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ELECTRONICALLY FILED

Superior Court of California

County of Sacramento

04/03/2025

By: A. Gray Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

FLOREE MCFADDEN, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

MAXIM HEALTHCARE STAFFING
SERVICES, INC. (now known as AMERGIS
HEALTHCARE STAFFING, INC.);
MONARCH MANAGEMENT SERVICES,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 23CV010874

[Case Assigned for All Purposes to Hon. Judge
Lauri A. Damrell in Dept. 22]

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Penalties Pursuant to Labor Code §2699,
et seq. for violations of Labor Code
§§201, 202, 203, 226, 226(a), 226.7,
510, 512, 1194, 1194.2, 1198.5, 1199,
2802

1 Plaintiff FLOREE MCFADDEN (“Plaintiff”), on behalf of herself and the people of the
2 State of California and as an “aggrieved employee” under the Labor Code Private Attorneys
3 General Act of 2004, §2699, et seq. (“PAGA”) complains against MONARCH MANAGEMENT
4 SERVICES, INC. and MAXIM HEALTHCARE STAFFING SERVICES, INC. (now known as
5 Amergis Healthcare Staffing, Inc.) (“Defendants”), a corporation, and DOES 1 to 50 (collectively
6 “Defendants”), as follows:

7 **I.**

8 **GENERAL ALLEGATIONS**

9 1. This is a Representative Action, pursuant to Labor Code §2699 et seq., on behalf
10 of the following individuals:

11 All non-exempt employees who are employed or have been
12 employed by Maxim Healthcare Staffing Services, Inc. (now known
13 as Amergis Healthcare Staffing, Inc.) and placed at Monarch
14 Management Services, Inc. in the State of California who worked
one or more pay periods since one (1) year prior to the date of this
letter and continuing to the present.

15 2. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
16 Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing
17 to the present, Defendant has failed to properly comply with Labor Code §§ 201, 202, 203, 226,
18 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, 2802, and IWC Wage Order No. 4-2001.

19 3. Defendants have had a consistent policy of failing to pay wages and/or overtime to
20 Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly
21 compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.
22 Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked
23 because Plaintiff and the aggrieved employees routinely worked “off the clock” and performed
24 compensable activities before and after working each shift for which no pay was provided. Plaintiff
25 and the aggrieved employees are not paid any wages for any pre-shift or post-shift activities. This
26 time was spent “clocked out” and as such, Plaintiff and the aggrieved employees are not
27 compensated for this time worked even though this time is compensable. Additionally, Defendants
28 failed to pay Plaintiff and all aggrieved employees for each and every hour worked, because

1 Defendants engaged in a pattern and practice of “time shaving”. Specifically, Plaintiff and the
2 aggrieved employees were subjected to timecard modifications that reduced their pay if they
3 clocked in five (5) minutes or more before the start of the day or if they clocked out five (5) minutes
4 or more after the end of the day.

5 4. Defendants failed to maintain a policy informing Plaintiff and all aggrieved
6 employees of their rights associated with meal periods. In addition, Defendants have had a
7 consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal
8 periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate
9 of compensation for each workday that the compliant meal period was not provided, as required
10 by California state wage and hour laws. Further, on the rare occasion if any that Defendants paid
11 meal period premiums, Defendants have had a consistent policy of improperly paying meal period
12 premiums at the base rate and not blended rate.

13 5. Defendant has failed to provide compliant rest periods. Defendants failed to provide
14 Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four
15 (4) hour work period, or major fraction thereof. Instead, Defendants required Plaintiff and all
16 aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis
17 during the relevant time period. Specifically, Plaintiff and the aggrieved employees have been
18 required to work four-hour increments (or major fractions thereof) without being provided with
19 compliant second ten (10) minute rest periods.

20 6. Defendant has failed to reimburse Plaintiff and the aggrieved employees for
21 business-related expenses in violation of Labor Code §2802. Defendants failed to reimburse
22 Plaintiff and the aggrieved employees for the costs associated with using their personal vehicles,
23 purchasing tools/equipment, and uniform maintenance for business related purposes. Defendants
24 did not provide a car, truck, and/or other alternative means of transportation for Plaintiff and other
25 aggrieved employees to use to complete their job duties. Additionally, Defendants required
26 Plaintiff and the aggrieved employees to purchase their own tools and/or equipment such as cloth
27 face masks, stethoscope, stethoscope case, and oxygen meter, and this was necessary to perform
28 their job duties. These tools and/or equipment were not provided by Defendants. Lastly,

1 Defendants did not provide any laundry services or reimbursement for laundry and maintenance
2 of Plaintiff's and other aggrieved employees' company uniforms. Thus, Plaintiff is an aggrieved
3 employee within the meaning of PAGA and Defendant has violated Labor Code Labor Code §2802
4 with respect to Plaintiff and all aggrieved employees.

5 7. Defendants engaged in a practice of failing to provide accurate itemized wage
6 statements in violation of Labor Code § 226(a) which requires that every employer shall,
7 semimonthly or at the time of each payment of wages, furnish each of his or her employees, an
8 accurate itemized statement in writing showing all applicable hourly rates in effect during the pay
9 period, and the corresponding number of hours worked at each hourly rate by the employee. Labor
10 Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment
11 of wages, furnish each of his or her employees, an accurate itemized statement in writing showing
12 the total hours worked by the employee. Also, Defendants issued to Plaintiff and the aggrieved
13 employees itemized wage statements that did not include all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate by the employee,
15 in violation of Labor Code §226(a)(9). As such, Plaintiff is an aggrieved employee within the
16 meaning PAGA and Defendants have violated Labor Code §226(a)(2) and (9) with respect to
17 Plaintiff and all aggrieved employees.

