

Eve H. Cervantez (State Bar No. 164709)
Robin Tholin (State Bar No. 344845)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
ecervantez@altber.com
rtholin@altber.com

George A. Hanson (pro hac vice forthcoming)
J. Austin Moore (pro hac vice forthcoming)
Alexander T. Ricke (pro hac vice forthcoming)
K. Ross Merrill (pro hac vice forthcoming)
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: 816-714-7100
hanson@stuevesiegel.com
moore@stuevesiegel.com
ricke@stuevesiegel.com
merrill@stuevesiegel.com

Counsel for Plaintiff Fleming

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
12/15/2023
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

CGC-23-611120

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

GRACE FLEMING,
individually and on behalf of all other
similarly situated aggrieved employees,

Plaintiffs,

v.

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

Defendants.

Case No.

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

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

Case Nos.

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

7 **NATURE OF THE ACTION**

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

15 2. But a troubling practice has emerged. Trusted is offering contracts to travel nurses
16 with a fixed-term assignment at an agreed-upon pay rate and guaranteed number of hours. After the
17 nurse accepts the position and starts the assignment, Trusted makes a “take-it-or-leave-it” demand
18 to accept less total compensation or be terminated. Of course, most nurses have no choice but to
19 continue working the assignment because they have no reasonable alternatives for comparable
20 employment: they have already incurred travel expenses, secured short-term housing, and uprooted
21 their lives to accept the assignment. Trusted is knowingly engaging in these “bait and switch”
22 practices by inducing travel nurses to travel to a location and then reducing their total compensation
23 to maintain the significant profit margins Trusted had become accustomed to during the COVID-
24 19 pandemic.

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

1 regular rate of pay for hours worked in excess of 12 hours in a day or in excess of eight hours in a
2 day on the seventh day of work. Trusted has failed to use the correct regular rate to calculate
3 overtime compensation owing. Trusted has treated employees' direct hourly cash wage as their
4 regular rate, and has excluded, in violation of the law, other parts of its employees' compensation
5 packages which must be included in the regular rate, thereby resulting in an unlawfully low rate of
6 pay for overtime hours worked.

7 4. On June 14, 2023, Plaintiff provided Trusted and the California Labor and
8 Workforce Development Agency (LWDA) with the required notice of her intent to bring this PAGA
9 action.¹ The requisite 65 days have passed, and LWDA has not notified Plaintiff that it intends to
10 pursue Trusted for the violations alleged in Plaintiff's PAGA letters. Plaintiff now brings this
11 PAGA action on behalf of the State of California and other current and former employees of Trusted
12 for engaging in "bait and switch" practices, underpayment for overtime hours worked, and failure
13 to reimburse reasonable business expenses, in violation of the Labor Code. Accordingly, Plaintiff
14 seeks all penalties permitted under PAGA.

15 **JURISDICTION, VENUE, AND PARTIES**

16 5. Trusted is a Delaware corporation with a principal place of business located at 201
17 California Street, Suite 950, San Francisco, CA 94111.

18 6. Plaintiff Grace Fleming accepted a travel assignment from Trusted to work at a
19 healthcare facility located in San Francisco, California, and traveled to San Francisco for that
20 assignment.

21 7. The true names of the persons or entities referred to herein as Defendants DOES 1-
22 50 are unknown to Plaintiff, who therefore sues them under fictitious names. Plaintiff is informed
23 and believes, and on that basis alleges, that each of the Defendants identified as DOES 1-50 is
24 legally responsible in some manner for the unlawful acts alleged herein. Plaintiff will seek leave of
25 Court to amend the complaint to substitute the true names of the fictitiously named defendants when
26
27

28 ¹ See Ex. 1 (PAGA Notice).

1 their identities become known to Plaintiff. Together, all Defendants are referred to herein as
2 “Trusted” or “Defendant.”

3 8. Plaintiff brings this PAGA action in her representative capacity on behalf of the
4 State of California and on behalf of all of Trusted’s current and former non-exempt employees who
5 were employed in California, traveled to California for employment with Trusted, or traveled from
6 within California to any place outside of California for employment with Trusted, and who suffered
7 one or more Labor Code violations enumerated herein (“Aggrieved Employees”) between June 14,
8 2022 and present (“PAGA Period”).

