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FILED ONLINE WITH THE LWDA

ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

OptumCare Management, LLC
2175 Park Place
El Segundo, CA 90245

Optum Care, Inc.
11000 Optum Circle
Minnetonka, MN 55344

UnitedHealth Group Incorporated
416 W San Ysidro Blvd.
L-1958
San Ysidro, CA 92173

Re: *Neomi Vasquez v. OptumCare Management, LLC, Optum Care, Inc., and UnitedHealth Group Incorporated*

Notice of Labor Code Violations Pursuant to Labor Code section 2699.3(a)(l)

Dear PAGA Administrator:

This letter shall constitute the required written notification under Labor Code section 2699.3(a)(l) of Labor Code violations alleged against **OptumCare Management, LLC, Optum Care, Inc., and UnitedHealth Group Incorporated** (“Employers”). Our client, **Neomi Vasquez and other similarly situated aggrieved employees** (together, “Claimants”), worked as non-exempt employees for Employers. Claimants hereby issue this Notice to both the LWDA and Employers in compliance with the notice requirements of Labor Code section 2699.3(a)(l).

Claimants hereby give Notice of the following specific provisions of the Labor Code and Wage Order that have been violated and the facts and theories to support the alleged violations:

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Violation	Facts and Theories
Labor Code sections 204, 218, 218.5, 218.6 & 1194, IWC Wage Order No. 5-2001, § 3	Labor Code section 204 provides that covered employees are entitled to receive all wages earned for the pay period corresponding to the payday. Here, Employers regularly failed to pay Claimants all wages earned for labor performed each pay period. For example, Employers misclassified Claimants as exempt employees, meaning Employers regularly suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. For example, among other things, Employers automatically deducted 30 minutes from their time for a meal period even though Claimants were required to continue working, including being required to answer questions of doctors and/or attending required training during meals such that employees overall lost hours worked. Employers also failed to provide the requisite one hour of pay at the regular rate of compensation for shifts with missed or non-compliant meal and/or rest periods. Additionally, Employers regularly altered time records to reduce or eliminate overtime worked by Claimants and penalties for missed or non-compliant meal and/or rest periods. As a result, Employers failed to pay Claimants for all hours worked. Accordingly, Employers violated the above code sections.
Labor Code sections 1194, 1197, IWC Wage Order No. 5-2001, § 4	Pursuant to Labor Code sections 1194 and 1197, and IWC Wage Order No. 5-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked during a payroll period is unlawful. Labor Code section 1194 provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Here, Employers misclassified Claimants as exempt, meaning that Employers failed to pay Claimants their earned minimum and/or overtime wages for all hours worked. For example, Employers regularly suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. For example, Employer, among other things, automatically deducted 30 minutes from their time for a meal period even though Claimants were required to continue working, including being required to answer questions of doctors and/or attending required training during meals such that employees overall lost hours worked. Additionally, Employers regularly treated Claimants as exempt, salaried employees and/or altered time records to reduce or eliminate overtime worked by Claimants and penalties for missed or non-compliant meal and/or rest periods. As a result, Employers failed to pay Claimants for all hours worked. Accordingly, Employers violated the above code section.

Labor Code sections 510 and 1194, IWC Wage Order No. 5-2001 § 3	Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. Any 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.” Labor Code section 1194 provides “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Here, Employers regularly treated Claimants as exempt, salaried employees. For instance, Claimants worked in excess of eight hours in one workday and/or in excess of 40 hours in one workweek, and were not compensated with overtime pay. As a result of this practice, Labor Code sections 510 and 1194 were violated. As a further example, Employers suffered or permitted Claimants to work off the clock, but did not compensate Claimants for that time. Employer, among other things, automatically deducted 30 minutes from Claimants’ time for a meal period even though Claimants were required to continue working in order to service customers. As a result, employees overall lost hours worked. Yet Employers neither compensated Claimants for such work nor counted the time spent working off the clock for purposes of calculating overtime. Additionally, Employers regularly altered time records to reduce or eliminate overtime worked by Claimants and penalties for missed or non-compliant meal and/or rest periods. As a result, Employers failed to pay Claimants for all hours worked. As a result of these practices, Employers violated the above code sections.
Labor Code Sections 226.7 and 512	Labor Code Sections 226.7 and 512 provide that no Employers shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Under these provisions, a first meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee’s 10th hour or work. If an Employers fails to provide an employee meal periods in accordance with this law, the Employers shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

