods, the rest periods were often cut short or interrupted for work reasons.

31. By not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273.

32. Each time Plaintiff and other aggrieved employees were unable to take a compliant rest period, Defendants failed and continue to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

33. Accordingly, due to Defendants' uniform rest period policies/practices and work demands, Plaintiff and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

34. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt employees to incur necessary business expenses associated with using their personal cell phones for work related purposes but did not reimburse aggrieved employees adequately for these necessary expenditures in violation of Labor Code § 2802. *See Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 "[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"].

35. Here, Defendants uniformly failed to adequately reimburse Plaintiff and other aggrieved employees for a reasonable portion of cell phone bill (and other costs incurred) in the

discharge of their duties for those aggrieved employees. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2804 and applicable Wage Orders, Plaintiff and other aggrieved employees would be entitled to recover unreimbursed expenses, interests, associated penalties, and attorneys' fees and costs pursuant to Labor Code § 2802.

36. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees for all minimum wages, overtime wages, sick pay wages at the appropriate legal rate, and Defendants' failure to pay for meal and rest period premiums at the "regular rate of pay," Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

37. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

38. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a).

39. As a further result of Defendants' failure to pay all minimum, sick pay and overtime wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

## FIRST CAUSE OF ACTION

## PRIVATE ATTORNEYS GENERAL ACT

(*Plaintiff and Similarly Aggrieved Employees Against All Defendants*)

40. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

41. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

(a) Defendants' failure to pay all overtime wages at the "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

(b) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §§ 204 and 210;

(c) Defendants' failure to pay all sick pay at the "regular rate of pay";

(d) Defendants' failure to allow and permit legally compliant meal periods or compensation at the "regular rate of pay" in lieu thereof;

(e) Defendants' failure to allow and permit legally compliant rest periods or compensation at the "regular rate of pay" in lieu thereof;

(f) Defendants' failure to furnish legally compliant wage statements pursuant to Labor Code § 226(a); and

(g) Defendants' failure to timely pay final wages to aggrieved employees at the time of separation from employment were unlawful.

42. On or about June 16, 2023, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et. seq*. with respect to violations of the California Labor Code identified in Paragraph 41 (a)-(g).

43. Now that sixty-five days (65) have passed since Plaintiff notifying Defendant of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the

Private Attorneys General Act with respect to these violations.

44. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2698 *et seq*.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against Defendants, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq*., and Code of Civil Procedure §1021.5; and

3. For such other and further relief, the Court may deem just and proper.

Dated: October 2, 2023

**FALAKSSA LAW, P.C.**
**BOKHOUR LAW GROUP, P.C.**

By: ______________________________
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Aggrieved Employees