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Attorneys for Defendant Flexcare, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

JESSICA PLUMMER AND PAIGE
RIEBOLDT, individually and on behalf of all
other similarly situated aggrieved employees,

Plaintiffs,

vs.

FLEXCARE, LLC and DOES 1-50, inclusive,

Defendants

Case No.: 23CV050251

**JOINT STIPULATION OF PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LAB. CODE § 2698, ET SEQ.)
SETTLEMENT AND RELEASE**

1 IT IS HEREBY STIPULATED AND AGREED by and among the undersigned, subject
2 to approval of the Court pursuant to Labor Code section 2699(1)(2), that the settlement of this
3 action shall be effectuated upon and subject to the following terms and conditions. Capitalized
4 terms used herein shall have the meanings set forth in Section 1 or elsewhere in this Joint
5 Stipulation of Private Attorneys General Act ("PAGA") Settlement and Release ("Agreement" or
6 "Settlement Agreement").

7 This Agreement is made by and between Plaintiffs Jessica Plummer, Paige Rieboldt, and
8 (soon to be added as Plaintiff) Danielle Devenney ("Plaintiffs") for themselves and on behalf of
9 other PAGA Members (defined below), and on behalf of the State of California, and Defendant
10 Flexcare, LLC ("Flexcare" or "Defendant"). (Plaintiffs and Defendant, as defined herein, are
11 sometimes collectively referred to as the "Parties"). The Parties agree that the Litigation (defined
12 below) is hereby compromised and settled pursuant to the terms and conditions set forth in this
13 Stipulation of PAGA Settlement ("Stipulation"), and that the Court shall make and enter
14 judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the
15 definitions, recitals, and terms set forth herein which by this reference become an integral part of
16 this Stipulation. The Parties have separately negotiated individual settlement agreements to
17 resolve the Plaintiffs' individual Labor Code claims that were not asserted in this Litigation, and
18 the amount that Defendant is paying to resolve those individual claims is not included in the
19 Gross Settlement Fund (defined below).

18 **1) DEFINITIONS**

19 The following terms used in this Agreement shall have the meanings ascribed to them as
20 set forth below:

- 21 a) "Approval Date" means the date on which the Court enters an order granting Plaintiffs'
22 filed motion seeking approval of the Settlement, entering the Judgment, and taking other
23 appropriate action as set forth in the Approval Order.
- 24 b) "Approval Order" means the order by which the Court approves this Agreement pursuant
25 to Labor Code Section 2699, subdivision (1)(2), and dismisses the Litigation without
26 prejudice, while retaining jurisdiction to enforce the Agreement pursuant to Code of Civil
27 Procedure Section 664.6, in substantially the form set forth in Exhibit A hereto.
- 28 c) "Complaint" or "Litigation" means the November 7, 2023 representative action entitled
Jessica Plummer et. al. v. Flexcare, LLC, filed in the Superior Court of the State of

California for the County of Alameda, Case No. 23CV050251, Plaintiffs' July 26, 2023 and November 28, 2023 correspondence submitted to the California Labor and Workforce Development Agency ("LWDA") that is attached to or referenced in the Complaint ("PAGA Notices"), and the Amended Complaint to be filed pursuant to this Settlement Agreement, as discussed below.

- d) "Court" shall mean the Superior Court of the State of California for the County of Alameda.
- e) "PAGA Members" means any and all current and former non-exempt clinicians who were employed in California or traveled to California for employment with Flexcare at any time during the PAGA Period, which Defendant represents are approximately 2,256 PAGA Members.
- f) "PAGA Members List" means information regarding the PAGA Members that Defendant shall in good faith compile from their records and shall be authorized by the Court to transmit in a secured and confidential manner to the Settlement Administrator. The PAGA Members List shall be in a Microsoft Excel spreadsheet and shall include the following information for each PAGA Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a PAGA member during the PAGA Period; (6) total compensable pay periods worked during the PAGA Period; (7) total compensable pay periods worked during the PAGA Period in which any overtime or double-time wages were paid; and (8) total compensable pay periods worked during the PAGA Period after a mid-contract reduction in rate of pay.
- g) "PAGA Period" means July 26, 2022 through February 21, 2024.
- h) "Defendant's Counsel" or "Counsel for Defendant" means:
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Imran Rahman (State Bar No. 308148)
O'Hagan Meyer LLP
1 Embarcadero Center, Suite 2100
San Francisco, CA 94111
Telephone: 415-604-0124
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irahman@ohaganmeyer.com

- 1 i) "Effective Date" means the date this Agreement shall be effective upon the later of the
2 following dates: (i) the Court enters an order approving the Settlement; and (ii) if an
3 appeal is filed, the date the Court of Appeal or the California Supreme Court has rendered
4 a final ruling affirming the Court's approval of the Agreement without material
5 modification; or (iii) the date that the deadline for seeking appellate review of the Court's
6 entry of the Approval Order has passed without the filing of a timely appeal or timely
7 request for review.
- 8 j) "PAGA Member Penalty Payment" means 25% of the Net Settlement Fund.
- 9 k) "Individual Settlement Payment" means the amount to be paid to each PAGA Member.
- 10 l) "Gross Settlement Fund" means the sum of eight hundred and sixty thousand dollars
(\$860,000) to be paid by Defendant in settlement of this Litigation.
- 11 m) "LWDA Penalty Payment" means 75% of the Net Settlement Fund.
- 12 n) "Net Settlement Fund" means the amount to be distributed as the LWDA Penalty
13 Payment and the PAGA Member Penalty Payment after deducting from the Gross
14 Settlement Fund the amounts approved by the Court for the Plaintiffs' Attorneys' Fees
15 and Litigation Costs (defined below), the Settlement Administration Fee (defined below),
16 and the Plaintiffs' Service Payments (defined below).
- 17 o) "Plaintiffs' Counsel" means:
18 Eve H. Cervantez
19 Robin S. Tholin
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- p) "Released Claims" with respect to Plaintiffs, the PAGA Members, and the LWDA means
any and all individual and representative claims for penalties and attorneys' fees and

costs recoverable under PAGA which Plaintiffs, PAGA Members, and/or the LWDA had, may claim to have, or could have alleged against Released Parties, arising out of the facts and violations alleged in the Complaint or the PAGA Notices, including PAGA penalties for the following: bait-and-switch claims under Labor Code § 970; failure to pay overtime premiums under §§ 223, 510, 1194, and 1198; failure to indemnify employees for expenses and losses under § 2802; failure to indemnify employees for want of ordinary care under § 2800; failure to furnish accurate wage statements under §§ 226, 1174, 1175; unlawful failure to make payment of all wages due upon termination under §§ 201, 202, 203, and/or 204. This release shall apply to claims arising during the PAGA Period and will be binding and effective upon Plaintiffs, PAGA Members, and the LWDA regardless of whether the PAGA Member cashes his or her settlement check.

- q) “Released Parties” means Defendant, and its past, present, and future agents of all types, employees, members, managers, officers, directors, partners, trustees, shareholders, owners, principals, attorneys, parents, subsidiaries, related entities, divisions, joint venturers, assigns, partners, indemnitees, persons to whom Defendant owes a duty to defend, predecessors, successors, affiliated organizations, insurers, joint employers, and all persons acting by or through or in concert with any of them, and each of them, including any person or entity which Plaintiffs might seek to hold liable as joint employers for the claims asserted in the Litigation. “Released Parties” also means, but only with respect to shifts PAGA Members worked for Defendant, entities with whom Defendant contracted to provide healthcare staff, hospital and/or medical facility site employers of Plaintiffs, managed-service providers or staffing agencies for whom Defendant supplied healthcare staff, and all persons acting by or through or in concert with any of them, and each of them, including any person or entity which Plaintiffs might seek to hold liable as joint employers for the claims asserted in the Litigation. The Parties agree that the release provided in this Agreement is intended to completely and fully resolve all Released Claims that Plaintiffs and PAGA Members have or could have against any person or entity relating to shifts PAGA Members worked for Defendant and that specifically listing each released person or entity by name would be unduly lengthy and burdensome. Accordingly, the Parties agree that PAGA Members are expressly releasing any persons or entities included in this definition even if such person or entity is

not specifically named or whether such person or entity is known to Plaintiffs' Counsel or PAGA Members. The definition of Released Parties shall be interpreted as broadly as possible and no persons or entities are expressly excluded from the definition of Released Parties.

- r) "Plaintiffs' Service Payments" means the sum of \$1,000 to be paid to each of the Plaintiffs, subject to Court approval.
- s) "Settlement Administrator" means Analytics, a third-party administrator who shall administer the settlement in accordance with this Agreement. The costs of the Settlement Administrator to perform its duties under this Agreement are currently estimated to be an amount of up to \$10,000 ("Settlement Administration Fee").
- t) "Settlement Packet" means the packet of documents which shall be mailed to all PAGA Members by the Settlement Administrator, including the Cover Letter (in substantially the form set forth in Exhibit B hereto) and each PAGA Member's respective Individual Settlement Payment.
- u) "Settlement Pay Periods" means the number of payroll periods during which each PAGA Member was paid wages as a PAGA Member during the PAGA Period. Defendant represents that there are approximately 51,798 Settlement Pay Periods.
 - i. "Overtime Settlement Pay Periods" means the number of payroll periods during which each PAGA Member was paid any amount of overtime or double-time wages by Defendant during the PAGA Period. Defendant represents that there are approximately 12,600 Overtime Settlement Pay Periods.
 - ii. "Section 970 Settlement Pay Periods" means the number of payroll periods during which each PAGA Member was employed by Defendant during the PAGA Period following a mid-contract reduction in rate of pay. Defendant represents that there are approximately 1,061 Section 970 Settlement Pay Periods.

2) **RECITALS**

- a) On July 26, 2023, Plaintiffs Jessica Plummer and Paige Rieboldt filed a notice with the California Labor & Workforce Development Agency ("LWDA") asserting multiple

1 violations of the Labor Code, including “bait and-switch” claims under Labor Code §
2 970, failure to pay overtime premiums under §§ 510 and 1194 (based on the omission of
3 “stipend” pay from the regular rate), and several other derivative Labor Code claims,
4 including failure to indemnify employees for expenses and losses under § 2802, failure to
5 indemnify employees for want of ordinary care under § 2800, failure to furnish accurate
6 wage statements under §§ 226, 1174, 1175; unlawful failure to make payment of all
7 wages due upon termination under §§ 201, 202, 203; and untimely payment of wages
8 under § 204.