18 8. Defendant has failed to pay Plaintiff and all aggrieved employees all wages due at
19 the time of termination or within seventy-two (72) hours of their resignation and have failed to pay
20 those sums for thirty (30) days thereafter in violation of Labor Code §203. Thus, Plaintiff is an
21 aggrieved employee within the meaning of PAGA and Defendant has violated §203 with respect
22 to Plaintiff and all aggrieved employees.

23 9. Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code
24 §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records
25 by sending a letter to Defendants. Defendants refused to provide the requested documentation in
26 violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA
27 and Defendants have violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

28 10. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly

1 employed by Defendant during the liability period, brings this representative action pursuant to
2 Labor Code §2699, et seq. seeking penalties for Defendant’s violation of Labor Code §§201, 202,
3 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, and 2802.

4 **II.**

5 **JURISDICTION & VENUE**

6 11. This Court has subject matter jurisdiction over any and all causes of action asserted
7 herein pursuant to Article VI, §10 of the California Constitution and California Code of Civil
8 Procedure §410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
9 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
10 laws of the State of California or is subject to adjudication in the courts of the State of California.

11 12. This Court has personal jurisdiction over Defendant because Defendant has caused
12 injuries in Sacramento County and the State of California through their acts, and by their violation
13 of the California Labor Code and California state common law.

14 13. At all times set forth herein, Defendant is and was, based upon information and
15 belief, a California corporation doing business in Sacramento County and in the State of California
16 with its California address at Monarch Management Services, Inc., 11000 Optum Circle, Eden
17 Prairie, MN 55344; and Maxim Healthcare Staffing Services, Inc. at 7227 Lee Deforest Dr. at
18 Columbia, MD 21046-3236. At all relevant times, Defendant employed Plaintiff in the State of
19 California.

20 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
21 Civil Procedure §395. Defendant operates within California and does business within the county
22 of Sacramento, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
23 all “aggrieved employees” within the State of California and Sacramento County.

24 **III.**

25 **PARTIES**

26 **A. Plaintiff**

27 15. Plaintiff FLOREE MCFADDEN is a resident of State of California. Plaintiff was
28 employed by Defendant as a non-exempt employee in California.

1 16. Upon information and belief, Plaintiff and all aggrieved employees are covered by
2 California Industrial Welfare Commission Occupational Wage Order No. 4 -2001 (Title 8 Cal.
3 Code of Regs. § 11040.)

4 17. Plaintiff and all current and former employees are aggrieved employees within the
5 meaning of Labor Code §2699, et seq. (See Labor Code §2699(c).)

6 **B. Defendants**

7 18. Defendant MONARCH MANAGEMENT SERVICES, INC. is a Minnesota
8 Corporation operating in California including the County of Sacramento. Defendant MAXIM
9 HEALTHCARE STAFFING SERVICES, INC is a Maryland Corporation operating in California
10 including in the County of Sacramento. Defendants' addresses are Monarch Management
11 Services, Inc. at 11000 Optum Circle, Eden Prairie, MN 55344, and Maxim Healthcare Staffing
12 Services, Inc. at 7227 Lee Deforest Dr. at Columbia, MD 21046-3236. Defendants employed
13 Plaintiff and the other aggrieved employees within California. Some of the violations alleged
14 herein arose in the County of Sacramento, California.

15 19. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
18 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
19 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
20 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
21 capacities of the Defendants designated hereinafter as DOES when such identities become known.

22 20. Plaintiff is informed and believes, and based thereon alleges, that each of the
23 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
24 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of
25 the Defendants are legally attributable to the other Defendants.

26 21. The Defendants named herein as DOE 1 through DOE 10 are and were persons
27 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one
28 or more provisions of the California Labor Code and public policy as alleged herein.

22. Furthermore, Defendants acted in all respects as the employers or joint employers of Aggrieved Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Aggrieved Employees, or suffered or permitted the Aggrieved Employees to work, or engaged, thereby creating a common law employment relationship, with the Aggrieved Employees. Therefore, Defendants, and each of them, employed or jointly employed the Aggrieved Employees.

IV.

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§201, 202, 203, 226, 226(A), 226.7, 510, 512, 1194,
1194.2, 1198.5, 1199, AND 2802.

23. Plaintiff realleges and incorporates by reference all previous paragraphs.

24. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant engaged in a practice of failing to pay wages/overtime pursuant to Labor Code §§510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of forty (40) hours in any one workweek.

a. Plaintiff and other aggrieved employees were not properly compensated for all hours worked, because Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities before and after working each shift for which no pay was provided. Plaintiff and the aggrieved employees are not paid any wages for any pre-shift or post-shift activities. Plaintiff and the aggrieved employees often spend approximately 30 minutes prior to the start of their scheduled shifts sending and

1 responding to emails, stocking and inventory, and completing reports while
2 “clocked out.” This time spent performing these work tasks was “clocked out”
3 and as such, Plaintiff and the aggrieved employees are not compensated for this
4 time worked even though this time is compensable. Additionally, after clocking
5 out of their scheduled shifts, Plaintiff and other aggrieved employees were
6 required to spend approximately 5-30 minutes off the clock, wrapping up their
7 tasks, such as sending and responding to emails, cleaning rooms, and stocking
8 and inventory. These off the clock compensable activities also included
9 wrapping up any assignments for Defendants’ supervising doctor or physician’s
10 assistant to whom Plaintiff and other aggrieved employees were assigned for a
11 given workday. As such, Plaintiff and the aggrieved employees were not
12 compensated for this time spent working off the clock after the end of their
13 scheduled shifts, despite performing compensable activities. This time was
14 spent “clocked out” and as such, Plaintiff and the aggrieved employees are not
15 compensated for this time worked even though this time is compensable.

