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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiffs,

v.

FLEXCARE LLC and DOES 1-50, inclusive

Defendants.

Case No. **23CV050251**

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

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

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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Case Nos.

1 Plaintiffs Jessica Plummer and Paige Rieboldt (collectively “Plaintiffs”) bring this Labor
2 Code Private Attorneys General Act of 2004 (“PAGA”) action against Flexcare LLC (“Flexcare”
3 or “Defendant”), in their representative capacity on behalf of the State of California for themselves
4 and all other similarly situated aggrieved employees. Plaintiffs make the following allegations
5 based upon personal knowledge as to their own actions and upon information and belief as to all
6 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 provided Flexcare and the California Labor and
7 Workforce Development Agency (LWDA) with the required notice of their intent to bring this
8 PAGA action.¹ The requisite 65 days have passed, and LWDA has not notified Plaintiffs that it
9 intends to pursue Flexcare for the violations alleged in Plaintiffs' PAGA letters. Plaintiffs now
10 bring this PAGA action on behalf of the State of California and other current and former employees
11 of Flexcare for engaging in "bait and switch" practices, underpayment for overtime hours worked,
12 and failure to reimburse reasonable business expenses, in violation of the Labor Code. Accordingly,
13 Plaintiffs seek all penalties permitted under PAGA.

14 **JURISDICTION, VENUE, AND PARTIES**

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

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

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

21 8. The true names of the persons or entities referred to herein as Defendants DOES 1-
22 50 are unknown to Plaintiffs, who therefore sue them under fictitious names. Plaintiffs are informed
23 and believe, and on that basis allege, that each of the Defendants identified as DOES 1-50 is legally
24 responsible in some manner for the unlawful acts alleged herein. Plaintiffs will seek leave of Court
25 to amend the complaint to substitute the true names of the fictitiously named defendants when their
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28 ¹ See Ex. 1 (PAGA Notice).

identities become known to Plaintiffs. Together, all Defendants are referred to herein as “Flexcare” or “Defendant.”

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

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

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

12. Venue is proper here because the acts and omissions complained of in this PAGA action took place, in part, within Alameda County, and because Flexcare does business in Alameda County and employs Aggrieved Employees in Alameda County. Flexcare staffs healthcare facilities in Alameda County, and provides services throughout California.²

STATEMENT OF FACTS

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

13. 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.”³ 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

² 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.

³ <https://www.flexcarestaff.com/flexcare-story>.

1 companies in the nation from industry authorities like Staffing Industry Analysts, and Travel
2 Nursing Central.” *Id.* “That’s why we work hard to eliminate the hassle and stress when it comes to
3 your allied, therapy, or nurse pay package.”⁴

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

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

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

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

22 18. Flexcare routinely makes representations to travel nurses like Plaintiffs and other
23 Aggrieved Employees concerning the kind or character of the work, the length of time the work
24 will last, or the compensation therefor.

25 19. Flexcare’s representations of this kind were false, in whole or in part, and Flexcare
26 knew when the representations were made that they were false and intended that Plaintiffs and other
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28 ⁴ <https://www.flexcarestaff.com/top-travel-healthcare-company-flexcare-difference>.

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

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

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

9 **Plaintiff Jessica Plummer**

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

12 23. The employment agreement offered her a position at Tri City Medical Center in
13 Oceanside, California from May 1, 2022, until July 30, 2022, with the following compensation
14 package: a base hourly pay rate of \$62.68 with a minimum of 36 scheduled hours per week; an
15 overtime hourly pay rate of \$94.02; a weekly meals and incidentals per diem of \$518.00; and a
16 weekly housing per diem of \$1,127.00.

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

21 25. On June 1, 2022, just one month into her three-month assignment, Flexcare made
22 her a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Flexcare
23 demanded that she accept an approximately 18% reduction in her base hourly pay rate, from \$62.68
24 to \$51.51, and related reduction in her overtime hourly pay rate, from \$94.02 to \$80.00, in order to
25 complete the previously agreed-upon assignment.

