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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DARBY CHURCHILL and DOMETRIVES ARMSTRONG, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

INTERIM HEALTHCARE SAN DIEGO, LLC; INTERIM HEALTHCARE, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00032762-CU-OE-CTL

Hon. Joel R. Wohlfeil
Dept. 73

<u>CLASS ACTION</u>

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Unfair Competition
11. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiffs DARBY CHURCHILL and DOMETRIVES ARMSTRONG, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiffs") brings this SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants INTERIM HEALTHCARE SAN DIEGO, LLC; INTERIM HEALTHCARE, INC.; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a class and representative action brought under California Code of Civil Procedure section 382 for Defendants' violations of the California Labor Code and Business and Professions Code.

2. Defendants underpaid the class members' wages by failing to pay at least the minimum wage for all hours worked and failing to include all forms of remuneration in overtime, sick pay, and premiums.

3. Additionally, Defendants failed to fully reimburse Plaintiffs and class members for necessary expenses.

4. Defendants' employment policies and practices and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the class members.

JURISDICTION & VENUE

5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

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

8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiffs Darby Churchill and Dometrives Armstrong

9. Plaintiff Churchill is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2022 to July 2023. Plaintiff worked as a LVN Intake Coordinator and Nurse.

10. Plaintiff Armstrong is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2018 to May 2023. Plaintiff worked as a Nurse Practitioner.

11. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

B. Defendants

12. Defendant Interim Healthcare San Diego, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant Interim Healthcare, Inc. is a Florida corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

18. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

19. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

20. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiffs' claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiffs are adequate class representatives; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

21. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

22. Plaintiffs and class members worked for Defendants and were compensated on an hourly basis as nonexempt employees. In addition to earning hourly compensation, Defendants paid

Plaintiffs and the class members other forms of non-discretionary remuneration, but Defendants did not factor that supplemental pay into the regular rate (or other lawful statutory rate) for overtime, sick leave, and premium wages.

23. For example, in the pay period February 18, 2023, to March 3, 2023, Plaintiff Churchill earned $60 for one hour of "Other Pay" in addition to her base hourly wages. Plaintiff also earned overtime wages in this pay period, but Defendants paid Plaintiff Churchill overtime wages at only 1.5x their base hourly rate, rather than the regular rate inclusive of all forms of non-discretionary income.

24. Defendants also failed to pay overtime for all hours over 8 in a workday, or 40 in a workweek. Plaintiffs often worked on-call shifts beginning directly after her 8-hour office shift. However, when Plaintiffs worked these 24-hour total shifts, Defendants only paid overtime for hours she spent deployed out to a worksite. However, Plaintiffs were subject to Defendants' control throughout the entire on-call period, whether Defendants called her out to an assignment or not. Therefore, Defendants failed to pay Plaintiffs and class members their due overtime wages for *all hours* over 8 in a workday or 40 in a workweek.

25. Further, to the extent the on-call hours Plaintiffs and class members worked do not count for overtime hour totals, Defendants failed to factor in on-call earnings and other forms of supplemental remuneration into the regular rate of pay for overtime, sick leave, and premiums. In other words, stated alternatively, to the extent the on-call pay was extra and in addition to the base wages paid, those amounts were non-discretionary and therefore should have been factored into the regular rate.

26. In several pay periods, Defendants failed to play Plaintiffs and class members at least the minimum wage for all hours worked. Plaintiffs worked compensable on-call time regularly throughout her employment with Defendants. However, Defendants paid Plaintiffs and class members less than minimum wage for these on-call hours in multiple pay periods.

27. For example, in the pay period February 4, 2023, to February 17, 2023, Plaintiff Churchill worked 138 hours of compensable on-call time. Defendants paid her a rate of $15, $1.30

less than the applicable minimum wage in San Diego County in 2023, where Plaintiff Churchill worked. Defendants never retroactively compensated Plaintiff for this deficiency.

28. Additionally, in anticipation of their closure in May 2023, Defendants unlawfully withdrew 40 hours of available sick leave from Plaintiffs and class members without the class members' consent or request. Plaintiffs believes and alleges that this unilateral sick leave withdrawal resulted in class members retaining less than the required 24 hours of sick leave for 2023.

29. Due to employee job responsibilities, short staffing, and patient needs, Plaintiffs and class members often suffered late, short, interrupted, and/or missed meal and rest periods. Plaintiffs and class members would often work through meal and rest periods to ensure the office remained open because there were not enough employees on staff to timely relieve each employee for their breaks when due. When Plaintiffs and class members suffered these deficient meal and rest periods, Defendants did not pay Plaintiffs and class members premiums. To the extent paid, Defendants underpaid these premiums due to Defendants' policy and practice of unlawfully excluding some forms of non-discretionary income from the regular rate of pay.

30. For example, on February 4, 2023, Plaintiff Churchill worked 7 hours straight with no meal or rest periods while monitoring the office and ensuring patient needs were met. Defendants did not provide Plaintiffs with a meal period or rest period premium for these deficiencies.