- 16 b. Additionally, Defendants failed to pay Plaintiff and all aggrieved employees for
17 each and every hour worked, because Defendants engaged in a pattern and
18 practice of “time shaving”. Specifically, Plaintiff and the aggrieved employees
19 were subjected to timecard modifications that reduced their pay if they clocked
20 in five (5) minutes or more before the start of the day or if they clocked out five
21 (5) minutes or more after the end of the day. As such, Plaintiff and the aggrieved
22 employees do not receive their correct compensation and are not paid for all
23 hours worked.

24 25. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
25 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
26 present, Defendant has violated Labor Code §§ 226.7 and 512. Labor Code §§ 226.7 and 512
27 require an employer to pay an additional hour of compensation for each meal period the employer
28 fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for

1 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
2 meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code §
3 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer
4 must pay the employee one (1) hour of pay at the employee's regular rate of compensation for
5 each workday that a thirty (30) minute uninterrupted meal period was not provided, was not
6 provided in full, or was not provided in a compliant manner.

7 a. Defendants failed to maintain a policy informing Plaintiff and all aggrieved
8 employees of their rights associated with meal periods. In addition, Defendants
9 have had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved
10 employees uninterrupted meal periods; and (2) failing to pay such employees
11 one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the compliant meal period was not provided. Meal periods were
13 frequently interrupted because Defendants required Plaintiff and all aggrieved
14 employees to watch videos occasionally during meal periods. Additionally,
15 Defendants required Plaintiff and other aggrieved employees to return to work
16 approximately 5-10 minutes prior to the end of their lunch breaks to help cover
17 another employee. As such, when meal periods were provided, they were not a
18 full thirty (30) minutes in length (short) and/or were interrupted consistently.
19 Defendants also failed to accurately record meal periods for Plaintiff and other
20 aggrieved employees.

21 b. Further, on the rare occasion if any that Defendants paid meal period premiums,
22 Defendants have had a consistent policy of improperly paying meal period
23 premiums at the base rate and not blended rate. Defendants' policies and
24 practices as alleged herein violate Labor Code § 226.7 and are inconsistent with
25 the California Supreme Court's recent decision in *Ferra v. Loews Hollywood*
26 *Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, which held that premium payments
27 that are owed if an employer fails to provide a compliant meal period or rest
28 break must include the hourly value of any nondiscretionary earnings (such as

1 a nondiscretionary bonuses), and cannot simply be paid at an employee's base
2 hourly rate. As such, Plaintiff is and aggrieved employee within the meaning of
3 PAGA and Defendants have violated Labor Code §§ 512 and 226.7 as well as
4 IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved
5 employees.

- 6 c. IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and
7 maintain accurate records of "meal periods." Labor Code § 1199 prohibits an
8 employer from causing any employee to work under conditions of labor
9 prohibited by an order of the IWC or from violating, refusing, or neglecting to
10 comply with any order of the commission's orders regarding wages, hours, and
11 working conditions. Defendants do not maintain accurate records of meal
12 periods for Plaintiff and the other aggrieved employees. As such, Defendants
13 have violated this statute and the Wage Order by failing to keep accurate
14 records.

15 26. Defendants failed to apprise Plaintiff and the aggrieved employees of their rights
16 associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code
17 § 226.7 and Wage Order 4-2001, Defendants failed to provide Plaintiff and the aggrieved
18 employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or
19 major fraction thereof. Instead, Defendants required Plaintiff and all aggrieved employees to forgo
20 at least one of their rest breaks on a regular and consistent basis during the relevant time period.
21 Specifically, Plaintiff and the aggrieved employees have been required to work four-hour
22 increments (or major fractions thereof) without being provided with compliant second ten (10)
23 minute rest periods.

- 24 a. Plaintiff and the aggrieved employees were not compensated with one (1) hour
25 of wages at the regular rate of compensation for each missed rest period as
26 described above and as required by Labor Code § 226.7. On the rare occasion
27 if any that Defendants paid rest period premiums, Defendants have had a
28 consistent policy of improperly paying rest period premiums at the base rate

1 and not blended rate. Defendants' policies and practices as alleged herein
2 violate Labor Code § 226.7 and are inconsistent with the California Supreme
3 Court's recent decision in *Ferra*. As such, Plaintiff is and aggrieved employee
4 within the meaning of PAGA and Defendants have violated Labor Code § 226.7
5 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all
6 aggrieved employees.

7 27. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
8 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
9 present, Defendant has violated Labor Code §2802. This statute provides that an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer, even though unlawful, unless the employee, at the time of obeying the
13 directions, believed them to be unlawful.

14 a. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost
15 of using their personal vehicles and tools/equipment for business related
16 purposes. First, Defendants required that Plaintiff and the aggrieved employees
17 use their own vehicles for work-related purposes. Specifically, Plaintiff and
18 other aggrieved employees were required to use their personal vehicle to travel
19 between Defendants' jobsites, and this was necessary to perform their job
20 duties. Defendants did not provide a car, truck, and/or other alternative means
21 of transportation for Plaintiff and other aggrieved employees to use to complete
22 their job duties.