- 9 b) Because the LWDA did not indicate that it intended to investigate these claims, on
10 November 7, 2023, Plaintiffs Jessica Plummer and Paige Rieboldt filed their PAGA
11 complaint in Alameda Superior Court on behalf of themselves and other aggrieved
12 employees.
- 13 c) Plaintiffs filed an amended PAGA letter on November 28, 2023 which added claims by
14 another aggrieved employee, Danielle Devenney, and also added a claim for unlawful
15 secret underpayment of wages, Labor Code § 223, based on the failure to pay proper
16 overtime premiums.
- 17 d) Prior to Defendant’s deadline to respond to the Complaint, the Parties determined to
18 engage in early mediation. In advance of that mediation, Defendant furnished to
19 Plaintiffs various core documents, including Travel Agreements between Defendant and
20 Plaintiffs, the Overtime section of the Clinician Handbook, and Defendant’s Account
21 Reimbursement Plan. Defendant also provided to Plaintiffs payroll and other data for
22 travel clinicians employed in California between March 2022 and January 2024 which
23 included, inter alia, (1) the total number of travel clinicians whose rate had been reduced
24 mid-contract, (2) the total number of weeks worked by travel clinicians after a rate
25 reduction, and (3) a 25% sample of all travel clinicians employed by Defendant in
26 California from March 2022 through January 2024 which included information on all
27 weeks worked in California and also weeks worked in which overtime and double-time
28 was paid.
- e) The Parties exchanged confidential mediation briefs in which each side carefully
explained their view of the law and facts. The Parties engaged in a full day mediation
session with Hon. Wynne Carvill (Ret.) on February 21, 2024. The Parties were unable

1 to reach a resolution at the mediation, but following further conversations and email
2 correspondence with the mediator and among counsel, the Parties reached a settlement in
3 principle on February 24, 2024, as later documented herein.

4 f) Plaintiffs and Plaintiffs' Counsel recognize the expense and length of continued
5 proceedings that would be necessary to litigate Plaintiffs' claims in the Litigation through
6 trial and through any possible appeals. Plaintiffs also have taken into account the
7 uncertainty and risks of the outcome of further litigation, and the difficulties and delays
8 inherent in such litigation. Plaintiffs and Plaintiffs' Counsel are also aware of the
9 burdens of proof necessary to establish liability for the claims asserted in the Litigation,
10 both generally and in response to Defendant's defenses thereto. Plaintiffs and Plaintiffs'
11 Counsel also have taken into account Defendant's agreement to enter into a settlement
12 that confers substantial benefits upon the PAGA Members. Based on the foregoing, and
13 their careful review of documents and data produced by Flexcare, Plaintiffs and
14 Plaintiffs' Counsel have determined that the Settlement set forth in this Stipulation is fair,
15 adequate, and reasonable in view of PAGA's purposes to remediate present labor law
16 violations, deter future ones, and to maximize enforcement of state labor laws and is in
17 the best interests of all PAGA Members.

18 g) Defendant has concluded that any further defense of the Litigation would be protracted
19 and expensive for all Parties. Substantial amounts of Defendant's time, energy, and
20 resources have been, and unless this Settlement is completed, shall continue to be,
21 devoted to the defense of the claims asserted by Plaintiffs. Defendant has also taken into
22 account the risks of further litigation in reaching its decision to enter into this Settlement.
23 Even though Defendant contends it is not liable for any of the claims alleged by Plaintiffs
24 in the Litigation, Defendant has agreed, nonetheless, to settle in the manner and upon the
25 terms set forth in this Stipulation and to put to rest the claims alleged in this Litigation.
26 Defendant has asserted and continues to assert that the claims alleged by Plaintiffs have
27 no merit and do not give rise to any liability, damages, restitution, penalties, or other
28 payments. This Stipulation is a compromise of disputed claims. Nothing contained in
this Stipulation, no documents referred to herein, and no action taken to carry out this
Stipulation, shall be construed or used as an admission by or against Defendant as to the

merits or lack thereof of the claims asserted in the Litigation. Defendant contends that it has complied with all applicable state, federal, and local laws.

3) TERMS OF SETTLEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

- a) Binding Settlement. This Settlement shall bind the Parties, all PAGA Members, and the LWDA, subject to the terms and conditions hereof and the Court's approval.
- b) Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments specified herein, and the PAGA Members are not relying on any statement or representation by the Parties, Plaintiffs' Counsel or Defendant's Counsel in this regard. The PAGA Members and Plaintiffs' Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments specified herein.
- c) Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision of this Stipulation, and no written communication or disclosure between or among the Parties, Plaintiffs' Counsel, or Defendant's Counsel and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Stipulation, (b) has not entered into this Stipulation based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Stipulation.
- d) Amendment of Complaint. Prior to or on March 26, 2024, Plaintiffs shall file a First Amended Complaint, substantially as set forth in Exhibit C, which shall (i) add Danielle

Devenney as a representative Plaintiff; (ii) add Plaintiffs' November 28, 2023 letter to LWDA as an Exhibit to the Complaint; and (iii) add Labor Code section 223 as an additional PAGA predicate. At the same time, Plaintiffs' Counsel shall submit a copy of the First Amended Complaint to the LWDA.

- e) Approval of Settlement. Plaintiffs shall be responsible for moving the Court by March 26, 2024 to approve the Settlement and enter the Judgment. The Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for approval, including working cooperatively in good faith to address any questions raised by the Court and making any amendments required by the Court to make any immaterial changes. Plaintiffs' Counsel will be responsible for drafting the motion for approval of Settlement and all documents necessary to obtain the Court's approval of the Settlement and will allow Defendant's Counsel a reasonable opportunity to comment and have input on said motion, particularly as to information that Defendant considers confidential, proprietary, or trade secret. Defendant further agrees that they will not oppose Plaintiffs' motion for approval of the Settlement. The Judgment shall provide for, among other things, the Settlement Packet to be sent to PAGA Members as specified herein.

f) Plan of Allocation

- i. Based on the Gross Settlement Amount of \$860,000, each Overtime Settlement Pay Period shall be valued at \$50 per Overtime Settlement Pay Period; each Section 970 Settlement Pay Period shall be valued at \$50 per Section 970 Settlement Pay Period, and each Settlement Pay Period that is both an Overtime Settlement Pay Period and a Section 970 Settlement Pay Period shall be valued at \$75 per Pay Period.
- ii. Settlement Pay Periods that are neither Overtime Settlement Pay Periods nor Section 970 Settlement Pay Periods shall be valued by subtracting the total value of the Overtime Settlement Pay Periods and the Section 970 Settlement Pay Periods from the Gross Settlement Amount of \$860,000, and dividing that amount by the number of Settlement Pay Periods that are

1 neither Overtime Settlement Pay Periods nor Section 970 Settlement Pay
2 Periods.

- 3 iii. Individual Settlement Payments will be calculated based on the value of
4 each PAGA Member's Overtime Settlement Pay Periods, Section 970
5 Settlement Pay Periods, and additional Settlement Pay Periods in
6 proportion to the PAGA Member Penalty Payment.
7

8 g) Settlement Administration.

- 9 i. Within fourteen (14) calendar days after the Approval Date,
10 Defendant shall provide the Settlement Administrator with the
11 PAGA Members List for purposes of mailing the Settlement Packets
12 to PAGA Members. Also within fourteen (14) calendar days after
13 the Approval Date, Plaintiffs shall provide the Settlement
14 Administrator with any updated addresses they have received from
15 PAGA Members.
- 16 ii. Determination of Individual Settlement Payments. Within fourteen
17 (14) calendar days after receiving the PAGA Members List from
18 Defendant, the Settlement Administrator shall determine the
19 eligibility for, and the amount of, each Individual Settlement
20 Payment under the terms of this Stipulation and Plan of Allocation,
21 and shall provide that information to Plaintiffs' Counsel and to
22 Defendant's Counsel. The Settlement Administrator's determination
23 of the eligibility for and amount of each Individual Settlement
24 Payment shall be binding upon the PAGA Members and the Parties,
25 yet subject to review by Plaintiffs' Counsel, Defendant's Counsel,
26 and the Court. In the absence of fraud or gross negligence,
27 Defendant's records shall be presumed accurate.
- 28 iii. Delivery of Settlement Packets. Upon receipt of the PAGA
 Members List, the Settlement Administrator shall perform a search
 based on the National Change of Address Database maintained by

1 the United States Postal Service to update and correct any known or
2 identifiable address changes. Within fourteen (14) days of receiving
3 the Gross Settlement Amount from Defendant as provided herein,
4 the Settlement Administrator shall mail copies of the Settlement
5 Packet, which shall include the Cover Letter and each PAGA
6 Member's respective Individual Settlement Payments, to all PAGA
7 Members via regular First Class U.S. Mail. The Settlement
8 Administrator shall exercise its best judgment to determine the
9 current mailing address for each PAGA Member. The address
10 identified by the Settlement Administrator as the current mailing
11 address shall be presumed to be the most current mailing address for
12 each PAGA Member. The Parties agree that this procedure for
13 notice provides the best notice practicable to PAGA Members and
14 fully complies with due process.

15
16 iv. Undeliverable Settlement Packets. Any Settlement Packet returned
17 to the Settlement Administrator as non-deliverable shall be re-mailed
18 to the forwarding address affixed thereto. If no forwarding address
19 is provided, the Settlement Administrator shall promptly attempt to
20 determine a correct address by the use of skip-tracing, or other type
21 of automated search, using the name, address, and/or Social Security
22 number of the PAGA Member involved, and shall then perform a re-
23 mailing to the PAGA Member whose Settlement Packet was
24 returned as non-deliverable, assuming another mailing address is
25 identified by the Settlement Administrator. If these procedures are
26 followed, notice to PAGA Members shall be deemed to have been
27 fully satisfied, and if the intended recipient of the Settlement Packet
28 does not receive the Settlement Packet, the intended recipient shall
nevertheless remain bound by all terms of the Settlement and the
Judgment.

v. Disputes Regarding Administration of Settlement. Any dispute not
resolved by the Settlement Administrator concerning the

administration of the Settlement shall be resolved by the Court. Prior to any such involvement of the Court, counsel for the Parties shall confer in good faith and make use of the services of mediator Hon. Wynne Carvill, if necessary, to resolve the dispute without the necessity of involving the Court.