31. Finally, Defendants did not fully reimburse Plaintiffs and class members for personal expenses the employees incurred in furtherance of job duties. Plaintiffs personally incurred the cost of her uniform and laptop usage, despite Defendants' specific policies for both dress and remote meeting capability. Defendants did not reimburse Plaintiffs for either of these expenses. Plaintiffs and class members also utilized their personal cars to complete work assignments. To the extent Defendants reimbursed Plaintiffs for her gas mileage, Plaintiffs believes and alleges that these amounts were underpaid, as Defendants never informed Plaintiffs of the method of calculation for this reimbursement.

32. Because of the aforementioned violations, Defendants failed to provide accurate itemized wage statements that included the accurate gross or net wages and the proper name and address of the employer. Likewise, overtime, premiums, and sick leave were paid at inaccurate hourly

wage rates (*i.e.* the base rate instead of the regular rate). Further, Defendants failed to pay Plaintiffs and class members at least minimum wage for all hours worked, resulting in inaccurate hourly rates. Defendants also failed to list the total hours worked on each wage statement in violation of Labor Code section 226(a)(2). Therefore, Defendants have provided inaccurate and noncompliant wage statements to class members.

33. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment.

<u>FIRST CAUSE OF ACTION</u>

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

34. All outside paragraphs of this Complaint are incorporated into this section.

35. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages).

36. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

37. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an

amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

38. All outside paragraphs of this Complaint are incorporated into this section.

39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

40. Defendants failed in their affirmative obligation to pay Plaintiffs and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

41. Plaintiffs and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

42. All outside paragraphs of this Complaint are incorporated into this section.

43. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an

employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

44. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiffs and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

45. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

46. Plaintiffs and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

47. All outside paragraphs of this Complaint are incorporated into this section.

48. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer’s failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

49. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

50. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

51. All outside paragraphs of this Complaint are incorporated into this section.

52. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiffs and a paid sick leave subclass in violation of Labor Code section 246 *et seq*. Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

53. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

> [A]n employer shall calculate paid sick leave using any of the following calculations:
>
> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

54. Defendants failed to pay Plaintiffs and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiffs and class members.

55. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq*.

56. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

57. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

58. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

59. Labor Code section 248.6 requires employers to pay supplemental sick leave using either method (I) or (II), as identified above.

60. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by class members.

61. As a result, Defendants violated the Labor Code and are liable to Plaintiffs and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

62. All outside paragraphs of this Complaint are incorporated into this section.

63. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

64. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

65. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of $100 for the initial violation for each failure to pay each employee and $200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

<u>SEVENTH CAUSE OF ACTION</u>

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

66. All outside paragraphs of this Complaint are incorporated into this section.

67. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

68. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiffs and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiffs and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

69. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

70. As a result, Plaintiffs and class members are entitled to recover the statutory penalty of $50 per employee for the initial pay period in which a violation occurred and $100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of $4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

<u>EIGHTH CAUSE OF ACTION</u>

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq*.

71. All outside paragraphs of this Complaint are incorporated into this section.

72. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

73. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiffs and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

74. Plaintiffs and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

75. All outside paragraphs of this Complaint are incorporated into this section.

76. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

77. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the amount unreimbursed expenses of Plaintiffs and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

78. All outside paragraphs of this Complaint are incorporated into this section.

79. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

80. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiffs and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

81. Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

82. Plaintiffs do not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

83. Plaintiffs and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiffs and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiffs and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

84. All outside paragraphs of this Complaint are incorporated into this section.

85. Plaintiffs brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

86. Plaintiffs reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

87. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

88. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. "

89. Labor Code section 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

90. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

91. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

92. On or about **July 26, 2023**, Plaintiff Churchill paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to

Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

93. On or about **October 12, 2023**, Plaintiff Armstrong paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

94. A true and correct copy of Plaintiffs' written PAGA notices, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and Exhibit 2 and incorporated by reference as though fully set forth herein (the "PAGA notice").

95. To date, neither Plaintiff nor Plaintiffs' counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

96. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither Plaintiff nor Plaintiffs' counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

97. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

98. As set forth in the PAGA notices attached as Exhibit 1 and Exhibit 2 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

99. Plaintiffs seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiffs prays for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiffs as the class representatives;

c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of damages in amount according to proof;

f. For all recoverable pre and post-judgment interest;

g. For recovery of all civil and statutory penalties and liquidated damages;

h. For disgorgement of all amounts wrongfully obtained;

i. For this action to be maintained as a representative action under the PAGA;

j. For Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

k. For recovery of all civil penalties and other recoverable amounts under the PAGA;

l. For restitution and injunctive relief;

m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and

n. For such other relief the Court deems just and proper.