	Here, Employers regularly treated Claimants as exempt, salaried employees and therefore, Employers regularly failed to provide compliant meal periods. For example, Employers did not provide Claimants with an uninterrupted meal period of not less than 30 minutes after 5 hours of work, nor did Employers provide Claimants with a second 30-minute meal period after 10 hours of work. Further, Employers automatically deducted 30 minutes from Claimants' time for a meal period even though Claimants were required to continue working, including being required to answer questions of doctors and/or attending required training during meals. Additionally, Employers failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each missed or non-compliant meal period. As a result of this practice, Employers violated the above code sections.
Labor Code section 226.7, IWC Wage Order No. 5-2001, § 11	Labor Code section 226.7 provides that Employers shall authorize and permit employees to take rest periods at the rate of (10) minutes net rest time per four (4) hours of work, or major fraction thereof. This means that an Employers must provide 10 minutes net rest time for each four-hour period worked by employees. If an Employers fails to provide an employee rest periods in accordance with this law, the Employers shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Here, Employers regularly treated Claimants as exempt, salaried employees meaning Employers did not comply with these rest period provisions, as Employers routinely failed to authorize and permit Claimants to take their ten (10) minute rest periods for each four (4) hours, or major fraction thereof, they had worked. For example, due to the press of business and/or lack of staffing, Claimants routinely performed four consecutive hours of work without receiving a ten-minute rest period, or had their rest period delayed or interrupted. Employers also failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each day on which Claimants did not receive one or more compliant rest periods.
Labor Code Section 226	Labor Code Section 226 provides: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is

	paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the Employers and, if the Employers is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the Employers is a temporary services Employers as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Here, Employers regularly treated Claimants as exempt employees, meaning Employers engaged in practices violating Labor Code section 226 and failed to provide compliant wage statements containing all information required by Labor Code section 226. For example, Employers failed to provide compliant wage statements because they failed to reflect all compensable hours Claimants worked, including time lost due to the Employer’s practice of automatically deducted time for meal periods which resulted in employees working off the clock. As another example, Employers failed to provide compliant wage statements because the wage statements failed to list meal and/or rest period premiums owed for shifts with non-compliant meal/rest periods.
Labor Code section 226, 1174, and 1174.5, IWC Wage Order No 7-2001, § 6	Labor Code section 1174 provides that Employers shall keep payroll records showing the hours worked and wages paid to each employee. These records are to be kept in accordance with rules established by the commission, but must be kept on file for a minimum of three (3) years. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).” Here, as a result of the aforementioned practices, <i>i.e.</i>, Employers suffering or permitting Claimants to work off the clock, including hours worked lost due to Employer’s practice of automatically deducting time for meal periods which resulted in employees working off the clock, failing to pay all overtime wages due, failing to authorize and permit compliant meal and rest periods, and failing to provide compliant wage statements, Employers knowingly and intentionally failed to maintain records, including but not limited to: all hours worked by Claimants, meal periods taken, and accurate itemized wage statements.

Labor Code Sections 201, 202, and 203	Labor Code Section 201 states that if an Employers discharges an employee, earned but unpaid wages at the time of discharge are due and payable immediately. Similarly, Labor Code Section 202 provides “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Under section 203, if an Employers willfully fails to pay in accordance with sections 201 or 202, any wages of an employee who is discharged or quits shall continue as a penalty. Here, Employers failed to pay all earned wages in accordance with sections 201, 202, and 203. For example, Employers failed to pay all earned wages for hours worked lost due to automatic deductions for meal periods, unpaid overtime, and wages for non-compliant meal and rest periods to employees who quit or were discharged, in violation of Sections 201 and 202. Nor has Employers paid any of the continuation wages under Section 203.
Labor Code Section 2802	Labor Code Section 2802 states an Employers shall indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties or in obedience to an employer’s directives. Here, Employers regularly treated Claimants as exempt, salaried employees and did not provide reimbursements for reimbursable expenses. Therefore, Employers failed to reimburse Claimants and other similarly aggrieved employees for all necessary expenditures required by Employers, including the purchase of staff uniforms and travel expenses, in violation of Labor Code § 2802.

Please notify us within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If notice is not received within 65 calendar days of the postmark date of this letter, we will proceed with a civil action for penalties pursuant to Labor Code Section 2699. This civil action will be pursued on behalf of Claimants. Please send the Notice to our office located at 11601 Wilshire Blvd., Suite 2440, Los Angeles, California 90025.

Thank you for your attention to this matter.

Respectfully,

MAKAREM & ASSOCIATES, APLC

By: *Daniel Bass*
Daniel Bass

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