- vi. Accounting. The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out.
- vii. Best Efforts. The Parties agree to use their best efforts to carry out the terms of this Settlement.

h) Plaintiffs' Attorneys' Fees and Litigation Costs. Subject to Court approval, Plaintiffs' Counsel will request and be paid from the Gross Settlement Fund (i) an amount up to one-third (33.33%) of the Gross Settlement Fund, totaling two hundred eighty six thousand six hundred thirty eight dollars (\$286,638) for attorneys' fees ("Plaintiffs' Attorneys' Fees Payment"), and (ii) an amount of up to twenty thousand (\$20,000) for reimbursement of actual litigation costs and expenses ("Plaintiffs' Litigation Costs Payment"). Plaintiffs' Counsel shall provide the Settlement Administrator with a properly completed and signed IRS Form W-9 in order for the Settlement Administrator to process the Plaintiffs' Attorneys' Fees and Litigation Costs approved by the Court. In the event that the Court awards Plaintiffs' Counsel less than two hundred eighty-six thousand six hundred thirty eight dollars (\$286,638) in attorneys' fees and/or less than twenty thousand Dollars (\$20,000) in costs, the difference shall become part of the Net Settlement Fund and shall be distributed to the LWDA and the PAGA Members as part of their Individual Settlement Payments. Plaintiffs' Counsel shall be paid any Court-awarded attorneys' fees and costs no later than fourteen (14) days after Defendant provides the Settlement Administrator with the Gross Settlement Amount. Plaintiffs' Counsel shall be solely and legally responsible to pay all applicable taxes on the Plaintiffs' Attorneys' Fees and Litigation Costs. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel for the Plaintiffs' Attorneys' Fees and Litigation Costs. This Settlement is not conditioned upon the Court awarding Plaintiffs' Counsel any particular amount of attorneys' fees or costs, unless the amount awarded is more than specified in this paragraph.

- 1 i) Plaintiffs' Service Payment. Subject to Court approval, Plaintiffs will request and be
2 paid from the Gross Settlement Fund an amount up to \$1,000 each as Plaintiffs' Service
3 Payments, which Defendant will not oppose. The service payment shall be paid to
4 Plaintiffs from the Gross Settlement Amount no later than fourteen (14) days after
5 Defendant provides the Settlement Administrator with the Gross Settlement Amount.
6 The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs for their service
7 payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable
8 taxes on their service payment and shall hold harmless Defendant, Plaintiffs' Counsel,
9 and Defendant's Counsel from any claim or liability for taxes, penalties, or interest
10 arising as a result of payment of the service payment. Plaintiffs' Service Payment shall
11 be made in addition to Plaintiffs' Individual Settlement Payment. Any amount requested
12 by Plaintiffs for the service payment and not awarded by the Court shall become part of
13 the PAGA Fund and shall be distributed to the LWDA and to the PAGA Members as part
14 of their Individual Settlement Payments.
- 15 j) LWDA Penalty Payment. Within fourteen (14) days after Defendant provides the
16 Settlement Administrator with the Gross Settlement Amount, the Settlement
17 Administrator shall transmit the LWDA Penalty Payment to the LWDA as one lump sum
18 payment, and if this payment is made by check, the check shall remain valid for one year.
- 19 k) Individual Settlement Payments. The PAGA Members shall not be required to submit a
20 claim in order to receive a share of the PAGA Fund, and no portion of the Gross
21 Settlement Amount shall revert to Defendant or result in an unpaid residue. Individual
22 Settlement Payments shall be paid by the Settlement Administrator from the Net
23 Settlement Fund pursuant to the formula set forth herein.
- 24 a. Individual Settlement Payments shall be made by check and shall be made
25 payable to each PAGA Member as set forth in this Stipulation.
- 26 b. Individual Settlement Payments shall be allocated one hundred percent (100%) as
27 non-wage penalties not subject to payroll tax withholdings. The Settlement
28 Administrator shall issue an IRS Form 1099 (if required) to each PAGA Member
along with the Individual Settlement Payment.

1 c. It is expressly understood and agreed that the receipt of Individual Settlement
2 Payments shall not entitle any PAGA Member to additional compensation or
3 benefits under any collective bargaining agreement or under any bonus, contest,
4 or other compensation or benefit plan or agreement in place during the period
5 covered by the Settlement, nor shall it entitle any PAGA Member to any increased
6 pension and/or retirement, or other deferred compensation benefits. It is the intent
7 of the Parties that the Individual Settlement Payments provided for in this
8 Stipulation are the sole payments to be made by Defendant to the PAGA
9 Members in connection with this Settlement, with the exception of Plaintiffs, and
10 that the PAGA Members are not entitled to any new or additional compensation
11 or benefits as a result of having received the Individual Settlement Payments.
12 Furthermore, the receipt of Individual Settlement Payments by the PAGA
13 Members shall not, and does not, by itself establish any general, special, or joint
14 employment relationship between and among the PAGA Members and
15 Defendant.

16 d. Checks issued to PAGA Members shall remain valid for one hundred eighty (180)
17 days. All checks issued to PAGA Members that have not been cashed or
18 deposited within the 180-day period will be cancelled, and the funds associated
19 with such cancelled checks will be transmitted by the Settlement Administrator to
20 Legal Aid at Work, as *cy pres*. If the Court does not approve the *cy pres* but
21 otherwise approves the Settlement, then funds associated with cancelled checks
22 will be transmitted by the Settlement Administrator to the Controller of the State
23 of California to be held pursuant to the Unclaimed Property Law, California Civil
24 Code § 1500 et seq., in the names and corresponding amounts associated with
25 each PAGA Member whose check(s) are cancelled.

26 1) Settlement Administration Fee. The Settlement Administration fees and expenses, which
27 are estimated not to exceed ten thousand dollars (\$10,000) shall be paid from the Gross
28 Settlement Amount. The Parties agree to cooperate in the Settlement Administration
process and to make all reasonable efforts to control and minimize Settlement
Administration Fee.

- 1 a. The Parties each represent they do not have any financial interest in the
2 Settlement Administrator or otherwise have a relationship with the Settlement
3 Administrator that could create a conflict of interest.
- 4 b. The Settlement Administrator shall keep the Parties timely apprised of the
5 performance of all Settlement Administrator responsibilities required by the
6 Settlement. The Settlement Administrator shall be authorized to establish a
7 Qualified Settlement Fund (“QSF”) pursuant to IRS rules and regulations in
8 which the Gross Settlement Amount shall be placed and from which payments
9 required by the Settlement shall be made.
- 10 m) Funding and Allocation of the Gross Settlement Amount. No later than fourteen (14)
11 days after the Effective Date, Defendant shall provide to the Settlement Administrator in
12 any feasible manner, including, but not limited to, by way of a wire transfer, the Gross
13 Settlement Amount. If this Settlement is not finally approved by the Court in full, or is
14 terminated, rescinded, canceled, or fails to become effective for any reason, or if the
15 Effective Date does not occur, then no portion of the Gross Settlement Amount shall be
16 paid by Defendant.
- 17 n) Release by Plaintiffs, PAGA Members, and State of California. Upon the Effective Date,
18 Plaintiffs, all PAGA Members, and the State of California shall be deemed to have fully,
19 finally, and forever released, relinquished, and discharged each and all of the Released
20 Parties from the Released Claims.
- 21 o) No Admission. This Agreement and compliance with this Agreement shall not be
22 construed as an admission by Defendant of any liability whatsoever, or as an admission
23 by Defendant of any violations of Plaintiffs’ or the PAGA Members’ rights, or any
24 violations of any order, law, statute, duty or contract whatsoever. Defendant specifically
25 disclaims any liability to Plaintiffs or any of the allegedly PAGA Members or the LWDA
26 for any alleged violation of rights, or for any alleged violation of any order, law, statute,
27 duty or contract.
- 28 p) Non-Evidentiary Use. Neither this Agreement nor any of its terms shall be offered or
used as evidence by any of the Parties, or their respective counsel in the Litigation or in
any other action or proceeding against Released Parties; provided, however, this shall not
prevent this Agreement from being used, offered, or received in evidence in any action or

proceeding to enforce, construe, or finalize this Agreement as to any person or entity covered by this Agreement.

- q) Nullification. If the Court should for any reason fail to approve this Agreement, then: (1) this Agreement shall be considered null and void, (2) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (3) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into, nor filed with the Court. However, the Parties will make best efforts to satisfy any concerns expressed by the Court, including negotiating in good faith with respect to any suggested modification of the Agreement, so as to obtain approval for the Settlement. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions shall remain in full force and effect.
- r) Voluntariness. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or any other person, firm or other entity.
- s) Amendments. The terms and provisions of this Agreement may be amended only by a written agreement that is both: (a) signed by the Plaintiffs and Defendant and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.
- t) Assignment. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Member, Plaintiffs' Counsel, or Defendant's Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiffs expressly warrant that they have not transferred to any person or entity any right or cause of action, or claim released by this Agreement.
- u) Interim Stay of Action. The Parties agree to stay and to request that the Court stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement and enter the Judgment.

- 1 v) Governing Law. This Agreement shall be governed, construed, and interpreted, and the
2 rights of the Parties shall be determined, in accordance with the laws of the State of
3 California.
- 4 w) Entire Agreement. This Agreement contains the entire understanding of the Parties
5 hereto in respect of the subject matter contained herein. This Agreement supersedes all
6 prior agreements and understandings among the Parties hereto with respect to the
7 settlement of the Litigation.
- 8 x) Counterparts. This Agreement, and any amendments hereto, may be executed in any
9 number of counterparts and any Party and/or their respective counsel hereto may execute
10 any such counterpart, each of which when executed and delivered shall be deemed to be
11 an original and all of which counterparts taken together shall constitute but one and the
12 same instrument. It shall not be necessary in making proof of this Agreement or any
13 counterpart hereof to produce or account for any of the other counterparts. A facsimile,
14 scanned or digital signature, including but not limited to DocuSign, shall be treated as an
15 original signature for all purposes.
- 16 y) Dispute(s). Should any dispute(s) arise among the Parties or their respective counsel
17 regarding the implementation or interpretation of this Agreement, the Parties agree to
18 submit any such dispute(s) to the Court.
- 19 z) Binding. This Agreement shall bind and inure to the benefit of the Parties hereto and to
20 their respective successors, assigns, legatees, heirs, and personal representatives.
- 21 aa) Dismissal & Continuing Jurisdiction. The Parties agree that upon the occurrence of the
22 dismissal without prejudice of the Litigation pursuant to the terms of this Agreement, this
23 Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section
24 664.6 and the Court shall retain exclusive and continuing equity jurisdiction over this
25 Litigation and over all Parties and PAGA Members to interpret and enforce the terms,
26 conditions and obligations of the Agreement. Plaintiffs' Counsel shall submit the
27 Approval Order to the LWDA, in compliance with California Labor Code section
28 2699(1)(3).
- bb) Invalidity of Any Provision. Before declaring any term or provision of this Stipulation
invalid, the Parties request that the Court first attempt to construe the terms or provisions

valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation as valid and enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date set forth below.