Dated: March 18, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorney for Plaintiffs

EXHIBIT 1

Notice of Labor Code Violations for Darby Churchill

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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July 26, 2023

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Interim Healthcare San Diego, LLC
1551 Sawgrass Corporate Pkwy. Suite 230
Sunrise, Florida 33323

Interim Healthcare, Inc.
1551 Sawgrass Corporate Pkwy. Suite 230
Sunrise, Florida, 33323

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DARBY CHURCHILL** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

INTERIM HEALTHCARE SAN DIEGO, LLC;
INTERIM HEALTHCARE, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the positions of LVN Intake Coordinator and Nurse from about September 2022 to July 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendants violated the Labor Code and IWC Wage Order Minimum Wage sections in several ways.

First, in several pay periods, Defendants paid Plaintiff and the aggrieved employees at a rate below the applicable minimum wage for on-call hours worked. Rather than paying at least $16.30, the minimum wage rate applicable in San Diego where Plaintiff worked, Defendants paid Plaintiff $15 an hour for on-call time. Although Defendants corrected this deficiency after Plaintiff's repeated requests, Defendants did not pay Plaintiff retroactively, and these wages remain underpaid. Plaintiff further believes and alleges that any similar minimum wage violations the aggrieved employees suffered likewise remain underpaid. An example of Defendants' minimum wage violation is below:

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
JX2200	DARBY E CHURCHILL	02-24-2023	02-04-2023	02-17-2023	52278468

Fed Tax SS/Single State Tax S/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL						DEDUCTIONS / TAXES		
Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked	Description	Amount	Y-T-D
02-17-2023	REG PAY	35.0000	80.00	2800.00	80.00	MEDICAL INS	167.13	668.52
02-17-2023	ON CALL HOURS	15.0000	138.00	2070.00	138.00	DENTAL 125	52.00	208.00
02-17-2023	TRAVEL	33.0000	5.25	173.25	5.25	VISION	11.50	46.00
02-17-2023	MILE REIM .625	0.6250	197.07	123.17	0.00	LIFE INS	1.75	7.00
02-17-2023	OVERTIME HOURS	52.5000	9.50	498.75	9.50	FEDERAL INCOME	816.70	1,901.51
02-17-2023	GTL OVER 50K	0.0000	0.00	2.43	0.00	MEDICARE - EE	77.05	234.39
						SOCIAL SEC - EE	329.46	1,002.24

Plaintiff's wage statement from 2/24/2023 showing a rate below San Diego's minimum wage for on-call hours worked.

Second, before Plaintiff began working on-call periods, Defendants required Plaintiff to communicate with patients, coworkers, and supervisors in furtherance of her job duties after-hours, unpaid. Plaintiff and aggrieved employees often received phone calls after their shifts regarding urgent matters like procedure or patient needs. Defendants did not compensate Plaintiff or the aggrieved employees for this time.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1197.1 ($100/$250), 1199 / "Penalties" section of the IWC Wage Orders ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. When Plaintiff or the aggrieved employees worked on-call hours after full 8-hour workdays, Defendants only paid the on-call employees overtime wages for time the employees deployed to a worksite, rather than overtime for the full time spent on-call. Plaintiff alleges that since the on-call time was compensable, those hours applied to the "total hours worked" for purposes of overtime calculation. Therefore, Plaintiff believes and alleges that Defendants underpaid the aggrieved employees overtime wages due for time the aggrieved employees worked on-call hours but were not ultimately deployed to a worksite.

Moreover, Plaintiff and the aggrieved employees frequently worked shifts over 12 hours when including the on-call time in total hours worked, as seen below. However, when Plaintiff and the aggrieved employees worked these shifts longer than 12 hours, Defendants did not pay Plaintiff or the aggrieved employees twice their regular rate of pay in violation of Labor Code section 510.

ne: Darby Churchill
4/30/2023 - 05/13/2023

me	Visit Date	Visit/Task Type	On-Call	Visit Status	Visit Time In	Visit Time Out	Visit Hours
	05/01/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/11/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/03/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/05/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/10/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/09/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/12/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/04/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/08/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00
	05/01/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/12/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/10/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/11/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/05/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/03/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/09/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/04/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/08/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00
	05/04/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/09/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/08/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/12/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/10/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/11/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/01/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/02/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
	05/03/2023	On-Call Triage	No	Completed	5:00 PM	8:00 AM	15.00
h	05/04/2023	Care Coordination Not	Yes	Completed	6:04 PM	7:30 PM	1.43
	05/11/2023	Care Coordination Not	No	Completed	10:30 AM	11:30 AM	1.00
	05/12/2023	Death Visit	Yes	Completed	4:00 AM	5:00 AM	1.00

Defendant's time records for Plaintiff show that she worked 24 hours total on 5/11/2023, including a 15 hour on call shift. However, Defendants did not pay Plaintiff double-time pay for hours exceeding 12 that shift.