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

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

14 11. Venue is proper here because the acts and omissions complained of in this PAGA
15 action took place, in part, within San Francisco County, and because Trusted does business in San
16 Francisco County. Trusted staffs healthcare facilities in San Francisco County, and provides
17 services throughout California.

18 **STATEMENT OF FACTS**

19 **A. Trusted’s Bait-and-Switch Tactics and Improper Pay Rate Reductions**

20 12. Trusted represents that it is “mobilizing the healthcare workforce to help people
21 everywhere get the care they deserve” and that it is “[h]elping travel nurses and allied health
22 professionals build the lives they want. . . . We’ve obsessed over the problems that frustrate you to
23 build new tools that *really* support you.”² On its website, Trusted states, “We all know the
24 healthcare system has problems – problems felt by overburdened hospitals and under-supported
25 clinicians. So we’re tackling some of the biggest hurdles in the industry to ensure that at the end of
26 the day, everyone gets the quality care that they deserve.” *Id.* Trusted also represents

27
28 ² <https://www.trustedhealth.com/>.

1 “Compensation transparency. We show you pay breakdowns and stats upfront so you’re ready with
2 all the info you need to make your next move.” *Id.* Trusted also quotes Forbes on its website,
3 ““Trusted Health has replaced the antiquated model of recruiters incentivized by commissions with
4 a responsive, intelligent platform that puts nurses’ interests first and supports them throughout their
5 careers.”” *Id.*

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

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

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

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

24 17. Trusted routinely makes representations to travel nurses like Plaintiff and other
25 Aggrieved Employees concerning the kind or character of the work, the length of time the work
26 will last, or the compensation therefor.

27 18. Trusted’s representations of this kind were false, in whole or in part, and Trusted
28 knew when the representations were made that they were false and intended that Plaintiff and other

1 Aggrieved Employees would rely on the false representations in accepting assignments and, among
2 other things, relocating for the assignments.

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

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

9 **Plaintiff Grace Fleming**

10 21. On or before October 11, 2022 Trusted made an employment offer to Plaintiff
11 Fleming which included a fixed-term travel assignment in San Francisco, California.

12 22. The employment agreement offered her a position at the UCSF Medical Center at
13 Mission Bay in San Francisco, California from November 1, 2022, until January 28, 2023, with the
14 following compensation package: a base hourly pay rate of \$33.84 with a minimum of 40 scheduled
15 hours per week; an overtime hourly pay rate of \$50.76; and per-shift reimbursements for housing
16 and meals & incidentals of \$511 and \$138.25, respectively, paid up to a "weekly maximum" of
17 \$2,044 and \$553. The agreement provided that the facility could only "call off 6 shifts every 13
18 weeks."

19 23. In reliance on the foregoing material terms, she accepted Trusted's offer of
20 employment by executing Trusted's form travel assignment agreement on October 11, 2022. To
21 comply with her duties under the agreement, she traveled away from her home in Missouri to San
22 Francisco, California at her own expense, secured short-term living arrangements, and forwent
23 other employment opportunities.

24 24. On or before January 8, 2023, Trusted made another employment offer to Plaintiff
25 Fleming which extended the fixed-term travel assignment in San Francisco, California.

26 25. This employment agreement offered her an extension at the same facility in San
27 Francisco, California from January 29, 2023, until April 1, 2023, with a similar compensation
28 package: a base hourly pay rate of \$38.62 with a minimum of 40 scheduled hours per week; an

1 overtime hourly pay rate of \$57.93; and per-shift reimbursements for housing and meals &
2 incidentals of \$510.56 and \$138.25, respectively, paid up to a “weekly maximum” of \$2,042.24
3 and \$553. The agreement provided that the facility could only “call off 6 shifts every 13 weeks.”

4 26. In reliance on the foregoing material terms, she accepted Trusted’s offer of
5 employment by executing Trusted’s form travel assignment agreement on January 8, 2023. To
6 comply with her duties under the agreement, she continued traveling away from her home in
7 Missouri to San Francisco, California at her own expense, secured short-term living arrangements,
8 and forwent other employment opportunities.

9 27. Almost immediately after signing the extension, Trusted called off numerous work
10 shifts that resulted in Plaintiff Fleming making significantly less total compensation than what was
11 promised by her contract. For example, after already calling off the six shifts permitted under the
12 contract, Trusted called off two full day shifts the week of January 9, 2023, two full day shifts the
13 week of January 16, 2023, and four full day shifts the week of February 27, 2023—all without full
14 payment for guaranteed hours.