23 b. Additionally, Defendants required Plaintiff and the aggrieved employees to
24 purchase their own tools and/or equipment such as cloth face masks,
25 stethoscope, stethoscope case, and oxygen meter, and this was necessary to
26 perform their job duties. These tools and/or equipment were not provided by
27 Defendants. Plaintiff and aggrieved employees were required to purchase these
28 necessary tools and/or equipment. Lastly, Defendants did not provide any

1 laundry services or reimbursement for laundry and maintenance of Plaintiff's
2 and other aggrieved employees' company uniforms. As such, Defendants failed
3 to reimburse Plaintiff and the aggrieved employees for the costs associated with
4 using their personal vehicles, purchasing tools/equipment, and uniform
5 maintenance.

6 28. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
7 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
8 present, Defendant engaged in a practice of failing to provide accurate itemized wage statements
9 in violation of Labor Code § 226(a). Labor Code § 226(a) which requires that every employer
10 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
11 an accurate itemized statement in writing showing all applicable hourly rates in effect during the
12 pay period, and the corresponding number of hours worked at each hourly rate by the employee.

13 a. Labor Code §226(a)(2) requires that every employer shall semimonthly or at
14 the time of each payment of wages, furnish each of his or her employees, an
15 accurate itemized statement in writing showing the total hours worked by the
16 employee. Plaintiff and the aggrieved employees are issued wage statements
17 that do not include the total hours worked by the employee. As such, Plaintiff
18 are aggrieved employees within the meaning PAGA and Defendants have
19 violated Labor Code §226(a) with respect to Plaintiff and all aggrieved
20 employees.

21 b. Defendants issued to Plaintiff and the aggrieved employees itemized wage
22 statements that did not include all applicable hourly rates in effect during the
23 pay period and the corresponding number of hours worked at each hourly rate
24 by the employee, in violation of Labor Code § 226(a)(9).

25 c. As a result of the allegations above, Defendant has failed to furnish Plaintiff
26 and all aggrieved employees accurate itemized wage statements that show total
27 hours worked by the employee and all applicable hourly rates in effect during
28 the pay period and the corresponding number of hours worked at each hourly

1 rate by the employee pursuant to Labor Code §§ 226(a)(2) and (9).
2 Additionally, IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require
3 defendants to maintain time records showing, among others, when the
4 employee begins and ends each work period, meal periods, split shift intervals
5 and total daily hours worked in an itemized wage statements, and must show all
6 deductions from payment of wages, the number of piece-rate units earned and
7 any applicable piece rate if the employee is paid on a piece-rate, and accurately
8 report total hours worked by Plaintiff and all aggrieved employees. Defendant
9 failed to keep accurate records of the total daily hours worked. The itemized
10 wage statements provided to Plaintiff and the aggrieved employees did not
11 include the hours worked at each hourly rate. Thus, Plaintiff is an aggrieved
12 employee within the meaning PAGA and Defendants have violated Labor Code
13 § 226(a) with respect to Plaintiff and all aggrieved employees.

14 29. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
15 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
16 present, Defendant has violated Labor Code § 203 by failing to timely pay Plaintiff and all
17 aggrieved employees all wages due upon their separation from Defendant's employ as required.

18 a. Labor Code § 203 provides that if "an employer willfully fails to pay...any
19 wages of an employee who is discharged or who quits, the wages of the
20 employee shall continue as a penalty from the due date thereof at the same rate
21 until paid or until an action therefor is commenced; but the wages shall not
22 continue for more than 30 days." Here, Plaintiff and all aggrieved employees
23 were not paid all wages due upon their separation from Defendants' employ.
24 As such, Plaintiff are aggrieved employees and Defendants failed to pay
25 Plaintiff and all aggrieved employees all wages due at the time of termination
26 or within seventy-two (72) hours of their resignation, and have failed to pay
27 those sums for thirty (30) days thereafter in violation of Labor Code §203.

28 30. Defendants have violated Labor Code §§226 and 1198.5 with respect to Plaintiff

only. Labor Code § 226(f) provides that “[a] failure by an employer to permit a current or former employee to inspect or copy records within the . . .” statutory time frame “. . . entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” Additionally, Labor Code §226(h) permits an employee to bring an action for injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 1198.5(a) states: “Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection or fails to permit an employee to copy personnel records within the times specified, the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney’s fees in such an action.

31. On November 15, 2022, Plaintiff mailed to Defendants her first written request to her employer to copy or to receive a copy of her personnel file and payroll records. The letter cited Labor Code §§ 226 and 1198.5. On or around December 8, 2022, Plaintiff’s Counsel received a letter from Defendants indicating it received Plaintiff’s written records request but they were unable to comply with the requests. Defendant did not provide the documentation requested by Plaintiff in her written request.

32. Defendant’s violation of Labor Code Labor Code §§201, 202, 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, and 2802 was all done on a regular and consistent basis.

33. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699, et seq. because of Defendant’s violation of Labor Code §§201, 202, 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, and 2802.

34. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial

subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

35. These penalties will be allocated 75% to the Labor & Workforce Development Agency and 25% to the affected employees.

36. On August 4, 2023, Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor & Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>) and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §2698 et seq. (Exhibit “1”.) Defendants signed certified mail return receipts verifying that it received Plaintiff’s letter. (Exhibit “2”.) Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate.