To the extent that the on-call time was not eligible for overtime calculation as "total hours worked," Defendants still underpaid overtime wages by failing to account for the on-call earnings/bonuses/remuneration in the "regular rate of pay" for overtime wages, as a form of non-discretionary income. Despite earning on-call earnings and other forms of bonus remuneration in the same pay periods as overtime, Defendants only paid Plaintiff and the aggrieved employees overtime wages on a multiple of their base hourly rate, as seen below.

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
03-03-2023	CELL PHONE	30.0000	1.00	30.00	0.00
03-03-2023	REG PAY	35.0000	80.00	2800.00	80.00
03-03-2023	ON CALL HOURS	15.0000	114.00	1710.00	114.00
03-03-2023	MILE REIM .625	0.6250	51.00	31.88	0.00
03-03-2023	OTHER PAY	60.0000	1.00	60.00	0.00
03-03-2023	OT PAY	52.5000	9.50	498.75	9.50
03-03-2023	TRAVEL	35.0000	5.00	175.00	5.00
03-03-2023	GTL OVER 50K	0.0000	0.00	2.58	0.00

Plaintiff's wage statement from 3/10/2023 showing on call earnings of $1,710 and "other pay" of $60, but Plaintiff's overtime wage rate is only $52.50 (Base hourly rate $35 x 1.5).

Further, to the extent that any of Plaintiff or the aggrieved employees' off-the-clock work resulted in unrecorded overtime hours worked, those overtime wages are also underpaid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

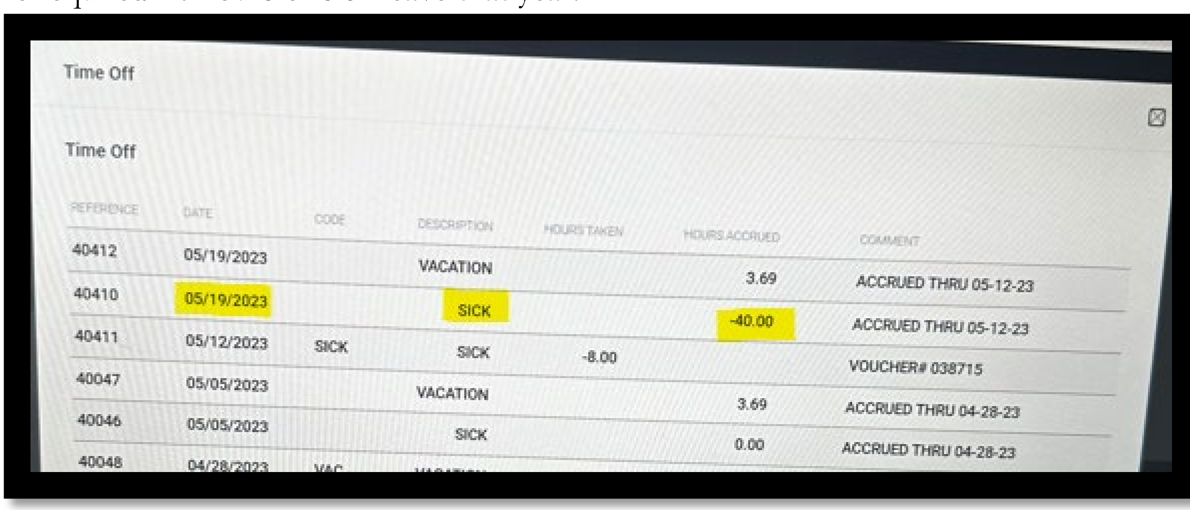
Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Defendants elected to provide Plaintiff and the aggrieved employees with a balance of sick leave available at the beginning of each year. However, when Defendants announced they planned on closing operations, Defendants took away 40 hours of sick pay from Plaintiff and the aggrieved employees as seen below. Plaintiff believes and alleges that Defendants' unilateral sick leave withdrawal resulted in aggrieved employees retaining less than the required 24 hours of sick leave that year.


Time Off

Time Off

REFERENCE	DATE	CODE	DESCRIPTION	HOURS TAKEN	HOURS ACCRUED	COMMENT
40412	05/19/2023		VACATION		3.69	ACCRUED THRU 05-12-23
40410	05/19/2023		SICK		-40.00	ACCRUED THRU 05-12-23
40411	05/12/2023	SICK	SICK	-8.00		VOUCHER# 038715
40047	05/05/2023		VACATION		3.69	ACCRUED THRU 04-28-23
40046	05/05/2023		SICK		0.00	ACCRUED THRU 04-28-23
40048	04/28/2023	VAC				

Plaintiff's time off records from 5/19/2023 showing Defendant's 40-hour sick leave withdrawal, without Plaintiff's request or consent.