15 28. Plaintiff Fleming relied on the material terms of her employment agreements
16 including: the fixed assignment term, the payment package, and the guaranteed hours or days in
17 accepting the offer; as the assignment had to be worth foregoing other employment, relocating, and
18 incurring the associated professional and personal costs of accepting the travel assignment. Had
19 Plaintiff Fleming known that Trusted would call off a material number of her shifts without pay in
20 contravention of the parties’ agreement, she never would have accepted the assignment in the first
21 instance.

22 29. Trusted’s conduct towards Plaintiff Fleming is consistent with how it treated other
23 travel nurses. Multiple employees have reported a similar story: after an employee is committed to
24 an assignment—for example the employee has completed pre-job training or already moved across
25 the country and started the assignment—Trusted informs the employee that the facility
26 unexpectedly adjusted its rates due to census changes or staffing needs, which in turn requires
27 Trusted to decrease the employee’s agreed-upon pay and/or hours. In other words, Trusted
28

1 knowingly engaged in a pattern and practice of misrepresenting the kind, character, or existence of
2 the employment it offered to travel employees like Plaintiff Fleming.

3 30. There is no legal justification for Trusted's conduct. Even if Trusted's client no
4 longer needed as much staff, for example, nothing in the terms of travel assignment agreements
5 authorize Trusted to unilaterally adjust the number of shifts allowed to be called off to account for
6 new circumstances, whether foreseeable or not.

7 31. "Revised" or reduced agreements are not enforceable because an effective contract
8 modification or accord requires the exchange of new consideration. As alleged herein, there was no
9 exchange of new consideration because Plaintiff Fleming and Aggrieved Employees were
10 compelled to undertake the same obligations for less pay. Consequently, Trusted cannot relieve
11 itself of its contractual obligations under one contract by coercing acceptance of a second contract
12 with less favorable terms.

13 **B. Trusted's Miscalculation of Its Employees' Regular Rate of Pay and Resulting**
14 **Failure to Lawfully Pay Overtime.**

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

17 33. Employers must pay their employees one-and-half times their "regular rate" for all
18 overtime hours worked. Labor Code § 510 codifies the right to overtime compensation at one-and-
19 one-half the regular rate of pay for hours worked in excess of 8 hours in one day, 40 hours in one
20 week, or for the first 8 hours worked on the seventh day of work, and to overtime compensation at
21 twice the regular rate of pay for hours worked in excess of 12 hours in a day or in excess of 8 hours
22 in a day on the seventh day of work. In addition, pursuant to the IWC Wage Order(s), including
23 Wage Order 4-2001, Trusted is required to pay Plaintiff and Aggrieved Employees for all hours
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work, whether or not required to do
26 so.

27 34. As a general matter, an employee's "regular rate" is "deemed to include all
28 remuneration for employment paid to, or on behalf of, the employee," but excludes, inter alia,

1 “reasonable payments for traveling expenses, or other expenses, incurred by an employee in the
2 furtherance of his employer’s interests and properly reimbursable by the employer; and other
3 similar payments to an employee which are not made as compensation for his hours of
4 employment.” 29 U.S.C. § 207(e); *see also Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir.),
5 *cert. denied*, 142 S. Ct. 710 (2021).

6 35. Plaintiff and Aggrieved Employees of Trusted worked in excess of 8 and 12 hours
7 in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the
8 seventh day of work. Indeed, Plaintiff and Aggrieved Employees of Trusted regularly worked time
9 for which they were owed overtime or double time as provide by California law; however, Trusted
10 paid Plaintiff and Aggrieved Employees for overtime worked based on an unlawful overtime rate
11 of pay.

12 36. Trusted failed to pay all overtime compensation owing due to its failure to correctly
13 calculate the regular rate of pay, on which the overtime rate of pay is based. Trusted violated
14 California law, in relevant part, by failing to compensate Plaintiff and Aggrieved Employees of
15 Trusted for overtime wages as required by Labor Code §§ 510, 1198; 8 C.C.R. § 11040; and IWC
16 Wage Order 4-2001.

17 37. Trusted’s regular rate of pay did not include weekly wages that Trusted referred to
18 as “stipends” or allowances. In calculating the overtime rate paid to its employees, Trusted
19 wrongfully excluded from their regular rate various stipends and allowances paid to its employees,
20 including per shift reimbursements for housing and meals & incidentals, even though these
21 payments functioned as a form of compensation as part of its employees’ pay package.

