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Attorneys for Plaintiff
MARITZA HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARITZA HERNANDEZ, as an aggrieved
employee and private attorney general,

Plaintiff,

vs.

PHYSICAL REHABILITATION
NETWORK, LLC, a Delaware limited
liability company; HEALTHCARE
EMPLOYEE SERVICES, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2023-00043980-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

**(1) VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS
GENERAL ACT)**

1 Plaintiff MARITZA HERNANDEZ (“Plaintiff”), as an aggrieved employee and as a
2 private attorney general, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants PHYSICAL REHABILITATION
7 NETWORK, LLC; HEALTHCARE EMPLOYEE SERVICES, LLC; and DOES 1 THROUGH
8 50 (hereinafter also collectively referred to as “Defendants”) as a representative action on behalf
9 of herself and certain other current and former non-exempt employees of Defendants against
10 whom one or more of the alleged violations was committed (hereinafter collectively referred to
11 as the “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff
12 is an aggrieved employee against whom one or more of the alleged violations was committed.
13 The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial.

15 2. The Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
17 except those given by statute to other courts. The statutes under which this action is brought do
18 not specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because, upon information and belief,
20 Defendants are citizens of California, have sufficient minimum contacts in California, or
21 otherwise intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play and
23 substantial justice.

24 4. Venue is proper in this Court because, upon information and belief, Defendants
25 maintain offices, have agents, and/or transact business in the State of California, County of San
26 Diego.

26 **PARTIES**

27 5. Plaintiff MARITZA HERNANDEZ is an individual residing in the County of San
28

1 Diego, State of California.

2 6. Defendant PHYSICAL REHABILITATION NETWORK, LLC is, and at all times
3 herein mentioned was, a limited liability company organized and existing under the laws of the
4 state of Delaware, and registered to do business in the state of California.

5 7. Defendant HEALTHCARE EMPLOYEE SERVICES, LLC is, and at all times
6 herein mentioned was, a limited liability company organized and existing under the laws of the
7 state of California, and registered to do business in the state of California.

8 8. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
9 and therefore sues these defendants by such fictitious names. The Doe defendants may be
10 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
11 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
12 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
13 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
14 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
15 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
16 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
17 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
18 were proximately caused by its conduct. PHYSICAL REHABILITATION NETWORK, LLC;
19 HEALTHCARE EMPLOYEE SERVICES, LLC; and Doe Defendants 1 through 50 are
20 collectively referred to herein as "Defendants."

21 9. Defendants are, and at all times herein mentioned were, (a) conducting business
22 in the County of San Diego, State of California, and (b) the employer of Plaintiff consistent with
23 the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

24 10. Plaintiff further alleges that Defendants, directly or indirectly, controlled or
25 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
26 and Aggrieved Employees so as to make each of said Defendants employers and employers jointly
27 liable under the statutory provisions set forth herein.
28

GENERAL ALLEGATIONS

11. Defendants are owners and operators of outpatient physical therapy clinics.

12. Defendants employed Plaintiff MARITZA HERNANDEZ to work as a Patient Account Representative from approximately 2014 to approximately January 2023.

13. At all relevant times set forth herein, Defendants employed Plaintiff and Aggrieved Employees as hourly-paid or non-exempt employees.

14. Throughout the time period involved in this case, Defendants had the authority to hire and terminate Plaintiff and Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff and Aggrieved Employees; and to hire and terminate the employment of Plaintiff and Aggrieved Employees.

15. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

16. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring Plaintiff and Aggrieved Employees to work off-the-clock without compensation, thereby failing to pay them for all hours worked, including minimum and overtime wages. Defendants also implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed. In addition, Defendants routinely failed to permit Plaintiff and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law. Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses.

17. Throughout the time period involved in this case, Defendants have implemented policies and practices which failed to provide Plaintiff and Aggrieved Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control over Plaintiff and

Aggrieved Employees during their meal periods, regularly failed to permit Plaintiff and Aggrieved Employees a reasonable opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff and Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Plaintiff and Aggrieved Employees.

18. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff and Aggrieved Employees of their right to take meal periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff and Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a way the prohibited them from taking timely and duty-free meal periods, and to require Plaintiff and Aggrieved Employees to work through their meal periods, for which they were not compensated.

19. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and Aggrieved Employees premium wages for meal periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally compliant meal periods to Plaintiff and Aggrieved Employees, and routinely failed pay one additional hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

20. Throughout the time period involved in this case, Defendants have implemented policies and practices which prohibited Plaintiff and Aggrieved Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff and Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting

three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

21. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff and Aggrieved Employees of their right to take rest periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of rest periods for Plaintiff and Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a way that regularly prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff and Aggrieved Employees to work through their rest periods.

22. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit Plaintiff and Aggrieved Employees to take duty-free rest periods, and failed to pay one additional hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a rest period was missed, short, late, and/or interrupted.

23. Throughout the time period involved in this case, Defendants regularly required Plaintiff and Aggrieved Employees to perform work off-the-clock. Although Defendants prohibited overtime, Defendants still regularly required Plaintiff and Aggrieved Employees complete all of their assigned duties. To do so, Plaintiff and Aggrieved Employees were regularly required to perform work off-the-clock for which they were not compensated.

24. Throughout the time period involved in this case, Defendants implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed.

1 25. Throughout the time period involved in this case, Plaintiff and Aggrieved
2 Employees worked more than eight (8) hours in a day and/or forty (40) hours in a week.

3 26. Throughout the time period involved in this case, Defendants regularly failed to
4 pay overtime compensation to Plaintiff and Aggrieved Employees when they worked in excess
5 of eight (8) hours in a single workday and/or forty (40) hours in a single work week, or in excess
6 of twelve (12) hours in a single work day and/or eighty (80) hours in a single work week.
7 Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to
8 receive certain wages for overtime or double overtime compensation and that they were not
9 receiving wages for overtime or double overtime compensation.