To the extent that the on-call pay was extra remuneration, those earnings were not factored into the paid sick leave statutory rate, resulting in an underpayment of sick pay wages in those respective pay periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699

($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Unpaid Meal Period Premium Wages</u>
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 512</u> and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. <u>Labor Code section 226.7</u> requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. <u>Labor Code section 1198</u> renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including <u>Section 11</u> (<u>Meal Periods</u>), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to <u>Section 11(A)</u> of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to employee job responsibilities, short staffing, and patient needs, Plaintiff and the aggrieved employees often suffered late, short, interrupted, and/or missed meal periods. Frequently, there were not enough employees to both staff the office and timely relieve employees for their due meal and rest periods. As a result, Plaintiff and aggrieved employees often had to work through their meal periods to ensure that the office remained open and available for patients. Likewise, Plaintiff and the aggrieved employees did not consistently receive their due second, uninterrupted, 30-minute meal periods for shifts over ten hours. An example of Defendants' meal period violations is below:

Darby Churchill
2/2023 - 02/04/2023

Visit Date	Visit/Task Type	On-Call	Visit Status	Visit Time In	Visit Time Out	Visit Hours	Vis
02/02/2023	LPN/LVN Visit	No	Completed	4:30 PM	5:15 PM	0.75	
02/01/2023	LPN/LVN Visit	No	Completed	10:15 AM	10:45 AM	0.50	
02/03/2023	LPN/LVN Visit	No	Completed	10:30 AM	11:00 AM	0.50	
02/03/2023	LPN/LVN Visit	No	Completed	12:15 PM	12:45 PM	0.50	
02/03/2023	LPN/LVN Visit	No	Completed	11:20 AM	11:45 AM	0.42	
02/03/2023	LPN/LVN PRN Visit	No	Completed	4:45 AM	5:30 AM	0.75	
02/01/2023	Death Visit	No	Completed	9:20 PM	11:30 PM	2.17	
01/24/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00	
01/26/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
01/23/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
01/25/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
02/02/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
01/27/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
02/03/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
02/01/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
01/27/2023	Lunch Break	No	Completed	12:00 PM	1:00 PM	1.00	
01/23/2023	Office	No	Completed	1:00 PM	5:30 PM	4.50	
01/24/2023	Office	No	Completed	8:00 AM	12:00 PM	4.00	
01/27/2023	Office	No	Completed	1:00 PM	6:00 PM	5.00	
01/26/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00	
02/02/2023	Office	No	Completed	1:00 PM	5:30 PM	4.50	
01/25/2023	Office	No	Completed	1:00 PM	5:00 PM	4.00	
02/03/2023	Office	No	Completed	1:00 PM	6:00 PM	5.00	
02/01/2023	Office	No	Completed	1:00 PM	6:00 PM	5.00	
02/04/2023	Office	No	Completed	12:00 PM	7:00 PM	7.00	

Defendants' time records show Plaintiff worked 7 hours on 2/4/2023 with no corresponding Lunch Break.

When Plaintiff and the aggrieved employees suffered these deficient meal periods, Defendants did not pay Plaintiff or the aggrieved employees their due meal period premiums. To the extent that Defendants paid Plaintiff and the aggrieved employees any meal period premiums, those premiums were underpaid for the same regular rate miscalculations stated in the overtime section above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the same circumstances as meal periods, Plaintiff and the aggrieved employees often suffered late, short, interrupted, and/or missed rest periods. Further, on information and belief, the aggrieved employees did not consistently receive their due third, uninterrupted, rest periods for shifts over ten hours. When Plaintiff and the aggrieved employees suffered these deficient rest periods, Defendants did not pay Plaintiff or the aggrieved employees their due rest period premiums. To the extent that Defendants paid Plaintiff and the aggrieved employees any rest period premiums, those premiums were underpaid for the same regular rate miscalculations stated in the overtime section above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or

204b (for weekly employees, as applicable). Specifically, Defendants failed to pay at least minimum wage for *all* hours worked, correct overtime wages, sick leave, and premiums. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to pay at least minimum wage for *all* hours worked, correct overtime wages, sick leave, and premiums. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

Additionally, Defendants failed to list the "total hours worked" on employee paystubs, in violation of section 226(a)(2). There is no total hours column and the hours listed on the wage statements cannot be readily tallied to calculate total hours based on the uncertain on call hours procedure.

Further, in violation of Labor Code section 226(a)(8), Defendants failed to clearly list the name and address of the legal employer. On Plaintiff and the aggrieved employees' wage statements, Defendants listed the name and address of both "Interim Healthcare of San Diego, LLC" (an inactive business in the state of California) and "Oasis Outsourcing III, LLC." However, on all of Plaintiff's hiring materials, the relevant employer and listed entity is "Interim Healthcare San Diego LLC." Plaintiff and aggrieved employees cannot assuredly determine from their wage statements their proper employer and address.

Finally, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees and at the proper wage rates. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. In further violation of Labor Code section 226(a)(9), Defendants included some wage categories on Plaintiff and the aggrieved employees' wage statements without the corresponding rates or hours in effect. An example of this violation is below.