37. On December 17, 2024, Plaintiff sent an amended PAGA Claim Notice letter to the LWDA and Defendants to add Defendants MONARCH MANAGEMENT SERVICES, INC. and MAXIM HEALTHCARE STAFFING SERVICES, INC. as named Defendants. (See Exhibit “3.”)

38. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the amended notice. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and Does 1 to 50, Inclusive, and each of them, as follows for Plaintiff and all aggrieved employees:

- a. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff and all other aggrieved employees.
- b. An award of prejudgment and post judgment interest;
- c. An award providing for payment of costs of suit;

1 d. An award of attorneys' fees; and

2 e. Such other and further relief as this Court may deem proper and just.

3 DATED: April 3, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

6
7 By: 
8 Eric B. Kingsley
9 Kelsey M. Szamet
Attorneys for Plaintiff

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 4, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

OptumCare Medical Group
26991 Crown Valley Parkway
Mission Viejo, CA 92691
Via Certified Mailing #7022 3330 0002 1335 6871

UnitedHealth Group, Inc.
9900 Bren Road East
Minnetonka, Minnesota 55343
Via Certified Mailing #7022 3330 0002 1335 6888

UnitedHealth Group, Inc.
9800 Health Care Ln
Minnetonka, Minnesota 55343
Via Certified Mailing #7022 3330 0002 1335 6895

Maxim Healthcare Services, Inc.
7227 Lee Deforest Dr
Columbia, MD 21046-3236
Via Certified Mailing #7022 3330 0002 1335 6901

Maxim Healthcare Services, Inc.
c/o Agent for Service of Process
1505 Corporation CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833
Via Certified Mailing #7022 3330 0002 1335 6918

Re: Floree McFadden v. OptumCare Medical Group; UnitedHealth Group, Inc.;
Maxim Healthcare Services, Inc.
California Labor Code § 2699 Penalties

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 2 of 5

Gentlepersons:

This office represents Floree McFadden (“Plaintiff”) and a proposed group of current and former employees working for OptumCare Medical Group; UnitedHealth Group, Inc.; Maxim Healthcare Services, Inc. (“Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by OptumCare Medical Group; UnitedHealth Group, Inc.; Maxim Healthcare Services, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendants have violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.

Plaintiff and other aggrieved employees were not properly compensated for all hours worked, because Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities before and after working each shift for which no pay was provided. Plaintiff and the aggrieved employees are not paid any wages for any pre-shift or post-shift activities. Plaintiff and the aggrieved employees often spend approximately 30 minutes prior to the start of their scheduled shifts sending and responding to emails, stocking and inventory, and completing reports while “clocked out.” This time spent performing these work tasks was “clocked out” and as such, Plaintiff and the aggrieved employees are not compensated for this time worked even though this time is compensable. Additionally, after clocking out of their scheduled shifts, Plaintiff and other aggrieved employees were required to spend approximately 5-30 minutes off the clock, wrapping up their tasks, such as sending and responding to emails, cleaning rooms, and stocking and inventory. These off the clock compensable activities also included wrapping up any assignments for Defendants’ supervising doctor or physician’s assistant to whom Plaintiff and other aggrieved employees were assigned for a given workday. As such, Plaintiff and the aggrieved employees were not compensated for this time spent working off the clock after the end of their scheduled shifts, despite performing compensable activities. This time was spent “clocked out”

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 3 of 5

and as such, Plaintiff and the aggrieved employees are not compensated for this time worked even though this time is compensable.

Additionally, Defendants failed to pay Plaintiff and all aggrieved employees for each and every hour worked, because Defendants engaged in a pattern and practice of “time shaving”. Specifically, Plaintiff and the aggrieved employees were subjected to timecard modifications that reduced their pay if they clocked in five (5) minutes or more before the start of the day or if they clocked out five (5) minutes or more after the end of the day. As such, Plaintiff and the aggrieved employees do not receive their correct compensation and are not paid for all hours worked.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a compliant manner.

Defendants failed to maintain a policy informing Plaintiff and all aggrieved employees of their rights associated with meal periods. In addition, Defendants have had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently interrupted because Defendants required Plaintiff and all aggrieved employees to watch videos occasionally during meal periods. Additionally, Defendants required Plaintiff and other aggrieved employees to return to work approximately 5-10 minutes prior to the end of their lunch breaks to help cover another employee. As such, when meal periods were provided, they were not a full thirty (30) minutes in length (short) and/or were interrupted consistently. Defendants also failed to accurately record meal periods for Plaintiff and other aggrieved employees.

Further, on the rare occasion if any that Defendants paid meal period premiums, Defendants have had a consistent policy of improperly paying meal period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, which held that premium payments that are owed if an employer fails to provide a compliant meal period or rest break must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. As such, Plaintiff is and aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§ 512 and 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 4 of 5

IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendants do not maintain accurate records of meal periods for Plaintiff and the other aggrieved employees. As such, Defendants have violated this statute and the Wage Order by failing to keep accurate records.

Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Instead, Defendants required Plaintiff and all aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period. Specifically, Plaintiff and the aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with compliant second ten (10) minute rest periods.

Moreover, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7. On the rare occasion if any that Defendants paid rest period premiums, Defendants have had a consistent policy of improperly paying rest period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra*. As such, Plaintiff is and aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code § 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

Labor Code § 2802 provides that an employer shall 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. Defendants have failed to reimburse Plaintiff and aggrieved employees the cost of using their personal vehicles and tools/equipment for business related purposes.