10 27. Throughout the time period involved in this case, Defendants failed to pay
11 overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on regular
12 rates of pay correctly calculated to include all applicable remuneration.

13 28. Throughout the time period involved in this case, Defendants regularly failed to
14 pay Plaintiff and Aggrieved Employees at least minimum wages for all hours worked. Defendants
15 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at
16 least minimum wages for all hours worked and that they were not receiving at least minimum
17 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*,
18 failing to pay Plaintiff and Aggrieved Employees at the required minimum wage pursuant to
19 California law, and requiring Plaintiff and Aggrieved Employees to perform work off-the-clock.

20 29. Throughout the time period involved in this case, Defendants regularly failed to
21 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
22 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
23 to receive at least minimum wages for all hours worked and that they were not receiving at least
24 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
25 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
26 to California law, and requiring Plaintiff and the Aggrieved Employees to perform work off-the-
27 clock.

28 30. Throughout the time period involved in this case, Defendants regularly failed to

1 pay Plaintiff and the Aggrieved Employees all wages owed to them upon discharge or resignation.
2 Defendant knew or should have known that Plaintiff and the Aggrieved Employees were entitled
3 to receive all wages owed to them upon termination within the time permissible under California
4 Labor Code section 202. Plaintiff and the Aggrieved Employees did not receive payment of all
5 final wages owed to them upon discharge or resignation, including overtime compensation and
6 minimum wages within any time permissible under California Labor Code section 202.

7 31. Throughout the time period involved in this case, Defendants regularly failed to
8 pay Plaintiff and Aggrieved Employees all wages within any time permissible under California
9 law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have
10 known that Plaintiff and Aggrieved Employees were entitled to receive all wages owed to them
11 during their employment. Plaintiff and Aggrieved Employees did not receive payment of all
12 wages, including overtime compensation, minimum wages, and meal and rest period premiums,
13 within any time permissible under California Labor Code section 204.

14 32. Throughout the time period involved in this case, Defendants regularly failed to
15 provide complete or accurate wage statements to Plaintiff and Aggrieved Employees. Defendants
16 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
17 complete and accurate wage statements in accordance with California law, but, in fact, they did
18 not receive complete and accurate wage statements from Defendants. These deficiencies included,
19 *inter alia*, the failure to include the total number of hours worked, the actual gross wages earned,
20 and the correct rates of pay.

21 33. Throughout the time period involved in this case, Defendants regularly failed to
22 keep complete or accurate payroll records for Plaintiff and Aggrieved Employees. Defendants
23 knew or should have known that Defendants were required keep complete and accurate payroll
24 records for Plaintiff and Aggrieved Employees in accordance with California law, but, in fact, did
25 not keep complete and accurate payroll records.

26 34. Throughout the time period involved in this case, Defendants regularly failed to
27 maintain accurate records relating to Plaintiff's and the Aggrieved Employees' work periods,
28 meal periods, total daily hours, hours per pay period, and applicable pay rates.

35. Throughout the time period involved in this case, Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including but not limited to expenses incurred in the use of a personal cell phone. Defendants knew or should have known that Defendants were required to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses and costs, but, in fact, failed to do so in violation of California law.

36. Throughout the time period involved in this case, Defendants knew or should have known that they had a duty to compensate Plaintiff and Aggrieved Employees pursuant to California law. Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and Aggrieved Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

37. On or about July 20, 2023, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 *et seq.* in accord with Cal. Lab. Code section 2699.3. As of the filing of this Complaint, the LWDA has not responded to Plaintiff’s PAGA claim notice.

FIRST CAUSE OF ACTION

(Violation of California Labor Code § 2699, Et Seq.)

(Against All Defendants)

38. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

39. Plaintiff brings her first and only cause of action as a representative action on behalf of herself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”).

40. PAGA specifically provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any

1 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
2 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
3 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
4 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
5 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
6 2699(a).

7 41. Plaintiff was employed by Defendants and the Labor Code violations alleged
8 above were committed against her during her time of employment. Plaintiff and the other non-
9 exempt employees of Defendants are therefore “aggrieved employees” as defined by California
10 Labor Code section 2699(c) in that they are all current or former employees of Defendants, and
11 one or more of the alleged violations were committed against them.

12 42. As set forth in detail above, during all times relevant to this Action, Defendants
13 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
14 Codes by:

- 15 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
16 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 17 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
18 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 19 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
20 Employees and failing to pay Plaintiff and the Aggrieved Employees an additional
21 hour of premium pay for meal period violations in violation of Labor Code §§
22 226.7 and 512.
- 23 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
24 take duty-free rest periods and failing to pay Plaintiff and the Aggrieved
25 Employees an additional hour of premium pay for rest period violations in
26 violation of Labor Code §§ 226.7 and 512.
- 27 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of
28 their employment in violation of Labor Code § 203.

- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226.
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.

43. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title section 11040, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 225.5, 226, 226.3, 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is an amount to be shown according to proof at trial.

44. Plaintiff has exhausted her administrative remedies pursuant to Labor Code § 2699.3. On July 20, 2023, Plaintiff, through her counsel of record, by online filing with the LWDA and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65 days have elapsed since the mailing of Plaintiff's July 20, 2023, notice, and the LWDA has not indicated that it intends to investigate the violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for herself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

45. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, and as a private attorney general, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;
2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 225.5, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code and/or other applicable statutes; and
3. For such other relief as the Court deems just and proper.

Dated: September 25, 2023

PROTECTION LAW GROUP, LLP

By:

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MARITZA HERNANDEZ