Employee ID	Employee Name	Check Date	Period Start	Period End
JX2200	DARBY E CHURCHILL	03-10-2023	02-18-2023	03-03-2023

Fed Tax SS/Single State Tax S/0 Method Of Paymen

CURRENT EARNINGS DETAIL					
Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
03-03-2023	CELL PHONE	30.0000	1.00	30.00	0.00
03-03-2023	REG PAY	35.0000	80.00	2800.00	80.00
03-03-2023	ON CALL HOURS	15.0000	114.00	1710.00	114.00
03-03-2023	MILE REIM .625	0.6250	51.00	31.88	0.00
03-03-2023	OTHER PAY	60.0000	1.00	60.00	0.00
03-03-2023	OT PAY	52.5000	9.50	498.75	9.50
03-03-2023	TRAVEL	35.0000	5.00	175.00	5.00
03-03-2023	GTL OVER 50K	0.0000	0.00	2.58	0.00

DEDUCTIONS	
Description	Amo
MEDICAL INS	
DENTAL 125	
VISION	
LIFE INS	
FEDERAL INCOME	
MEDICARE - EE	
SOCIAL SEC - EE	
CA INCOME TAX	
CA DISABILITY	

Plaintiff's wage statement from 3/10/2023 showing current earnings in the "GTL OVER 50K" wage category but no corresponding rate or hours.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

First, Defendants did not reimburse Plaintiff for her incurred costs purchasing the required uniform. Despite requiring specific uniforms for all employees assigned to a home, Defendants did not reimburse Plaintiff for or provide Plaintiff with a uniform. Instead, Plaintiff personally incurred the expenses of acquiring this uniform.

6.10 Personal Appearance

Interim HealthCare employees are expected to perform their assignment(s) properly dressed. A clean, professional appearance is expected at all times. Unless otherwise required by law, employees are expected to comply with the following procedures:

- Wear an Interim HealthCare ID badge;
- Keep jewelry conservative and to a minimum (i.e. no nose rings or facial piercing). Small earrings are acceptable;
- Wear clean, sturdy, and closed-toe shoes;

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- Keep hair neat, clean, and away from the face to avoid contact with the work field and/or patient/client. Facial hair must be kept neat and clean; and
- Maintain daily hygiene: a bath, deodorant, and clean clothes. Do not wear perfumes or colognes, as the patient/client or colleagues may be sensitive or allergic to these.

When assigned to a home, employees may wear a uniform of their own or a uniform provided by an Interim HealthCare office or casual business wear as outlined below.

Uniform: Clean nursing uniform, scrubs (no commercial advertising such as the name of another home care company and/or hospital, etc.) or a clean white lab coat/smock over "casual business wear".

Defendants' employee handbook detailing the required scrubs and dress. Plaintiff had to personally incur expenses to comply with this policy, and Defendants did not reimburse her.

Further, Defendants often required Plaintiff and aggrieved employees to participate in remote meetings but did not provide company-sponsored laptops or reimbursement for the use of personal laptops and internet utilities. Although Plaintiff occasionally utilized a borrowed laptop from her supervisor, when that laptop broke, this left Plaintiff with no other option than to utilize her personal laptop and incur expenses personally. Once Defendants noticed that Plaintiff "already had a laptop," (her personal laptop) Defendants did not continue processing Plaintiff's request for a company-provided computer or reimburse her for using her personal supplies.

Plaintiff believes and alleges that other aggrieved employees likewise incurred personal expenses to provide themselves with uniforms and laptop/internet access in direct furtherance of their job duties without reimbursement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Darby Churchill

Dara Schnellinger (HR Representative for Defendant)
DaraSchnellinger@InterimHealthCare.com

<u>EXHIBIT 2</u>

Notice of Labor Code Violations for Dometrives Armstrong

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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October 12, 2023

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Interim Healthcare San Diego, LLC
1511 Sawgrass Corporate Pkwy. Suite 230
Sunrise, Florida 33323

Interim Healthcare, Inc.
1551 Sawgrass Corporate Pkwy. Suite 230
Sunrise, Florida, 33323

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DOMETRIVES ARMSTRONG** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

INTERIM HEALTHCARE SAN DIEGO, LLC; and
INTERIM HEALTHCARE, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v.*

Reins International California, Inc. (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Nurse Practitioner from about October 2018 to May 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and

Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendants violated the Labor Code and IWC Wage Order Minimum Wage sections in several ways.

First, in several pay periods, Defendants paid Plaintiff and the aggrieved employees at a rate below the applicable minimum wage for hours worked. Rather than paying at least $16.30, the minimum wage rate appliable in San Diego where Plaintiff worked, Defendants paid aggrieved employees $15 an hour for on-call time. Examples of this minimum wage violation are below:

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
T38572	DOMETRIVES ARMSTRONG	02-03-2023	01-07-2023	01-20-2023	51966275

Fed Tax M/0 State Tax M/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
01-20-2023	REG PAY	15.0000	24.00	360.00	24.00

DEDUCTIONS / TAXES

Description	Amount	Y-T-D
401(K)	43.20	832.50
FEDERAL INCOME	50.00	771.74

Plaintiff's wage statement from pay period January 7, 2023 to January 20, 2023 reflecting a pay rate below San Diego's minimum wage.