APPROVED AND ACCEPTED

Dated: March 26, 2024

PLAINTIFF:

Jessica Plummer

JESSICA PLUMMER

Dated: _____, 2024

PLAINTIFF:

PAIGE RIEBOLDT

Dated: _____, 2024

PLAINTIFF:

DANIELLE DEVENNEY

Dated: _____, 2024

DEFENDANT:

FLEXCARE, LLC

valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation as valid and enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date set forth below.

APPROVED AND ACCEPTED

Dated: _____, 2024

PLAINTIFF:

JESSICA PLUMMER

Dated: 3/26, 2024

PLAINTIFF:


Paige Rieboldt (Mar 26, 2024 17:35 PDT)

PAIGE RIEBOLDT

Dated: _____, 2024

PLAINTIFF:

DANIELLE DEVENNEY

Dated: _____, 2024

DEFENDANT:

FLEXCARE, LLC

valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation as valid and enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date set forth below.

APPROVED AND ACCEPTED

Dated: _____, 2024

PLAINTIFF:

JESSICA PLUMMER

Dated: _____, 2024

PLAINTIFF:

PAIGE RIEBOLDT

Dated: 3/26, 2024

PLAINTIFF:

Danielle Devenney
Danielle Devenney (Mar 26, 2024 15:12 PDT)

DANIELLE DEVENNEY

Dated: _____, 2024

DEFENDANT:

FLEXCARE, LLC

valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation as valid and enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date set forth below.

APPROVED AND ACCEPTED

Dated: _____, 2024

PLAINTIFF:

JESSICA PLUMMER

Dated: _____, 2024

PLAINTIFF:

PAIGE RIEBOLDT

Dated: 3/26, 2024

PLAINTIFF:

Danielle Devenney
Danielle Devenney (Mar 26, 2024 15:12 PDT)

DANIELLE DEVENNEY

DEFENDANT:

Dated: March 26, 2024

Signature: *Bill McElyea*
Bill McElyea (Mar 26, 2024 20:58 EDT)

FLEXCARE, LLC

EXHIBIT A
TO SETTLEMENT AGREEMENT

Eve H. Cervantez (State Bar No. 164709)
Robin Tholin (State Bar No. 344845)
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*Attorneys for Plaintiffs Jessica Plummer,
Paige Rieboldt, and Danielle Devenney*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JESSICA PLUMMER, PAIGE RIEBOLDT, and
DANIELLE DEVENNEY individually and on
behalf of all other similarly situated aggrieved
employees,

Plaintiffs,

vs.

FLEXCARE, LLC and DOES 1-50, inclusive,

Defendants

CASE NO.: 23CV050251

[Assigned for all purposes to Judge Julia
Spain, Department 520]

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARDS; AND JUDGMENT
THEREON**

Hearing Date: April 17, 2024

Time: 2:00 p.m.

Dept.: 520

Reservation No.: A-502151-001

Complaint Filed: November 6, 2023

Trial Date: Not Set

1 Plaintiffs’ Unopposed Motion for Approval of PAGA Settlement, Attorneys’ Fees and
2 Costs, and Service Awards came on for hearing on April 17, 2024. The Court finds and orders as
3 follows:

4 1. The Motion for Approval of PAGA Settlement is granted. Pursuant to Labor Code
5 §2699(1)(2), the Court finds that the \$860,000 non-reversionary settlement, as memorialized in the
6 parties’ Private Attorneys General Act Settlement Agreement (“Agreement”), is “fair, reasonable,
7 and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future
8 ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72
9 Cal.App.5th 56, 77 (2021). The settlement was the product of extensive, arms-length negotiation,
10 and the settlement, as allocated pursuant to the terms of the Agreement, provides genuine and
11 meaningful relief to the State and aggrieved employees.

12 2. Pursuant to Labor Code §2699(g)(1), the Court awards attorneys’ fees in the amount
13 of one-third (33.33%) of the Gross Settlement Fund, totaling \$286,638, to Plaintiffs’ Counsel,
14 Altshuler Berzon LLP and Stueve Siegel Hanson LLP. The Court concludes that under a
15 percentage-of-the-fund analysis, 33.33% of the Gross Settlement Fund is standard in similar
16 settlements and constitutes a reasonable fee award in this case based on the contingent risk incurred
17 by counsel and the benefits conferred on plaintiffs, the aggrieved employees, and the State.
18 Applying a lodestar cross-check, the Court finds that the hours incurred in litigating these matters
19 were reasonable, and that the hourly rates requested are reasonable in light of the skill, experience,
20 and qualifications of Plaintiffs’ counsel. The multiplier of 1.3 is reasonable in this case in light of
21 the nature and complexity of the litigation and the benefits to the State and aggrieved employees of
22 the swift resolution of the case.

23 3. The Court awards litigation costs of \$6,807.94 to Plaintiffs’ counsel. The Court finds
24 that the requested expenses were reasonably incurred in the litigation of this matter and are properly
25 awarded under Labor Code § 2699(g)(1) and under a common fund analysis.

26 4. Pursuant to the terms of the Settlement, the Court grants service awards in the
27 amount of \$1,000 each to Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney. The
28

1 Court finds that these awards are reasonable for the time expended and risks incurred by the
2 Plaintiffs in bringing this case.

3 5. The parties are ordered to implement the Agreement according to its terms. Pursuant
4 to Code of Civil Procedure §664.6, the Court shall retain jurisdiction over the Settlement to enforce
5 its terms.

6 6. Plaintiffs' PAGA claims are dismissed with prejudice.
7

8 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
9 judgment shall be entered in this action according to the foregoing terms.
10

11 Dated: _____, 2024

12 HON. JULIA SPAIN
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EXHIBIT B
TO SETTLEMENT AGREEMENT

Notice of PAGA Settlement and Release of Claims

Jessica Plummer, Paige Rieboldt, and Danielle Devenney v. Flexcare, LLC, Case No.: 23CV050251

NAME

ADDRESS

I. NOTICE OF PAGA SETTLEMENT

The Alameda County Superior Court (the “Court”) has approved a settlement between Jessica Plummer, Paige Rieboldt, and Danielle Devenney (collectively “Plaintiffs”), on behalf of themselves, the State of California, and all other aggrieved employees, and Defendant Flexcare, LLC in the above-captioned case.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: all current and former non-exempt clinicians who were employed in California or traveled to California for employment with Flexcare at any time between July 26, 2022 and February 21, 2024 (the “PAGA Period”).

In this lawsuit, Plaintiffs alleged that Flexcare failed to comply with multiple sections of the California Labor Code by offering contracts to travel nurses for fixed-term assignments at guaranteed rates of pay and subsequently making “taking it or leave it” amendments to those assignments to accept less pay or be terminated (“bait and switch” claims) and by failing to include purported stipends in employees’ regular rate of pay for the purpose of calculating overtime pay rates. Plaintiffs sought civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under California Labor Code § 2698 et seq., also known as the Private Attorneys General Act (“PAGA”).

Defendant contends it is not liable for any of the claims alleged by Plaintiffs and has asserted and continue to assert that the claims alleged by Plaintiffs have no merit and do not give rise to any liability, damages, restitution, penalties, or other payments. Defendant also contends that it has complied with all applicable state, federal, and local laws. However, Defendant has concluded that the further defense of the lawsuit would be protracted and expensive for all Parties.

The Court has not made a determination about Plaintiffs’ allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

The Court has approved the parties’ Settlement Agreement (“Settlement”). The enclosed check is your share of the Settlement.

Pursuant to the terms of the Settlement, your individual settlement amount was calculated based on the number of pay periods that you worked for Flexcare during the PAGA Period, and the number of those pay periods, if any, in which you worked overtime or in which you worked after a “take it or leave it” offer to accept less pay.

Because this calculation was approved by the Court, the amount of your payment is final and cannot change. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. Further, you are bound by the settlement and release of claims (discussed below) based on the Court's final judgment, whether or not you cash or deposit the enclosed check.

III. RELEASE

By operation of the Settlement's terms, all Aggrieved Employees have released any and all claims against Flexcare, its agents, employees, and others ("Released Parties") that were asserted in Plaintiffs' LWDA Letter and Complaint, or that reasonably could have been asserted based upon the facts alleged in the LWDA Letter and Plaintiffs' Complaint ("Released Claims").

The Released Parties include but are not limited to Flexcare, its past, present, and future agents of all types, employees, members, officers, directors, shareholders, and related entities. "Released Parties" also means any person or entity which may have been a joint employer, including the hospitals and medical facilities in which Aggrieved Employees worked, but only with respect to shifts they worked for Flexcare during the PAGA Period.

The Released Claims include, but are not limited to, claims under PAGA alleging that Defendant made "bait and switch" offers, failed to pay overtime rates based on purported stipends, or failed to provide accurate wage statements based on either of those theories that arose before February 21, 2024. This means that you are not able to pursue a PAGA lawsuit against Defendant based on such claims.

IV. ADDITIONAL INFORMATION

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

If you have any questions or would like more information about the settlement or this lawsuit, please contact Plaintiffs' counsel:

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STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: 816-714-7100
merrill@stuevesiegel.com

EXHIBIT C
TO SETTLEMENT AGREEMENT

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Robin Tholin (State Bar No. 344845)
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Counsel for Plaintiffs Plummer, Rieboldt, and
Devenney

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JESSICA PLUMMER,
PAIGE RIEBOLDT, and
DANIELLE DEVENNEY individually
and on behalf of all other similarly
situated aggrieved employees,

Plaintiffs,

v.