First, Defendants required that Plaintiff and the aggrieved employees use their own vehicles for work-related purposes. Specifically, Plaintiff and other aggrieved employees were required to use their personal vehicle to travel between Defendants’ jobsites, and this was necessary to perform their job duties. Defendants did not provide a car, truck, and/or other alternative means of transportation for Plaintiff and other aggrieved employees to use to complete their job duties. Additionally, Defendants required Plaintiff and the aggrieved employees to purchase their own tools and/or equipment such as cloth face masks, stethoscope, stethoscope case, and oxygen meter, and this was necessary to perform their job duties. These tools and/or equipment were not provided

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 5 of 5

by Defendants. Plaintiff and aggrieved employees were required to purchase these necessary tools and/or equipment. Lastly, Defendants did not provide any laundry services or reimbursement for laundry and maintenance of Plaintiff's and other aggrieved employees' company uniforms. As such, Defendants failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using their personal vehicles, purchasing tools/equipment, and uniform maintenance.

As a result of the claims alleged above, Defendants engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff are aggrieved employees within the meaning PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendants issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendants' employ. As such, Plaintiff are aggrieved employees and Defendants failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

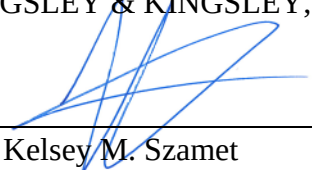
Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendants. Defendants refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

Further, under Labor Code § 2699.3(c)(2)(A), Defendants may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, 2802 and IWC Wage Order No. 4-2001 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Liane Katzenstein Ly

LKL/km

Cc: 1. Davtyan Law Firm, Inc., 880 E. Broadway Glendale, CA 91205

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Maxim Healthcare Services, Inc.
c/o Agent for Service of Process
1505 Corporation CSC – Lawyers
Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833



9590 9402 7019 1225 1733 90

2. Article Number (Transfer from service label)

7022 3330 0002 1335 6918

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

SHAMEEL MOHAMMED

C. Date of Delivery

A/A/O CSC

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

AUG 07 2023

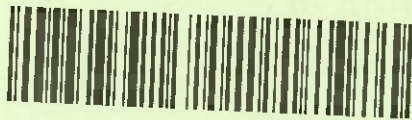
3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING#



First-Class Mail
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USPS
Permit No. G-10

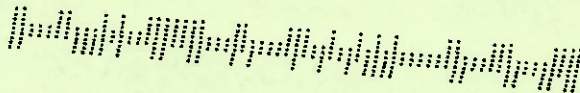
9590 9402 7019 1225 1733 90

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KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
OPTUMCARE MEDICAL GROUP



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9 AUG 2023 PM 1 L

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USPS
Permit No. G-10

9590 9402 7019 1225 1734 37

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

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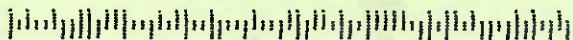
A PROFESSIONAL CORPORATION

CITY NATIONAL BANK BUILDING

16133 VENTURA BOULEVARD, SUITE 1200

ENCINO, CALIFORNIA 91436

PAGA LETTER
OPTUMCARE MEDICAL GROUP



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X <i>Ashley Lopez</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) <i>Ashley Lopez</i> C. Date of Delivery <i>8-7-25</i>																
1. Article Addressed to: OptumCare Medical Group 26991 Crown Valley Parkway Mission Viejo, CA 92691  9590 9402 7019 1225 1734 37	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No 3. Service Type <table border="0"><tr><td>☐ Adult Signature</td><td>☐ Priority Mail Express®</td></tr><tr><td>☐ Adult Signature Restricted Delivery</td><td>☐ Registered Mail™</td></tr><tr><td>☒ Certified Mail®</td><td>☐ Registered Mail Restricted Delivery</td></tr><tr><td>☐ Certified Mail Restricted Delivery</td><td>☐ Signature Confirmation™</td></tr><tr><td>☐ Collect on Delivery</td><td>☐ Signature Confirmation Restricted Delivery</td></tr><tr><td>☐ Collect on Delivery Restricted Delivery</td><td></td></tr><tr><td>☐ Insured Mail</td><td></td></tr><tr><td>☐ Mail Restricted Delivery (0)</td><td></td></tr></table>	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™	☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery	☐ Collect on Delivery Restricted Delivery		☐ Insured Mail		☐ Mail Restricted Delivery (0)	
☐ Adult Signature	☐ Priority Mail Express®																
☐ Adult Signature Restricted Delivery	☐ Registered Mail™																
☒ Certified Mail®	☐ Registered Mail Restricted Delivery																
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☐ Insured Mail																	
☐ Mail Restricted Delivery (0)																	
2. Article Number (Transfer from service label) 7022 3330 0002 1335 6871																	

EXHIBIT "3"



16133 Ventura Boulevard, Suite 1200, 
Encino, California 91436
www.kingsleylawyers.com 
(818) 990-8300 

December 17, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

SEYFARTH SHAW LLP
Andrew M. Paley
apaley@seyfarth.com
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Attorneys for Defendants
MONARCH MANAGEMENT SERVICES, INC.

Michael S. Kun
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Los Angeles, CA 90067
mkun@ebglaw.com
Via Electronic Mail Transmission

Attorneys for Defendant
MAXIM HEALTHCARE STAFFING
SERVICES, INC.