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
T38572	DOMETRIVES ARMSTRONG	02-14-2023	01-21-2023	02-03-2023	52083575

Fed Tax M/0 State Tax M/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
02-03-2023	ON CALL HOURS	15.0000	24.00	360.00	24.00

DEDUCTIONS / TAXES

Description	Amount	Y-T-D
401(K)	43.20	875.70

Plaintiff's wage statement from pay period January 21, 2023 to February 3, 2023, reflecting a pay rate below San Diego's minimum wage.

Second, before receiving this deflated hourly rate, Defendants paid Plaintiff and other aggrieved employees a lump sum for on-call hours worked, resulting in an hourly rate far below the applicable minimum wage. For example, Plaintiff earned $50 total for each on-call day worked Monday through Thursday, and $100 total for each on-call day worked Friday through Sunday. When Plaintiff worked an on-call weekend, she was on-call and subject to Defendants' control from Friday at 5PM to Monday at 8AM—a total of 63 on-call hours worked. However, when Plaintiff worked these 63 on-call hours, she was paid a total of $300—one $100 lump sum payment for each day worked. This lump sum breaks down to an hourly rate of $4.76 for every on-call hour worked. An example of this minimum wage violation is below:

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
T38572	DOMETRIVES ARMSTRONG	08-12-2022	07-23-2022	08-05-2022	49138775

Fed Tax M/0 State Tax M/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
08-05-2022	ON CALL HOURS	100.0000	3.00	300.00	3.00
08-05-2022	ON CALL HOURS	50.0000	4.00	200.00	4.00

DEDUCTIONS / TAXES

Description	Amount	Y-T-D
401(K)	60.00	2,404.50
FEDERAL INCOME	50.00	1,825.83
MEDICARE - EE	7.25	290.54

Plaintiff's wage statement for pay period July 23, 2022, to August 5, 2022, reflecting a lump sum payment of $300 for Plaintiff's 63-hour on-call weekend shift.

Third, Plaintiff believes and alleges that Defendants required aggrieved employees to communicate with patients, coworkers, and supervisors in furtherance of their job duties after-hours, unpaid. Plaintiff believes these aggrieved employees received phone calls after their shifts regarding urgent matters like procedure or patient needs, and that Defendants did not compensate those aggrieved employees for their time.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1197.1 ($100/$250), 1199 / "Penalties" section of the IWC Wage Orders ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, Plaintiff alleges that since the on-call time was compensable, those hours applied to the "total hours worked" for purposes of overtime calculation. Therefore, Defendants did not pay Plaintiff and the aggrieved employees overtime wages due for the time the employees worked on-call hours after their regular 8-hour shifts but did not ultimately report to the worksite. Despite working on-call shifts of 15 hours or longer, Plaintiff never received overtime or double time wages.

Second, Plaintiff and aggrieved employees who worked shifts over 12 hours, including the on-call time in total hours worked, did not receive twice their regular rate of pay in violation of Labor Code section 510.

Third, to the extent that the on-call time was not eligible for overtime calculation as "total hours worked," Plaintiff believes and alleges that Defendants still underpaid overtime wages by failing to account for the on-call earnings/bonuses/remuneration in the "regular rate of pay" for overtime wages as a form of non-discretionary income. Despite aggrieved employees earning on-call wages and other forms of remuneration in the same pay periods as overtime, Plaintiff believes and alleges that Defendants only paid the aggrieved employees' overtime at 1.5x their base hourly rate.

Fourth, to the extent that any of the aggrieved employees' off-the-clock work resulted in unrecorded overtime hours worked, Plaintiff believes and alleges that Defendants likewise underpaid those overtime wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees in several ways.

<u>First</u>, to the extent that the on-call pay was extra remuneration as discussed above, Defendants did not factor those earnings into the paid sick leave statutory rate, resulting in underpayment of sick wages in those respective pay periods.

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
T38572	DOMETRIVES ARMSTRONG	10-21-2022	10-01-2022	10-14-2022	50299503

Fed Tax M/0 State Tax M/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
10-14-2022	MILE REIM .625	0.6250	169.10	105.69	0.00
10-14-2022	ON CALL	750.0000	1.00	750.00	0.00
10-14-2022	REG PAY	75.0000	10.00	750.00	10.00
10-14-2022	SICK PAY	75.0000	8.00	600.00	0.00

DEDUCTIONS / TAXES

Description	Amount	Y-T-D
401(K)	252.00	3,531.75
FEDERAL INCOME	195.95	2,698.84
MEDICARE - EE	30.45	426.75
SOCIAL SEC - EE	130.20	1,824.74
CA INCOME TAX	78.70	1,395.58
CA DISABILITY	23.10	323.76

Plaintiff's wage statement for pay period October 1, 2022, to October 14, 2022, showing on-call pay and sick pay in the same pay period, but Defendants only paid Plaintiff's sick pay at her base hourly rate.