FLEXCARE LLC and DOES 1-50, inclusive

Defendants.

Case No. 23CV050251

[Assigned for all purposes to Judge Julia Spain,
Department 520]

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

Action Filed: November 6, 2023

Unlimited Civil Case

1 Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney (collectively
2 “Plaintiffs”) bring this Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against
3 Flexcare LLC (“Flexcare” or “Defendant”), in their representative capacity on behalf of the State
4 of California for themselves and all other similarly situated aggrieved employees. Plaintiffs make
5 the following allegations based upon personal knowledge as to their 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. Flexcare is offering contracts to travel nurses
16 with a fixed-term assignment at an agreed-upon pay rate. After the nurse accepts the position and
17 starts the assignment, Flexcare makes a “take-it-or-leave-it” demand to accept less pay or be
18 terminated. Of course, most nurses have no choice but to continue working the assignment at the
19 lower rate because they have no reasonable alternatives for comparable employment: they have
20 already incurred travel expenses, secured short-term housing, and uprooted their lives to accept the
21 assignment. Flexcare is knowingly engaging in these “bait and switch” practices by inducing travel
22 nurses to travel to a location and then reducing their pay, to maintain the significant profit margins
23 Flexcare had become accustomed to during the COVID-19 pandemic.

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

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

6 4. On July 26, 2023, Plaintiffs Plummer and Rieboldt provided Flexcare and the
7 California Labor and Workforce Development Agency (LWDA) with the required notice of their
8 intent to bring this PAGA action.¹ The requisite 65 days passed, and LWDA did not notify Plaintiffs
9 Plummer and Rieboldt that it intended to pursue Flexcare for the violations alleged in that PAGA
10 letter. Accordingly, Plaintiffs brought this PAGA action on behalf of the State of California and
11 other current and former employees of Flexcare for engaging in "bait and switch" practices,
12 underpayment for overtime hours worked, and failure to reimburse reasonable business expenses,
13 in violation of the Labor Code, seeking all penalties permitted under PAGA.

14 5. On November 28, 2023, Plaintiffs Plummer, Rieboldt, and Devenney provided
15 Flexcare and the LWDA with an amended notice, adding Plaintiff Devenney and notice of unlawful
16 payment of secrete wages in violation of California Labor Code § 223.² The requisite 65 days have
17 passed, and the LWDA has not notified Plaintiffs that it intends to pursue Flexcare for the violations
18 alleged in the amended PAGA notice. Accordingly, Plaintiffs bring this first amended
19 representative action complaint, adding Plaintiff Devenney and allegations regarding Labor Code
20 § 223 and seeking all related penalties permitted under PAGA.

21 **JURISDICTION, VENUE, AND PARTIES**

22 6. Flexcare is a California limited liability company with a principal place of business
23 located in Placer County, 532 Gibson Drive, Suite 100, Roseville, California 95678.

24 7. Plaintiff Jessica Plummer accepted a travel assignment from Flexcare to work at a
25 healthcare facility located in Oceanside, California, and traveled to Oceanside for that assignment.

26
27 ¹ See Ex. 1 (PAGA Notice).

28 ² See Ex. 2 (Amended PAGA Notice).

1 8. Plaintiff Paige Rieboldt accepted a travel assignment from Flexcare to work at a
2 healthcare facility located in Marysville, California, and traveled to Marysville for that assignment.

3 9. Plaintiff Danielle Devenney accepted travel assignments from Flexcare to work at
4 healthcare facilities located in San Francisco, Redwood City, and Greenbrae, California, and
5 traveled to those facilities for those assignments.

6 10. The true names of the persons or entities referred to herein as Defendants DOES 1-
7 50 are unknown to Plaintiffs, who therefore sue them under fictitious names. Plaintiffs are informed
8 and believe, and on that basis allege, that each of the Defendants identified as DOES 1-50 is legally
9 responsible in some manner for the unlawful acts alleged herein. Plaintiffs will seek leave of Court
10 to amend the complaint to substitute the true names of the fictitiously named defendants when their
11 identities become known to Plaintiffs. Together, all Defendants are referred to herein as “Flexcare”
12 or “Defendant.”

13 11. Plaintiffs bring this PAGA action in their representative capacity on behalf of the
14 State of California and on behalf of all of Flexcare’s current and former non-exempt employees
15 who were employed in California, traveled to California for employment with Flexcare, or traveled
16 from within California to any place outside of California for employment with Flexcare, and who
17 suffered one or more Labor Code violations enumerated herein (“Aggrieved Employees”) between
18 July 26, 2022 and present (“PAGA Period”).

19 12. IWC Wage Order No. 4-2001 applies to Plaintiffs’ and other Aggrieved Employees’
20 employment with Flexcare, and no exemptions apply.

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

24 14. Venue is proper here because the acts and omissions complained of in this PAGA
25 action took place, in part, within Alameda County, and because Flexcare does business in Alameda
26
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County. Flexcare staffs healthcare facilities in Alameda County, and provides services throughout California.³

STATEMENT OF FACTS

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

15. Flexcare represents that it “set out to shake up the medical staffing industry in 2006 . . . to give travel nurses a better and more transparent experience.”⁴ On its website, Flexcare states that “Since 2006, FlexCare Medical Staffing has grown to become a nationwide leader in travel nursing, therapy, and allied staffing services for top healthcare facilities around the country. Our mission is to improve the lives of everyone we touch by delivering premier staffing solutions with integrity and transparency. As a result, FlexCare continues to be recognized as one of the top companies in the nation from industry authorities like Staffing Industry Analysts, and Travel Nursing Central.” *Id.* “That's why we work hard to eliminate the hassle and stress when it comes to your allied, therapy, or nurse pay package.”⁵

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

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

³ https://www.flexcarestaff.com/jobs?sort_by=field_job_created_date&sort_order=DESC&fc_job_board_lat_long%5Bvalue%5D%5B%5D=Oakland%2C+CA%2C+USA.

⁴ <https://www.flexcarestaff.com/flexcare-story>.

⁵ <https://www.flexcarestaff.com/top-travel-healthcare-company-flexcare-difference>.

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

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

8 20. Flexcare routinely makes representations to travel nurses like Plaintiffs Plummer
9 and Rieboldt and other Aggrieved Employees concerning the kind or character of the work, the
10 length of time the work will last, or the compensation therefor.

11 21. Flexcare's representations of this kind were false, in whole or in part, and Flexcare
12 knew when the representations were made that they were false and intended that Plaintiffs Plummer
13 and Rieboldt and other Aggrieved Employees would rely on the false representations in accepting
14 assignments and, among other things, relocating for the assignments.

15 22. Plaintiffs Plummer and Rieboldt and Aggrieved Employees relied on Flexcare's
16 false representations in accepting the assignments and, among other things, relocating for the
17 purpose of working for Flexcare.

18 23. As a result of Flexcare's misrepresentations, Plaintiffs Plummer and Rieboldt and
19 other Aggrieved Employees were harmed, and their reliance on Flexcare's misrepresentations was
20 a substantial factor in causing such harm.

21 **Plaintiff Jessica Plummer**

22 24. On or about April 6, 2022 Flexcare made an employment offer to Plaintiff Plummer
23 which included a fixed-term travel assignment in Oceanside, California.

24 25. The employment agreement offered her a position at Tri City Medical Center in
25 Oceanside, California from May 1, 2022, until July 30, 2022, with the following compensation
26 package: a base hourly pay rate of \$62.68 with a minimum of 36 scheduled hours per week; an
27 overtime hourly pay rate of \$90.02; a weekly meals and incidentals per diem of \$518.00; and a
28 weekly housing per diem of \$1,127.00.

1 26. In reliance on the foregoing material terms, she accepted Flexcare's offer of
2 employment by executing Flexcare's form travel assignment agreement on April 6, 2022. To
3 comply with her duties under the agreement, she traveled to Oceanside, California at her own
4 expense, secured short-term living arrangements, and forwent other employment opportunities.

5 27. On June 1, 2022, just one month into her three-month assignment, Flexcare made
6 her a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Flexcare
7 demanded that she accept an approximately 18% reduction in her base hourly pay rate, from \$62.68
8 to \$51.51, and related reduction in her overtime hourly pay rate, from \$90.02 to \$80.00, in order to
9 complete the previously agreed-upon assignment.

10 28. Having already spent substantial time and money securing the assignment and taking
11 the steps necessary to ensure compliance with her obligations under the agreement, and unable to
12 find comparable employment in such a short period of time, she had no choice but to continue the
13 assignment at the lower rate.

14 **Plaintiff Paige Rieboldt**

15 29. On or about November 8, 2021, Flexcare made an employment offer to Plaintiff
16 Rieboldt which included a fixed-term travel assignment in Marysville, California.

17 30. The employment agreement offered her a position at Adventist Health & Rideout in
18 Marysville, California from December 12, 2021, until March 12, 2022, with the following
19 compensation package: a base hourly pay rate of \$105.99 with a minimum of 36 scheduled hours
20 per week; an overtime hourly pay rate of \$158.98; a weekly meals and incidentals per diem of
21 \$413.00; and a weekly lodging per diem of \$672.00.

22 31. In reliance on the foregoing material terms, she accepted Flexcare's offer of
23 employment by executing Flexcare's form travel assignment agreement on November 8, 2022. To
24 comply with her duties under the agreement, she continued to travel away from her home to
25 Marysville, California, at her own expense, secured short-term living arrangements, and forwent
26 other employment opportunities.

27 32. On or about December 20, 2021, just one week into her 13-week assignment,
28 Flexcare made her a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically,

1 Flexcare demanded that she accept an approximately 16% reduction in her base hourly pay rate,
2 from \$105.99 to \$89.04, and related reduction in her overtime hourly pay rate, from \$158.98 to
3 \$133.56, in order to complete the previously agreed-upon assignment.

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

13 34. There is no legal justification for Flexcare's conduct. Even if Flexcare's client no
14 longer needed as much staff or decided to reduce the bill rate, for example, nothing in the terms of
15 travel assignment agreements authorize Flexcare to unilaterally adjust pay rates to account for new
16 circumstances, whether foreseeable or not.