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

3 **Plaintiff Paige Rieboldt**

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

6 28. The employment agreement offered her a position at Adventist Health & Rideout in
7 Marysville, California from December 12, 2021, until March 12, 2022, with the following
8 compensation package: a base hourly pay rate of \$105.99 with a minimum of 36 scheduled hours
9 per week; an overtime hourly pay rate of \$158.98; a weekly meals and incidentals per diem of
10 \$413.00; and a weekly lodging per diem of \$672.00.

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

16 30. On or about December 20, 2021, just one week into her 13-week assignment,
17 Flexcare made her a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically,
18 Flexcare demanded that she accept an approximately 16% reduction in her base hourly pay rate,
19 from \$105.99 to \$89.04, and related reduction in her overtime hourly pay rate, from \$158.98 to
20 \$133.56, in order to complete the previously agreed-upon assignment.

21 31. As described above, Plaintiffs relied on the material terms of their employment
22 agreements including: the fixed assignment term, the payment package, and the guaranteed hours
23 or days in accepting the offer; as the assignment had to be worth foregoing other employment,
24 relocating, and incurring the associated professional and personal costs of accepting the travel
25 assignment. In addition, Plaintiffs relied on the fact the foregoing material terms could not be
26 changed without additional consideration and the reasonable expectation that Flexcare would act in
27 good faith and fair dealing and honor its promises or representations. Plaintiffs would not have
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1 accepted the agreements had they known that Flexcare would violate the terms and spirit of their
2 agreements.

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

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

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

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

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

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

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

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

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

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

22 40. Plaintiffs regularly worked overtime and were not properly compensated for it. For
23 instance:

- 24 a. Plaintiff Jessica Plummer’s initial contract provides for overtime at a rate of \$94.02
25 per hour, or 1.5 times her initial base hourly pay rate of \$62.68. Her weekly meals
26 & incidentals per diem of \$518 and her weekly housing per diem of \$1,127 were not
27 included in the calculation of her regular rate.
28

- b. Plaintiff Jessica Plummer’s reduced contract provides for overtime at a rate of \$80 per hour, or roughly 1.5 times her reduced base hourly pay rate of \$51.51. Her weekly meals & incidentals per diem of \$518 and her weekly housing per diem of \$1,127 were not included in the calculation of her regular rate.
- c. Plaintiff Paige Rieboldt’s initial contract provides for overtime at a rate of \$158.98 per hour, or 1.5 times her initial base hourly pay rate of \$105.99. Her weekly meals & incidentals per diem of \$413 and her weekly housing per diem of \$672 were not included in the calculation of her regular rate.
- d. Plaintiff Paige Rieboldt’s reduced contract provides for overtime at a rate of \$133.56 per hour, or 1.5 times her initial base hourly pay rate of \$89.04. Her weekly meals & incidentals per diem of \$413 and her weekly housing per diem of \$672 were not included in the calculation of her regular rate.
- e. In the workweek for February 20 to 26, 2022, Plaintiff Rieboldt worked 48.25 hours for which Flexcare paid her a base rate of \$89.04 for 36 hours, an overtime rate of \$133.56 for 12 hours, and a double-time rate of \$178.08 for 0.25 hours. Given her stipends that week for \$413 and \$672, she should have been compensated as follows: her regular rate was \$111.53, therefore, her overtime and double-time rates should have been \$167.29 and \$223.05, respectively.
- f. In the workweek for June 5 to 11, 2022, Plaintiff Plummer worked 43.01 hours for which Flexcare paid her a base rate of \$51.51 for 36 hours and an overtime rate of \$80 for 7.01 hours. Given her stipends that week for \$518 and \$1,127, she should have been compensated as follows: her regular rate was \$89.76, therefore, her overtime rate should have been \$134.64.