<u>Second</u>, Plaintiff believes and alleges that Defendants did not provide other aggrieved employees with a balance of sick leave available at the beginning of each year or a compliant sick leave accrual rate. Plaintiff further believes and alleges that Defendants unilaterally deducted paid sick leave hours from aggrieved employees in May 2023, resulting in those employees retaining less than the required minimum 24 hours of paid sick leave that year.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Unpaid Meal Period Premium Wages</u>
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 512</u> and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. <u>Labor Code section 226.7</u> requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. <u>Labor Code section 1198</u> renders

"employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to employee job responsibilities, short staffing, and patient needs, Plaintiff believes and alleges that aggrieved employees suffered late, short, missed, and/or interrupted first and second meal periods. As a result, employees who worked through part or all of their lunches did not receive compliant meal periods, and Plaintiff believes Defendants did not provide premiums for these deficient meal periods. To the extent that Defendants paid the aggrieved employees premiums for these deficient meal periods, Plaintiff believes and alleges that those premiums were underpaid because of the same regular rate miscalculations stated in the overtime and sick leave sections above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the same circumstances as meal periods, Plaintiff believes and alleges that aggrieved employees often suffered deficient rest periods. Further, on information and belief, the aggrieved employees did not receive their due third, uninterrupted rest periods for shifts over ten hours. When aggrieved employees suffered these deficient rest periods, Plaintiff believes and alleges that Defendants did not pay the aggrieved employees their due rest period premiums. To the extent Defendants paid aggrieved employees any rest period premiums for these deficiencies, Plaintiff believes those premiums were underpaid because of Defendants' regular rate miscalculations as stated above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to pay at least minimum wage for all hours worked, correct overtime wages, sick leave, and premiums. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

<u>Untimely Payment of Wages Upon Separation of Employment</u>
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

<u>Labor Code section 201</u> requires that if an employer fires an employee, the wages must be paid immediately. <u>Labor Code section 202</u> requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. <u>Labor Code section 202</u> states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. <u>Labor Code section 203</u> requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to pay at least minimum wage for all hours worked, correct overtime wages, sick leave, and premiums. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Non-Compliant Wage Statements</u>
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

<u>Labor Code section 226(a)</u> requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable

hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. In further violation of Labor Code section 226(a)(9), Defendants paid Plaintiff's and aggrieved employees' on-call time in lump sums instead of hourly payments, resulting in an incorrect hourly rate and amount of hours. An example of this violation is below:

Employee ID	Employee Name	Check Date	Period Start	Period End	Check No
T38572	DOMETRIVES ARMSTRONG	10-21-2022	10-01-2022	10-14-2022	50299503

Fed Tax M/0 State Tax M/0 Method Of Payment: Hourly

CURRENT EARNINGS DETAIL

Charge Date	Description	Rate	Hours/ Units	Amount	Hours Worked
10-14-2022	MILE REIM .625	0.6250	169.10	105.69	0.00
10-14-2022	ON CALL	750.0000	1.00	750.00	0.00
10-14-2022	REG PAY	75.0000	10.00	750.00	10.00
10-14-2022	SICK PAY	75.0000	8.00	600.00	0.00

DEDUCTIONS / TAXES

Description	Amount	Y-T-D
401(K)	252.00	3,531.75
FEDERAL INCOME	195.95	2,698.84
MEDICARE - EE	30.45	426.75
SOCIAL SEC - EE	130.20	1,824.74
CA INCOME TAX	78.70	1,395.58
CA DISABILITY	23.10	323.76

Plaintiff's wage statement for pay period October 1, 2022, to October 14, 2022, showing a lump sum payment of $750 for several days of on-call work, rather than the applicable hourly rate and number of hours.

Finally, in violation of Labor Code section 226(a)(9), Defendants failed to clearly list the name and address of the legal employer. On Plaintiff and the aggrieved employees' wage statements, Defendants listed the name and address of both "Interim Healthcare of San Diego, LLC" (an inactive business in the state of California) and "Oasis Outsourcing III, LLC." However, on Plaintiff's hiring materials, the relevant employer and listed entity is "Interim Healthcare San Diego LLC." Plaintiff and aggrieved employees cannot assuredly determine from their wage statements their proper employer and address.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

On information and belief, Defendants required aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff believes that aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff believes and alleges that aggrieved employees had to purchase and maintain their required work uniforms without Defendants' reimbursement. Further, Plaintiff believes and alleges that some aggrieved employees needed to use their personal laptops and home office resources to attend remote work meetings, without Defendants' reimbursement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Failure to Maintain Accurate Records</u>
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

<u>Labor Code section 1174</u> requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold <u>must be suspended immediately</u>.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

REJ

Cc Plaintiff Dometrives Armstrong

Tyler Paetkau, Esq. (Tyler.Paetkau@huschblackwell.com)
Counsel for Interim Healthcare