17 35. "Revised" or reduced agreements are not enforceable because an effective contract
18 modification or accord requires the exchange of new consideration. As alleged herein, there was no
19 exchange of new consideration because Plaintiffs Plummer and Rieboldt and Aggrieved Employees
20 were compelled to undertake the same obligations for less pay. Consequently, Flexcare cannot
21 relieve itself of its contractual obligations under one contract by coercing acceptance of a second
22 contract with less favorable terms.

23 **B. Flexcare's Miscalculation of Its Employees' Regular Rate of Pay and Resulting**
24 **Failure to Lawfully Pay Overtime.**

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

27 37. Employers must pay their employees one-and-half times their "regular rate" for all
28 overtime hours worked. Labor Code § 510 codifies the right to overtime compensation at one-and-

1 one-half the regular rate of pay for hours worked in excess of 8 hours in one day, 40 hours in one
2 week, or for the first 8 hours worked on the seventh day of work, and to overtime compensation at
3 twice the regular rate of pay for hours worked in excess of 12 hours in a day or in excess of 8 hours
4 in a day on the seventh day of work. In addition, pursuant to the IWC Wage Order(s), including
5 Wage Order 4-2001, Flexcare is required to pay Plaintiffs and Aggrieved Employees for all hours
6 worked, meaning the time during which an employee is subject to the control of an employer,
7 including all the time the employee is suffered or permitted to work, whether or not required to do
8 so.

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

16 39. Plaintiffs and Aggrieved Employees of Flexcare worked in excess of 8 and 12 hours
17 in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the
18 seventh day of work. Indeed, Plaintiffs and Aggrieved Employees of Flexcare regularly worked
19 time for which they were owed overtime or double time as provide by California law; however,
20 Flexcare paid Plaintiffs and Aggrieved Employees for overtime worked based on an unlawful
21 overtime rate of pay.

22 40. Flexcare failed to pay all overtime compensation owing due to its failure to correctly
23 calculate the regular rate of pay, on which the overtime rate of pay is based. Flexcare violated
24 California law, in relevant part, by failing to compensate Plaintiffs and Aggrieved Employees of
25 Flexcare for overtime wages as required by Labor Code §§ 510, 1198; 8 C.C.R. § 11040; and IWC
26 Wage Order 4-2001.

27 41. Flexcare's regular rate of pay did not include weekly wages that Flexcare referred
28 to as "stipends" or allowances. In calculating the overtime rate paid to its employees, Flexcare

1 wrongfully excluded from their regular rate various stipends and allowances paid to its employees,
2 including weekly per diems for lodging and meals & incidentals, even though these payments
3 functioned as a form of compensation as part of its employees' pay package.

4 42. Plaintiffs regularly worked overtime and were not properly compensated for it. For
5 instance:

- 6 a. Plaintiff Jessica Plummer's initial contract provides for overtime at a rate of \$90.02
7 per hour, or less than 1.5 times her initial base hourly pay rate of \$62.68. Her weekly
8 meals & incidentals per diem of \$518 and her weekly housing per diem of \$1,127
9 were not included in the calculation of her regular rate.
- 10 b. Plaintiff Jessica Plummer's reduced contract provides for overtime at a rate of \$80
11 per hour, or roughly 1.5 times her reduced base hourly pay rate of \$51.51. Her
12 weekly meals & incidentals per diem of \$518 and her weekly housing per diem of
13 \$1,127 were not included in the calculation of her regular rate.
- 14 c. Plaintiff Paige Rieboldt's initial contract provides for overtime at a rate of \$158.98
15 per hour, or 1.5 times her initial base hourly pay rate of \$105.99. Her weekly meals
16 & incidentals per diem of \$413 and her weekly housing per diem of \$672 were not
17 included in the calculation of her regular rate.
- 18 d. Plaintiff Paige Rieboldt's reduced contract provides for overtime at a rate of \$133.56
19 per hour, or 1.5 times her initial base hourly pay rate of \$89.04. Her weekly meals
20 & incidentals per diem of \$413 and her weekly housing per diem of \$672 were not
21 included in the calculation of her regular rate.
- 22 e. Plaintiff Danielle Devenney's Redwood City contract provides for overtime at a rate
23 of \$80 per hour, or 1.8 times her base hourly pay rate of \$43.90. Her weekly meals
24 & incidentals per diem of \$518 and her weekly housing per diem of \$1,554 were not
25 included in the calculation of her regular rate.
- 26 f. Plaintiff Danielle Devenney's Greenbrae contract provides for overtime at a rate of
27 \$70 per hour, or 1.6 times her base hourly pay rate of \$43.77. Her weekly meals &
28

1 incidentals per diem of \$518 and her weekly housing per diem of \$1,162 were not
2 included in the calculation of her regular rate.

3 g. In the workweek for February 20 to 26, 2022, Plaintiff Rieboldt worked 48.25 hours
4 for which Flexcare paid her a base rate of \$89.04 for 36 hours, an overtime rate of
5 \$133.56 for 12 hours, and a double-time rate of \$178.08 for 0.25 hours. Given her
6 stipends that week for \$413 and \$672, she should have been compensated as follows:
7 her regular rate was \$116.17, therefore, her overtime and double-time rates should
8 have been \$174.25 and \$232.33, respectively.

9 h. In the workweek for June 5 to 11, 2022, Plaintiff Plummer worked 43.01 hours for
10 which Flexcare paid her a base rate of \$51.51 for 36 hours and an overtime rate of
11 \$80 for 7.01 hours. Given her stipends that week for \$518 and \$1,127, she should
12 have been compensated as follows: her regular rate was \$92.64, therefore, her
13 overtime rate should have been \$138.95.

14 i. In the workweek of October 2-8, 2022, Plaintiff Devenney worked 41 hours and
15 received an hourly rate of \$43.77 for 40 hours and an overtime rate of \$70 for 1
16 hour, along with stipends of \$1,162 for housing and \$518 for meals & incidentals,
17 which were improperly excluded from her regular rate, resulting in underpayment
18 of overtime; her regular rate should have been \$85.77, resulting in an overtime rate
19 of \$128.66.

20 j. In the workweek of November 27 to December 3, 2022, Plaintiff Devenney worked
21 47.25 hours and received an hourly rate of \$43.77 for 40 hours and an overtime rate
22 of \$70 for 7.25 hours, along with the same excluded stipends; her regular rate should
23 likewise have been \$85.77, resulting in an overtime rate of \$128.66.

24 k. In the workweek of July 30 to August 5, 2023, Plaintiff Devenney worked 40 hours
25 and received an hourly rate of \$39.80 for 32 hours and an overtime rate of \$80 for 8
26 hours, along with stipends of \$1,554 for housing and \$518 for meals & incidentals,
27 which were improperly excluded from her regular rate, resulting in underpayment
28

1 of overtime; her regular rate should have been \$91.60, resulting in an overtime rate
2 of \$137.40.

- 3 l. In the workweek of September 3-9, 2023, Plaintiff Devenney worked 24 hours and
4 received an hourly rate of \$39.80 for 16 hours and an overtime rate of \$80 for 8
5 hours, along with stipends of \$914 for housing and \$304.80 for meals & incidentals,
6 which were improperly excluded from her regular rate, resulting in underpayment
7 of overtime; her regular rate should have been \$70.27, resulting in an overtime rate
8 of \$105.41.

9 43. Flexcare's exclusion of the various stipends and allowances paid to its employees,
10 including the weekly per diems for lodging and meals & incidentals, from said employees' "regular
11 rate" in calculating overtime was wrongful and in violation of the law, in that:

- 12 a. Said payments functioned as compensation for the employees' hours of
13 employment;
- 14 b. Said payments were tied to the number of hours worked, rather than the amount of
15 expenses actually incurred;
- 16 c. Said payments varied with the number of hours worked per week, such that if an
17 employee missed one or more shifts, said payments would be reduced a
18 corresponding amount;
- 19 d. Said payments did not vary with the amount of expenses an employee actually
20 incurred, nor were they calculated to approximate actual expenses. Employees were
21 not required to document expenses, nor provide any attestation that he or she actually
22 incurred a particular amount of expenses in a given period;
- 23 e. Upon information and belief, said payments were not limited to employees who
24 were actually traveling, but instead could be received by local employees who
25 worked proximate to their residence; and
- 26 f. Upon information and belief, employees could roll over extra shifts worked in a
27 previous week to avoid a pro rata reduction in said payments occasioned by having
28 missed one or more shifts in a given week.

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

7 45. Flexcare classified this form of Plaintiffs' compensation as expense reimbursement
8 to avoid paying payroll taxes on these wages and to avoid paying materially increased overtime
9 rates, particularly given that many travel nurses (including Plaintiffs) are guaranteed more than 8
10 hours in a single workday and more than 40 hours per week.

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

17 **C. Flexcare's Other Violations of Labor Code**

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

24 48. Flexcare's failure to pay Plaintiffs and Aggrieved Employees the contracted-for
25 wages for each hour worked, and proper overtime compensation of 1.5 or 2 times the correctly-
26 calculated regular rate for every hour worked, means that Flexcare also fails to make timely
27 payment of the wages earned on regular paydays, in violation of Labor Code § 204, and fails to
28

1 make timely payment of the wages earned when Plaintiffs and Aggrieved Employees stop working
2 for Flexcare due to discharge, layoff or resignation, in violation of Labor Code §§ 201 and 202.

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

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

14 51. Flexcare's failure to pay Plaintiffs and Aggrieved Employees the contracted-for
15 wages for each hour worked, and the proper overtime rate for each hour worked, means that
16 Flexcare violated Labor Code § 226 by failing to provide proper itemized statements; in particular,
17 the itemized statements failed to set forth all applicable hourly rates in effect during the pay period
18 and the corresponding number of hours worked at each hourly rate.

19 52. In committing such violations, Flexcare has acted neither in good faith nor with
20 reasonable grounds to believe that its actions and omissions were not a violation of California law.
21 Flexcare's unlawful conduct was willful because, among other reasons described herein, Flexcare
22 purposefully and knowingly reduced the contracted-for rate of pay after inducing Plaintiffs and
23 Aggrieved Employees to travel to or within California as a travel nurse for Flexcare and
24 purposefully and knowingly underpaid overtime. Flexcare's compensation system clearly violates
25 the California Labor Code such that any belief by Flexcare that wages were not owed to Plaintiffs
26 and Aggrieved Employees would be objectively unreasonable and in bad faith. Despite the ability
27 to make such payment, Flexcare maintained customs, policies, practices, procedures, and routines
28 incompatible with the requirements of the Labor Code.