22 38. Plaintiff regularly worked overtime and was not properly compensated for it. For
23 instance:

- 24 a. Plaintiff Fleming’s initial contract provides for overtime at a rate of \$50.76 per hour,
25 or 1.5 times her initial base hourly pay rate of \$33.84. Her per shift reimbursements
26 for housing and meals & incidentals of \$511 and \$138.25, respectively, paid up to a
27 “weekly maximum” of \$2,044 and \$553, were not included in the calculation of her
28 regular rate.

- 1 b. Plaintiff Fleming's second contract provides for overtime at a rate of \$57.93 per
2 hour, or 1.5 times her reduced base hourly pay rate of \$38.62. Her per shift
3 reimbursements for housing and meals & incidentals of \$510.56 and \$138.25,
4 respectively, paid up to a "weekly maximum" of \$2,042.24 and \$553, were not
5 included in the calculation of her regular rate.
- 6 c. In the workweek for November 27 to December 3, 2022, Plaintiff Fleming worked
7 40.12 hours for which Trusted paid her a base rate of \$33.84 for 34.32 hours and an
8 overtime rate of \$50.76 for 5.8 hours. Given her per-shift reimbursements that week
9 for \$2,044 and \$553, she should have been compensated as follows: her regular rate
10 was \$98.57, therefore, her overtime rate should have been \$147.86.
- 11 d. In the workweek for February 19 to 25, 2023, Plaintiff Fleming worked 17.56 hours
12 and was credited with 21.79 guaranteed hours for which Trusted paid her a base rate
13 of \$38.62 for 37.87 hours and an overtime rate of \$57.93 for 1.48 hours. Given her
14 per-shift reimbursements that week for \$2,042.24 and \$553, she should have been
15 compensated as follows: her regular rate was \$104.57, therefore, her overtime rate
16 should have been \$156.86.

17 39. Trusted's exclusion of the various stipends and allowances paid to its employees,
18 including the per shift reimbursements for housing and meals & incidentals, from said employees'
19 "regular rate" in calculating overtime was wrongful and in violation of the law, in that:

- 20 a. Said payments functioned as compensation for the employees' hours of
21 employment;
- 22 b. Said payments were tied to the number of hours worked, rather than the amount of
23 expenses actually incurred;
- 24 c. Said payments varied with the number of hours worked per week, such that if an
25 employee missed one or more shifts, said payments would be reduced a
26 corresponding amount;
- 27 d. Said payments did not vary with the amount of expenses an employee actually
28 incurred, nor were they calculated to approximate actual expenses. Employees were

not required to document expenses, nor provide any attestation that he or she actually incurred a particular amount of expenses in a given period;

e. Upon information and belief, said payments were not limited to employees who were actually traveling, but instead could be received by local employees who worked proximate to their residence; and

f. Upon information and belief, employees could roll over extra shifts worked in a previous week to avoid a pro rata reduction in said payments occasioned by having missed one or more shifts in a given week.

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

41. Trusted classified this form of Plaintiffs' compensation as expense reimbursement to avoid paying payroll taxes on these wages and to avoid paying materially increased overtime rates, particularly given that many travel nurses (including Plaintiffs) are guaranteed more than 8 hours in a single workday and more than 40 hours per week. *See also* <https://www.trustedhealth.com/travel-nursing-guide/how-much-do-travel-nurses-make> ("Maximizing Take-Home Pay with Tax-Free Compensation. . . "stipends, often referred to as 'per diems,' . . . can significantly increase your overall earnings. . . . This effectively reduces your tax liability and increases your take-home pay!").

42. Trusted's course of conduct described herein violated the Labor Code and applicable Wage Orders by improperly excluding from its employees' regular rate certain forms of compensation, including stipends and allowances, thereby resulting in unpaid overtime owed to Plaintiff and Aggrieved Employees. Trusted maintains a uniform, company-wide policy and practice of miscalculating the overtime rate of Plaintiff and Aggrieved Employees, and said policy is willful in nature and not the result of a good faith mistake.