Re: Floree McFadden v. Monarch Management Services, Inc.; Maxim Healthcare
Staffing Services, Inc..
California Labor Code § 2699 Penalties

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 17, 2024

Page 2 of 6

Gentlepersons:

This office represents Floree McFadden (“Plaintiff”) and a proposed group of current and former employees working for Maxim Healthcare Staffing Services, Inc. and placed at Monarch Management Services, Inc. (“Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* This is an amended notice letter which shall serve to incorporate and supplement the letter from our office on August 4, 2023. A true and correct copy of Plaintiff’s August 4, 2023 letter to the LWDA and Defendants is attached as Exhibit “1”. Plaintiff is amending her letter to add Monarch Management Services, Inc. and Maxim Healthcare Staffing Services, Inc. as named Defendants. We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Maxim Healthcare Services, Inc. and placed at Monarch Management Services, Inc. in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”) Defendants have violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.

Plaintiff and other aggrieved employees were not properly compensated for all hours worked, because Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities before and after working each shift for which no pay was provided. Plaintiff and the aggrieved employees are not paid any wages for any pre-shift or post-shift activities. Plaintiff and the aggrieved employees often spend approximately 30 minutes prior to the start of their scheduled shifts sending and responding to emails, stocking and inventory, and completing reports while “clocked out.” This time spent performing these work tasks was “clocked out” and as such, Plaintiff and the aggrieved employees are not compensated for this time worked even though this time is compensable. Additionally, after clocking out of their scheduled shifts, Plaintiff and other aggrieved employees were required to spend approximately 5-30 minutes off the clock, wrapping up their tasks, such as sending and responding to emails, cleaning rooms, and stocking and inventory. These off the clock compensable activities also included wrapping up any assignments for Defendants’ supervising doctor or physician’s assistant to whom Plaintiff and

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 17, 2024

Page 3 of 6

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Additionally, Defendants failed to pay Plaintiff and all aggrieved employees for each and every hour worked, because Defendants engaged in a pattern and practice of “time shaving”. Specifically, Plaintiff and the aggrieved employees were subjected to timecard modifications that reduced their pay if they clocked in five (5) minutes or more before the start of the day or if they clocked out five (5) minutes or more after the end of the day. As such, Plaintiff and the aggrieved employees do not receive their correct compensation and are not paid for all hours worked.

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Defendants failed to maintain a policy informing Plaintiff and all aggrieved employees of their rights associated with meal periods. In addition, Defendants have had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently interrupted because Defendants required Plaintiff and all aggrieved employees to watch videos occasionally during meal periods. Additionally, Defendants required Plaintiff and other aggrieved employees to return to work approximately 5-10 minutes prior to the end of their lunch breaks to help cover another employee. As such, when meal periods were provided, they were not a full thirty (30) minutes in length (short) and/or were interrupted consistently. Defendants also failed to accurately record meal periods for Plaintiff and other aggrieved employees.

Further, on the rare occasion if any that Defendants paid meal period premiums, Defendants have had a consistent policy of improperly paying meal period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, which held that premium payments that are owed if an employer fails to provide a compliant meal period or rest break must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. As such, Plaintiff is and aggrieved employee within the meaning

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 17, 2024

Page 4 of 6

of PAGA and Defendants have violated Labor Code §§ 512 and 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendants do not maintain accurate records of meal periods for Plaintiff and the other aggrieved employees. As such, Defendants have violated this statute and the Wage Order by failing to keep accurate records.

Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Instead, Defendants required Plaintiff and all aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period. Specifically, Plaintiff and the aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with compliant second ten (10) minute rest periods.

Moreover, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7. On the rare occasion if any that Defendants paid rest period premiums, Defendants have had a consistent policy of improperly paying rest period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra*. As such, Plaintiff is and aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code § 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

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First, Defendants required that Plaintiff and the aggrieved employees use their own vehicles for work-related purposes. Specifically, Plaintiff and other aggrieved employees were required to use their personal vehicle to travel between Defendants’ jobsites, and this was necessary to perform their job duties. Defendants did not provide a car, truck, and/or other alternative means of transportation for Plaintiff and other aggrieved employees to use to complete their job duties.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 17, 2024

Page 5 of 6

Additionally, Defendants required Plaintiff and the aggrieved employees to purchase their own tools and/or equipment such as cloth face masks, stethoscope, stethoscope case, and oxygen meter, and this was necessary to perform their job duties. These tools and/or equipment were not provided by Defendants. Plaintiff and aggrieved employees were required to purchase these necessary tools and/or equipment. Lastly, Defendants did not provide any laundry services or reimbursement for laundry and maintenance of Plaintiff's and other aggrieved employees' company uniforms. As such, Defendants failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using their personal vehicles, purchasing tools/equipment, and uniform maintenance.