1 53. Flexcare violated Labor Code §§ 1174 and 1175 by knowingly, intentionally,
2 willfully, and unlawfully failing to provide Plaintiffs and Aggrieved Employees with timely and
3 accurate wage statements in violation of Labor Code § 226.

4 54. As a direct and proximate result, Plaintiffs and Aggrieved Employees have suffered
5 damages. Among other things, Flexcare's failure to provide accurate wage statements required for
6 employees was in furtherance of Flexcare's above-described scheme to pay overtime to Plaintiffs
7 and Aggrieved Employees at unlawfully low rates that did not include all compensation in
8 calculating the regular rate. Flexcare's wage statement failures caused and will cause Plaintiffs and
9 Aggrieved Employees extra work and effort to determine their true wages.

10 55. Flexcare has also required Plaintiffs and Aggrieved Employees to cover – out of
11 their own pockets – certain expenses flowing directly from their duties as travel nurses. For
12 instance, Plaintiffs are required to pay out-of-pocket for lodging, traveling, mileage, etc. Pursuant
13 to Labor Code § 2802, employers must indemnify their employees for “all necessary expenditures
14 or losses incurred by the employee in direct consequence of the discharge of his or her duties.”
15 Flexcare did not do so, and is therefore liable for civil penalties pursuant to Labor Code § 2698 et
16 seq.

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

24 57. Finally, Labor Code § 223 provides that it is unlawful, where a statute or contract
25 requires an employer to maintain a designated wage scale, “to secretly pay a lower wage while
26 purporting to pay the wage designated by statute or contract.” Plaintiffs and Aggrieved Employees
27 worked in excess of 8 and 12 hours in a single day, in excess of 40 hours in a week and also worked
28 in excess of 8 and 12 hours on the seventh day of work. Plaintiffs and Aggrieved Employees worked

1 time for which they were owed overtime or double time as provided by California law; however,
2 Flexcare paid them based on an unlawful regular rate of pay. The regular rate of pay did not include
3 weekly wages that Flexcare referred to as “stipends.” Flexcare thus violated California law by
4 purporting to pay the appropriate amount of overtime wages.

5 58. As a direct and proximate result, Plaintiffs and Aggrieved Employees have suffered
6 damages. Among other things, Flexcare’s secret payment of lower wages was in furtherance of
7 Flexcare’s above-described scheme to pay overtime to Plaintiffs and Aggrieved Employees at
8 unlawfully low rates that did not include all compensation in calculating the regular rate. Flexcare’s
9 secret payment of lower wages caused and will cause Plaintiffs and Aggrieved Employees extra
10 work and effort to determine their true wages.

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

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

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

22 61. At all relevant times, Plaintiffs and Aggrieved Employees are aggrieved employees
23 within the meaning of Labor Code § 2699(c) because they were employed by Flexcare and suffered
24 one or more of the alleged Labor Code violations committed by Flexcare.

25 62. Plaintiffs bring this PAGA action on behalf of the State of California with respect to
26 themselves and all Aggrieved Employees employed by Flexcare during the PAGA Period.

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

1 64. Under Cal. Lab. Code § 2699.3, Plaintiffs gave written notice by online submission
2 to the LWDA on July 26, 2023 and November 28, 2023, and by certified mail to Flexcare of the
3 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
4 to support the alleged violations,⁶ and the LWDA did not provide notice to Plaintiffs that it intends
5 to investigate the alleged violations.

6 65. Under Cal. Lab. Code §§ 2698-2699.5, Plaintiffs, as representatives of the State of
7 California and on behalf of themselves and all other similarly Aggrieved Employees, seek to
8 recover civil penalties, including but not limited to penalties under §§ 210, 558, 1197.1, and 2699
9 for Flexcare's violation of the following Labor Code sections:

- 10 a. Unlawful solicitation of employees by misrepresentation in violation of Cal. Lab.
11 Code § 970;
- 12 b. Unlawful failure to pay overtime in violation of Cal. Lab. Code § 510;
- 13 c. Unlawful failure to make timely payment of all wages in violation of Cal. Lab. Code
14 §§ 201, 202, and/or 204;
- 15 d. Unlawful failure to furnish accurate wage statements in violation of California Labor
16 Code §§ 226, 1174, and 1175;
- 17 e. Unlawful failure to indemnify employees for expenses and losses in violation of Cal.
18 Lab. Code § 2802;
- 19 f. Unlawful failure to indemnify employees for want of ordinary care in violation of
20 Cal. Lab. Code § 2800; and
- 21 g. Unlawful payment of secret wages in violation of Cal. Lab. Code § 223.

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

27 _____
28 ⁶ See Ex. 1 (PAGA Notice); Ex. 2 (Amended PAGA Notice).

1 67. Cal. Lab. Code § 210(a)(1)-(2) provides for § 204 violations, that “[i]n addition to,
2 and entirely independent and apart from, any other penalty provided in this article, every person
3 who fails to pay the wages of each employee . . . shall be subject to a penalty as follows: (1) For
4 any initial violation, one hundred dollars (\$100) for each failure to pay each employee[; and] (2)
5 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
6 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

7 68. Cal. Lab. Code § 558(a)(1)-(3) provides “[a]ny employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
11 underpaid employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages[;] (2) [f]or each subsequent violation, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages[; and] (3) [w]ages
15 recovered pursuant to this section shall be paid to the affected employee.” See also Cal. Lab. Code
16 § 558(d) (“The civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law.”).

18 69. Cal. Lab. Code § 225.5 provides that “In addition to, and entirely independent and
19 apart from, any other penalty provided in this article, every person who unlawfully withholds wages
20 due any employee in violation of Section . . . 223 shall be subject to a civil penalty as follows: (a)
21 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
23 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

24 70. Plaintiffs and Aggrieved Employees are entitled to an award of costs and reasonable
25 attorney’s fees under PAGA and additional relief as described herein and permitted by law.
26
27
28

REQUEST FOR RELIEF

71. Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter judgment in their favor and against Flexcare as follows:

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

73. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses as provided by law;

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

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

Dated: March 26, 2024

Respectfully submitted,

ALTSHULER BERZON LLP
Eve H. Cervantez
Robin S. Tholin

STUEVE SIEGEL HANSON LLP
K. Ross Merrill

By: /s/ Eve H. Cervantez

*Attorneys for Plaintiffs Plummer,
Rieboldt, and Devenney*

EXHIBIT 1



July 26, 2023

VIA ELECTRONIC SUBMISSION

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

VIA CERTIFIED MAIL

FlexCare LLC
532 Gibson Drive, Ste. 100
Roseville, CA 95678

Re: PAGA Notice Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator,

The law firm of Stueve Siegel Hanson LLP represents Paige Rieboldt and Jessica Plummer (“Claimants”), who have worked within California as travel nurses for FlexCare LLC (“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 Claimants 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, Claimants, on behalf of themselves and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 (“PAGA”). Claimants respectfully request that the LWDA notify undersigned counsel as to whether it intends to investigate Employer’s alleged violations so that they can include the LWDA’s findings in their 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 the healthcare system afloat. But traveling requires significant sacrifices from the nurses themselves, including leaving existing employment, traveling hundreds or thousands of miles away from their homes to an unfamiliar location and work environment, securing short-term housing, and bearing significant moving-related expenses. To induce nurses to take on these roles, staffing agencies like Employer offer guaranteed hourly rates, along with minimum hours during a specified date range.

Paige Rieboldt

After completing a prior contract from September to December 2021, on or about November 8, 2021, Employer offered Ms. Rieboldt a contract to continue working from December 12, 2021 to March 12, 2022 at the rate of \$105.99 per hour, plus as weekly stipend amount, for 36 guaranteed hours per week at Adventist Health & Rideout in Marysville, California. In reliance on Employer's contractual promises, Ms. Rieboldt forwent other employment opportunities and continued traveling in Marysville, California; she had previously secured short-term living arrangements that she extended for the duration of her assignment. But Employer had no intention of honoring its commitment. Employer intended to implement, or is in the pattern and practice of implementing, mid-contract rate or hour reductions—that is, Employer, after an aggrieved employee signs their contract and acts in reliance on it, gives a take-it-or-leave it demand to accept less pay or be terminated. Just a couple weeks after the extension began, on or about December 20, 2021, Ms. Rieboldt received a text message from Employer that they intended to reduce her pay rate from \$105.99 to \$89.04 – a 16 percent rate cut. With no time to find a new position and having just extended her short-term living arrangements, Ms. Rieboldt had little choice but to continue the assignment at the lower rate.

Employer then offered Ms. Rieboldt another extension contract to continue working from March 20, 2022 to May 14, 2022, providing that she would continue to be paid \$89.04 per hour for 36 guaranteed hours per week at Adventist Health & Rideout. But Employer again had no intention of honoring its commitment. After planning on the extension for three months, Employer, just days before her assignment start date, informed Ms. Rieboldt that they intended to reduce her pay rate once again from \$89.04 per hour to \$85.65 per hour – another 4 percent rate cut. Because she'd once again relied on Employer's contractual promises, Ms. Rieboldt again had little choice but to continue the assignment at the lower rate. She completed her contractual obligations and did not agree to another contract with Employer.

Jessica Plummer

On or about April 6, 2022, Employer offered Ms. Plummer a contract providing that she would be paid \$62.68 per hour plus a weekly stipend amount, for a guaranteed 36 hours per week at Tri City Medical Center in Oceanside, California. The assignment was scheduled to commence on May 1, 2022, and end on July 30, 2022. In reliance on Employer's contractual promises, Ms. Plummer forwent other employment opportunities, traveled to Oceanside, California at her own expense, and secured short-term living arrangements for the duration of her assignment. But Employer had no intention of honoring its commitment. Employer intended to implement, or is in the pattern and practice of implementing, mid-contract rate or hour reductions—that is, Employer, after an aggrieved employee signs their contract and acts in reliance on it, gives a take-it-or-leave it demand to accept less pay or be terminated. Partway through the assignment, on June 1, 2022, Employer informed Ms. Plummer that they intended to reduce her hourly rate by over \$11 from \$62.68 per hour to \$51.51 per hour – an 18 percent pay cut. Ms. Plummer had little choice but to continue the assignment at the lower rate.