C. Trusted's Other Violations of Labor Code

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

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

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

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

47. Trusted's failure to pay Plaintiff and Aggrieved Employees the contracted-for wages for each hour worked, and the proper overtime rate for each hour worked, means that Trusted violated Labor Code § 226 by failing to provide proper itemized statements; in particular, the

1 itemized statements failed to set forth all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate.

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

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

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

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

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

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

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

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

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

21 56. Plaintiff brings this PAGA action on behalf of the State of California with respect to
22 themselves and all Aggrieved Employees employed by Trusted during the PAGA Period.

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

25 58. Under Cal. Lab. Code § 2699.3, Plaintiff gave written notice by online submission
26 to the LWDA on June 14, 2023, and by certified mail to Trusted of the specific provisions of the
27 Labor Code alleged to have been violated, including the facts and theories to support the alleged
28

1 violations,³ and the LWDA did not provide notice to Plaintiff that it intends to investigate the
2 alleged violations.

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

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

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

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

27
28 ³ See Ex. 1 (PAGA Notice).

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

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

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

16 **REQUEST FOR RELIEF**

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

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

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

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

24 68. That the Court grant all such other relief as it deems just and proper.
25
26
27
28

1 Dated: December 15, 2023

Respectfully submitted,

2 ALTSHULER BERZON LLP

Eve H. Cervantez

3 Robin S. Tholin

4 STUEVE SIEGEL HANSON LLP

George A. Hanson

5 J. Austin Moore

6 Alexander T. Ricke

K. Ross Merrill

7
8 By: /s/ Eve H. Cervantez

9
10 *Attorneys for Plaintiff Fleming*

EXHIBIT 1



June 14, 2023

VIA ELECTRONIC SUBMISSION

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

VIA CERTIFIED MAIL

Trusted Health, Inc.
201 California Street
Suite 950
San Francisco, CA 94111

Re: PAGA Notice Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator,

The law firm of Stueve Siegel Hanson, LLP represents Grace Fleming, who has worked as a travel nurse for Trusted Health, Inc. ("Employer"). Pursuant to California Labor Code § 2699.3(a) and (c), this letter shall serve as notice of Employer's violations of the California Labor Code and related regulations arising out of Employer's unlawful conduct with respect to its employment of Ms. Fleming and other aggrieved employees. These violations give rise to civil penalties under California Labor Code § 2698 *et seq.* The Labor and Workforce Development Agency ("LWDA") may pursue legal redress, including civil and statutory penalties, against Employer for its violations of California's labor laws. If the LWDA elects not to pursue its own action, Ms. Fleming, on behalf of herself and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 ("PAGA"). Ms. Fleming respectfully requests that the LWDA notify undersigned counsel as to whether it intends to investigate Employer's alleged violations so that she can include the LWDA's findings in her action should the Agency decline to proceed.

FACTS, THEORIES, AND ALLEGED VIOLATIONS

Employer is a travel nursing agency, whose business involves placing nurses on short-term assignments (usually about 13 weeks in duration) at various work sites throughout the country. Hospitals and other healthcare facilities use travel nurses as a remedy to staff shortages, which have been severely exacerbated by the COVID-19 pandemic and its aftermath. In that way, travel nurses have played a vital role in keeping

Alexander T. Ricke | (816) 714-7141 | ricke@stuevesiegel.com

(816) 714-7100 | stuevesiegel.com | 460 Nichols Road, Suite 200 | Kansas City, MO 64112

the healthcare system afloat. But traveling requires significant sacrifices from the nurses themselves. Most travel assignments require nurses to move hundreds or even thousands of miles away from their families and friends to an unfamiliar location and work environment, and often require them to bear significant travel-related costs out of their own pockets.

To induce nurses to take on these roles, travel placement agencies like Employer must offer them a premium pay rate. Employer, for instance, offered Ms. Fleming a pay rate of \$33.84 per hour to travel from her residence in Missouri to work at UCSF Medical Center at Mission Bay in San Francisco, California for a short-term assignment. The contract also guaranteed Ms. Fleming would work 40 hours per week and that the facility could only “call off” her shift six times per 13-week contract. Ms. Fleming accepted and, in reliance on these terms, temporarily uprooted her life and moved for the job. But Employer had no intention of honoring its commitment. After moving and starting the assignment, in her first non-orientation week, she experienced her first “call off” by the facility. During her first contract Ms. Fleming was “called off” 16 times and during her second contract, she was “called off” 27 times. Employer had guaranteed Ms. Fleming that she would be paid for 40-hours per week. In many work weeks, Employer did not pay Ms. Fleming her guaranteed hours. Employer failed to uphold their end of their agreement with Ms. Fleming, they allowed the facility to “call off” Ms. Fleming for more shifts than agreed to and did not then pay Ms. Fleming for the guaranteed hours promised.