41. Flexcare’s exclusion of the various stipends and allowances paid to its employees, including the weekly per diems for lodging and meals & incidentals, from said employees’ “regular rate” in calculating overtime was wrongful and in violation of the law, in that:

- a. Said payments functioned as compensation for the employees’ hours of employment;

- 1 b. Said payments were tied to the number of hours worked, rather than the amount of
2 expenses actually incurred;
- 3 c. Said payments varied with the number of hours worked per week, such that if an
4 employee missed one or more shifts, said payments would be reduced a
5 corresponding amount;
- 6 d. Said payments did not vary with the amount of expenses an employee actually
7 incurred, nor were they calculated to approximate actual expenses. Employees were
8 not required to document expenses, nor provide any attestation that he or she actually
9 incurred a particular amount of expenses in a given period;
- 10 e. Upon information and belief, said payments were not limited to employees who
11 were actually traveling, but instead could be received by local employees who
12 worked proximate to their residence; and
- 13 f. Upon information and belief, employees could roll over extra shifts worked in a
14 previous week to avoid a pro rata reduction in said payments occasioned by having
15 missed one or more shifts in a given week.

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

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

26 44. Flexcare's course of conduct described herein violated the Labor Code and
27 applicable Wage Orders by improperly excluding from its employees' regular rate certain forms of
28 compensation, including stipends and allowances, thereby resulting in unpaid overtime owed to

1 Plaintiffs and Aggrieved Employees. Flexcare maintains a uniform, company-wide policy and
2 practice of miscalculating the overtime rate of Plaintiff and Aggrieved Employees, and said policy
3 is willful in nature and not the result of a good faith mistake.

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

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

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

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

21 48. Labor Code § 226 requires employers to provide employees, on each payday,
22 itemized statements showing, among other things: (1) gross wages earned, (2) total hours worked
23 by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive
25 dates of the period for which the employee is paid, (7) the name of the employee, (8) the name and
26 address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during
27 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
28

1 49. Flexcare’s failure to pay Plaintiffs and Aggrieved Employees the contracted-for
2 wages for each hour worked, and the proper overtime rate for each hour worked, means that
3 Flexcare violated Labor Code § 226 by failing to provide proper itemized statements; in particular,
4 the itemized statements failed to set forth all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate.

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

16 51. Flexcare violated Labor Code §§ 1174 and 1175 by knowingly, intentionally,
17 willfully, and unlawfully failing to provide Plaintiffs and Aggrieved Employees with timely and
18 accurate wage statements in violation of Labor Code § 226.

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

25 53. Flexcare has also required Plaintiffs and Aggrieved Employees to cover – out of
26 their own pockets – certain expenses flowing directly from their duties as travel nurses. For
27 instance, Plaintiffs are required to pay out-of-pocket for lodging, traveling, mileage, etc. Pursuant
28 to Labor Code § 2802, employers must indemnify their employees for “all necessary expenditures

1 or losses incurred by the employee in direct consequence of the discharge of his or her duties.”
2 Flexcare did not do so, and is therefore liable for civil penalties pursuant to Labor Code § 2698 et
3 seq.

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

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

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

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

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

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

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

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

6 61. 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; and
- 19 f. Unlawful failure to indemnify employees for want of ordinary care in violation of
20 Cal. Lab. Code § 2800.

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

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28 ⁵ See Ex. 1 (PAGA Notice).

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

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

65. Plaintiffs and Aggrieved Employees are entitled to an award of costs and reasonable attorney's fees under PAGA and additional relief as described herein and permitted by law.

REQUEST FOR RELIEF

66. 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:

67. 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;

68. 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;

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

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

Dated: November 6, 2023

Respectfully submitted,

ALTSHULER BERZON LLP
Eve H. Cervantez
Robin S. Tholin

STUEVE SIEGEL HANSON LLP
George A. Hanson
J. Austin Moore
Alexander T. Ricke
K. Ross Merrill

By: /s/ Eve H. Cervantez

*Attorneys for Plaintiffs Plummer and
Rieboldt*

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.

July 26, 2023

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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,



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Kansas City, Missouri 64112
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