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

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

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

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

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

Employer required Claimants and other aggrieved employees to pay Employer’s business expenses, each of which flow directly from the nurses’ work on behalf of the Employer and which inure to the benefit of the Employer. For instance, Claimants were required to pay hundreds of dollars in travel expenses, which was not reimbursed by Employer. Pursuant to California Labor Code § 2802, employers must indemnify their employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

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

**Unlawful Failure to Pay Overtime Premium
in Violation of California Labor Code §§ 510 and/or 1194**

IWC Wage Order No. 4-2001 applies to Claimants’ 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. Both Claimants worked in excess of 8 and 12 hours in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the seventh day of work. Both Claimants regularly worked time for which they were owed overtime or double time as provide by California law; however, Employer paid them 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 Claimants 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 Claimants 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 Claimants. *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).

**Unlawful Failure to Furnish Accurate Wage Statements
in Violation of California Labor Code §§ 226, 1174, and/or 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.

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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. Sison with timely and accurate wage statements. Employer violated California Labor Code §§ 1174 and 1175 by knowingly, intentionally, and unlawfully failing to provide Claimants with timely and accurate wage statements in violation of California Labor Code § 226. As a direct and proximate result, Claimants have 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 Claimants at unlawfully low rates that did not include all necessary wages. Employer's wage statement failures caused and will cause Claimants extra work and effort to determine their true wages.

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

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

Conclusion

Should the LWDA decline to proceed in this matter, Claimants 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
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: 816-714-7100
ricke@stuevesiegel.com

EXHIBIT 2



November 28, 2023

VIA ELECTRONIC SUBMISSION

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

VIA CERTIFIED MAIL

FlexCare LLC
532 Gibson Drive, Ste. 100
Roseville, CA 95678

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

Dear PAGA Administrator,

The law firm of Stueve Siegel Hanson LLP represents Paige Rieboldt, Jessica Plummer, and Danielle Devenney (“Claimants”), who have worked within California as travel nurses for FlexCare LLC (“Employer”). Pursuant to California Labor Code § 2699.3(a) and (c), this letter shall serve as an amended notice of Employer’s violations of the California Labor Code and related regulations arising out of Employer’s unlawful conduct with respect to its employment of Claimants and other aggrieved employees. These violations give rise to civil penalties under California Labor Code § 2698, *et seq.*

Claimants Rieboldt and Plummer previously submitted a PAGA notice detailing some of these issues on July 26, 2023. 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, Claimants, on behalf of themselves and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 (“PAGA”). Claimants respectfully request that the LWDA notify undersigned counsel as to whether it intends to investigate Employer’s alleged violations so that they can include the LWDA’s findings in their action should the Agency decline to proceed. Having received no notification from the LWDA within 65 days of their July 26 PAGA notice, Claimants Rieboldt and Plummer filed a PAGA complaint on November 6, 2023, in the Superior Court of the State of California, County of Alameda, Case No. 23-cv-050251. Accordingly, Claimants’ request relates to the amended facts, theories, and alleged violations herein as to Claimant Devenney.

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 the healthcare system afloat. But traveling requires significant sacrifices from the nurses themselves, including leaving existing employment, traveling hundreds or thousands of miles away from their homes to an unfamiliar location and work environment, securing short-term housing, and bearing significant moving-related expenses. To induce nurses to take on these roles, staffing agencies like Employer offer guaranteed hourly rates, along with minimum hours during a specified date range.

Paige Rieboldt

After completing a prior contract from September to December 2021, on or about November 8, 2021, Employer offered Ms. Rieboldt a contract to continue working from December 12, 2021 to March 12, 2022 at the rate of \$105.99 per hour, plus as weekly stipend amount, for 36 guaranteed hours per week at Adventist Health & Rideout in Marysville, California. In reliance on Employer's contractual promises, Ms. Rieboldt forwent other employment opportunities and continued traveling in Marysville, California; she had previously secured short-term living arrangements that she extended for the duration of her assignment. But Employer had no intention of honoring its commitment. Employer intended to implement, or is in the pattern and practice of implementing, mid-contract rate or hour reductions—that is, Employer, after an aggrieved employee signs their contract and acts in reliance on it, gives a take-it-or-leave it demand to accept less pay or be terminated. Just a couple weeks after the extension began, on or about December 20, 2021, Ms. Rieboldt received a text message from Employer that they intended to reduce her pay rate from \$105.99 to \$89.04 – a 16 percent rate cut. With no time to find a new position and having just extended her short-term living arrangements, Ms. Rieboldt had little choice but to continue the assignment at the lower rate.

Employer then offered Ms. Rieboldt another extension contract to continue working from March 20, 2022 to May 14, 2022, providing that she would continue to be paid \$89.04 per hour for 36 guaranteed hours per week at Adventist Health & Rideout. But Employer again had no intention of honoring its commitment. After planning on the extension for three months, Employer, just days before her assignment start date, informed Ms. Rieboldt that they intended to reduce her pay rate once again from \$89.04 per hour to \$85.65 per hour – another 4 percent rate cut. Because she'd once again relied on Employer's contractual promises, Ms. Rieboldt again had little choice but to continue the assignment at the lower rate. She completed her contractual obligations and did not agree to another contract with Employer.

Jessica Plummer

On or about April 6, 2022, Employer offered Ms. Plummer a contract providing that she would be paid \$62.68 per hour plus a weekly stipend amount, for a guaranteed 36 hours per week at Tri City Medical Center in Oceanside, California. The assignment was scheduled to commence on May 1, 2022, and end on July 30, 2022. In reliance on Employer's contractual promises, Ms. Plummer forwent other employment opportunities, traveled to Oceanside, California at her own expense, and secured short-term living arrangements for the duration of her assignment. But Employer had no intention of honoring its commitment. Employer intended to

implement, or is in the pattern and practice of implementing, mid-contract rate or hour reductions—that is, Employer, after an aggrieved employee signs their contract and acts in reliance on it, gives a take-it-or-leave-it demand to accept less pay or be terminated. Partway through the assignment, on June 1, 2022, Employer informed Ms. Plummer that they intended to reduce her hourly rate by over \$11 from \$62.68 per hour to \$51.51 per hour – an 18 percent pay cut. Ms. Plummer had little choice but to continue the assignment at the lower rate.

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

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

Danielle Devenney

For example, Ms. Devenney worked for Employer in the state of California and was not paid the appropriate amount of overtime wages. In the workweek of October 2-8, 2022, she worked 41 hours and received an hourly rate of \$43.77 for 40 hours and an overtime rate of \$70 for 1 hour, along with stipends of \$1,162 for housing and \$518 for meals & incidentals, which were improperly excluded from her regular rate, resulting in underpayment of overtime; her regular rate should have been \$84.75, resulting in an overtime rate of \$127.12. In the workweek of November 27 to December 3, 2022, she worked 47.25 hours and received an hourly rate of \$43.77 for 40 hours and an overtime rate of \$70 for 7.25 hours, along with the same excluded stipends; her regular rate should have been \$79.33, resulting in an overtime rate of \$118.99. In the workweek of July 30 to August 5, 2023, she worked 40 hours and received an hourly rate of \$39.80 for 32 hours and an overtime rate of \$80 for 8 hours, along with stipends of \$1,554 for housing and \$518 for meals & incidentals, which were improperly excluded from her regular rate, resulting in underpayment of overtime; her regular rate should have been \$91.60, resulting in an overtime rate of \$137.40. In the workweek of September 3-9, 2023, she worked 24 hours and received an hourly rate of \$39.80 for 16 hours and an overtime rate of \$80 for 8 hours, along with stipends of \$914 for housing and \$304.80 for meals & incidentals, which were improperly excluded from her regular rate, resulting in underpayment of overtime; her regular rate should have been \$90.60, resulting in an overtime rate of \$135.9.

Unlawful Solicitation of Employees by Misrepresentation

in Violation of California Labor Code § 970

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

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

Employer required Claimants and other aggrieved employees to pay Employer’s business expenses, each of which flow directly from the nurses’ work on behalf of the Employer and which inure to the benefit of the Employer. For instance, Claimants were required to pay hundreds of dollars in travel expenses, which was not reimbursed by Employer. Pursuant to California Labor Code § 2802, employers must indemnify their employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

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

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

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in Violation of California Labor Code §§ 510 and/or 1194**

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excess of 8 and 12 hours on the seventh day of work. Both Claimants regularly worked time for which they were owed overtime or double time as provide by California law; however, Employer paid them 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 Claimants 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 Claimants 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 Claimants. *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).

**Unlawful Failure to Furnish Accurate Wage Statements
in Violation of California Labor Code §§ 226, 1174, and/or 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. Sison with timely and accurate wage statements. Employer violated California Labor Code §§ 1174 and 1175 by knowingly, intentionally, and unlawfully failing to provide Claimants with timely and accurate wage statements in violation of California Labor Code § 226. As a direct and proximate result, Claimants have 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 Claimants at unlawfully low rates that did not include all necessary wages. Employer’s wage statement failures caused and will cause Claimants extra work and effort to determine their true wages.

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

Employer’s failure to pay Claimants and other aggrieved employees for every hour worked or contracted for at the agreed-upon hourly rate stated in their written employment contracts, as well as Employer’s failure to pay Claimants the proper rate of overtime pay, resulted in Employer failing to make timely payment of the wages aggrieved employees earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages aggrieved employees earned when they stopped working for Employer due to discharge,

November 28, 2023

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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.*

**Unlawful Payment of Secret Wages
in Violation of California Labor Code §§ 223**

California Labor Code § 223 provides that it is unlawful, where a statute or contract requires an employer to maintain a designated wage scale, “to secretly pay a lower wage while purporting to pay the wage designated by statute or contract.” Both Claimants worked in excess of 8 and 12 hours in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the seventh day of work. Both Claimants regularly worked time for which they were owed overtime or double time as provide by California law; however, Employer paid them 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 by purporting to pay the appropriate amount of overtime wages.

Conclusion

Should the LWDA decline to proceed in this matter, Claimants intend 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
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