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

Under Labor Code § 970, it is unlawful for an employer to “influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations” concerning . . . “[t]he length of time such work will last, or the compensation therefor.” As described above, Employer made knowingly false representations concerning the compensation for nursing assignments to Ms. Fleming and other aggrieved employees, thereby inducing them to travel for work. This violation of § 970 gives rise to civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

Employer’s failure to pay Ms. Fleming and other aggrieved employees for every hour worked at the agreed-upon hourly rate stated in their written employment contracts resulted in Employer failing to make timely payment of the wages aggrieved employees earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages

aggrieved employees earned when they stopped working for Employer due to discharge, layoff or resignation, in violation of California Labor Code §§ 201, 202, and/or 203. These violations give rise to civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

Employer has also required Ms. Fleming and other aggrieved employees to cover – out their own pockets – certain expenses flowing directly from their duties as a travel nurse. For instance, Ms. Fleming was required to pay out-of-pocket for hotels totaling approximately \$349 and mileage costs totaling approximately \$1,198.65 for 1830 total miles and was not reimbursed by Employer. Pursuant to Labor Code § 2802, employers must indemnify their employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

Pursuant to Labor Code § 2800, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.” Employer here failed to use ordinary care in, *inter alia*, breaching material terms in Ms. Fleming's employment agreements, failing to exercise good faith and fair dealing pursuant to a contractual agreement, and engaging in negligent misrepresentation. These failures resulted in losses to Ms. Fleming and other aggrieved employees, which Employer has not indemnified. Employer is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

IWC Wage Order No. 4-2001 applies to Ms. Flemings' employment with Employer, and no exemptions apply. California Labor Code § 1198 provides that it is unlawful to employ persons for longer than the hours set by the IWC without just compensation. Ms. Fleming worked in excess of 8 and 12 hours in a single day. Ms. Fleming regularly worked time for which she was owed overtime or double time as provide by California law; however, Employer paid her based on an unlawful regular rate of pay. The regular rate of pay did not include weekly wages that Employer referred to as “stipends.” Employer violated California law, in relevant part, by failing to compensate Ms. Fleming for overtime wages as required by California Labor Code §§ 510, 1194; 8 C.C.R. § 11040; and IWC Wage Order 4-2001. Employer violated California law, in relevant part, by willfully failing to compensate Ms. Fleming for overtime hours as required by law. Employer has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law. Employer's unlawful conduct was willful because, among other reasons described herein, Employer knew or

should have known that it was not correctly calculating the regular rate of pay or overtime wages of Ms. Fleming. *See, e.g., Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir.), *cert. denied*, 211 L. Ed. 2d 400, 142 S. Ct. 710 (2021).

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

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

**Violation of California Unfair Competition Law
Cal. Bus. & Prof. Code § 17200**

The California Unfair Competition Law prohibits "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200, *et seq.* Employer has engaged in business acts and practices that, as alleged above, constitute unfair competition in violation of Business and Professions Code section 17200. Employer's unlawful conduct under the Unfair Competition Law includes, but is not limited to, violating California Labor Code § 970, and the other statutes and regulations alleged herein. Employer's business practices, as alleged herein, violate the "unfair" prong of the Unfair Competition Law because they resulted in Ms. Fleming being misled and denied pay for wages she earned and were promised pursuant to her binding employment agreement. Further, said business practices offend established public policy and are immoral, unethical, and unscrupulous or substantially injurious to employees. Employer's bait-and-switch tactics were indeed calculated to deceive—and in fact did deceive—Ms. Fleming into accepting travel nursing assignments at a promised rate of pay and hours of work, only to have that promised of hours reduced after she had undertaken obligations under the agreement.

June 14, 2023

Page 5

Conclusion

Should the LWDA decline to proceed in this matter, Ms. Fleming intends to seek all civil penalties, interest, and attorney's fees permitted under the California Labor Code for these violations. Should you require anything further or have additional questions, please do not hesitate to contact us.

Sincerely,



Alexander T. Ricke