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Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff are aggrieved employees within the meaning PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendants issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendants' employ. As such, Plaintiff are aggrieved employees and Defendants failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendants. Defendants refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and

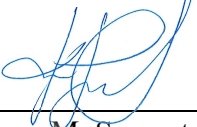
Defendants have violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

Further, under Labor Code § 2699.3(c)(2)(A), Defendants may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, 2802 and IWC Wage Order No. 4-2001 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 
Kelsey M. Szamet

KMS/tg

Cc: 1. D.Law, Inc., 400 N. Brand Blvd., 7th Floor, Glendale, CA 91203

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 4, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

OptumCare Medical Group
26991 Crown Valley Parkway
Mission Viejo, CA 92691
Via Certified Mailing #7022 3330 0002 1335 6871

UnitedHealth Group, Inc.
9900 Bren Road East
Minnetonka, Minnesota 55343
Via Certified Mailing #7022 3330 0002 1335 6888

UnitedHealth Group, Inc.
9800 Health Care Ln
Minnetonka, Minnesota 55343
Via Certified Mailing #7022 3330 0002 1335 6895

Maxim Healthcare Services, Inc.
7227 Lee Deforest Dr
Columbia, MD 21046-3236
Via Certified Mailing #7022 3330 0002 1335 6901

Maxim Healthcare Services, Inc.
c/o Agent for Service of Process
1505 Corporation CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833
Via Certified Mailing #7022 3330 0002 1335 6918

Re: Floree McFadden v. OptumCare Medical Group; UnitedHealth Group, Inc.;
Maxim Healthcare Services, Inc.
California Labor Code § 2699 Penalties

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 2 of 5

Gentlepersons:

This office represents Floree McFadden (“Plaintiff”) and a proposed group of current and former employees working for OptumCare Medical Group; UnitedHealth Group, Inc.; Maxim Healthcare Services, Inc. (“Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by OptumCare Medical Group; UnitedHealth Group, Inc.; Maxim Healthcare Services, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendants have violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.

Plaintiff and other aggrieved employees were not properly compensated for all hours worked, because Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities before and after working each shift for which no pay was provided. Plaintiff and the aggrieved employees are not paid any wages for any pre-shift or post-shift activities. Plaintiff and the aggrieved employees often spend approximately 30 minutes prior to the start of their scheduled shifts sending and responding to emails, stocking and inventory, and completing reports while “clocked out.” This time spent performing these work tasks was “clocked out” and as such, Plaintiff and the aggrieved employees are not compensated for this time worked even though this time is compensable. Additionally, after clocking out of their scheduled shifts, Plaintiff and other aggrieved employees were required to spend approximately 5-30 minutes off the clock, wrapping up their tasks, such as sending and responding to emails, cleaning rooms, and stocking and inventory. These off the clock compensable activities also included wrapping up any assignments for Defendants’ supervising doctor or physician’s assistant to whom Plaintiff and other aggrieved employees were assigned for a given workday. As such, Plaintiff and the aggrieved employees were not compensated for this time spent working off the clock after the end of their scheduled shifts, despite performing compensable activities. This time was spent “clocked out”

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 3 of 5

and as such, Plaintiff and the aggrieved employees are not compensated for this time worked even though this time is compensable.

Additionally, Defendants failed to pay Plaintiff and all aggrieved employees for each and every hour worked, because Defendants engaged in a pattern and practice of “time shaving”. Specifically, Plaintiff and the aggrieved employees were subjected to timecard modifications that reduced their pay if they clocked in five (5) minutes or more before the start of the day or if they clocked out five (5) minutes or more after the end of the day. As such, Plaintiff and the aggrieved employees do not receive their correct compensation and are not paid for all hours worked.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a compliant manner.

Defendants failed to maintain a policy informing Plaintiff and all aggrieved employees of their rights associated with meal periods. In addition, Defendants have had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently interrupted because Defendants required Plaintiff and all aggrieved employees to watch videos occasionally during meal periods. Additionally, Defendants required Plaintiff and other aggrieved employees to return to work approximately 5-10 minutes prior to the end of their lunch breaks to help cover another employee. As such, when meal periods were provided, they were not a full thirty (30) minutes in length (short) and/or were interrupted consistently. Defendants also failed to accurately record meal periods for Plaintiff and other aggrieved employees.

Further, on the rare occasion if any that Defendants paid meal period premiums, Defendants have had a consistent policy of improperly paying meal period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, which held that premium payments that are owed if an employer fails to provide a compliant meal period or rest break must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. As such, Plaintiff is and aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§ 512 and 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 4 of 5

IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendants do not maintain accurate records of meal periods for Plaintiff and the other aggrieved employees. As such, Defendants have violated this statute and the Wage Order by failing to keep accurate records.

Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Instead, Defendants required Plaintiff and all aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period. Specifically, Plaintiff and the aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with compliant second ten (10) minute rest periods.

Moreover, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7. On the rare occasion if any that Defendants paid rest period premiums, Defendants have had a consistent policy of improperly paying rest period premiums at the base rate and not blended rate. Defendants’ policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court’s recent decision in *Ferra*. As such, Plaintiff is and aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code § 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

Labor Code § 2802 provides that an employer shall 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. Defendants have failed to reimburse Plaintiff and aggrieved employees the cost of using their personal vehicles and tools/equipment for business related purposes.

First, Defendants required that Plaintiff and the aggrieved employees use their own vehicles for work-related purposes. Specifically, Plaintiff and other aggrieved employees were required to use their personal vehicle to travel between Defendants’ jobsites, and this was necessary to perform their job duties. Defendants did not provide a car, truck, and/or other alternative means of transportation for Plaintiff and other aggrieved employees to use to complete their job duties. Additionally, Defendants required Plaintiff and the aggrieved employees to purchase their own tools and/or equipment such as cloth face masks, stethoscope, stethoscope case, and oxygen meter, and this was necessary to perform their job duties. These tools and/or equipment were not provided

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 5 of 5

by Defendants. Plaintiff and aggrieved employees were required to purchase these necessary tools and/or equipment. Lastly, Defendants did not provide any laundry services or reimbursement for laundry and maintenance of Plaintiff's and other aggrieved employees' company uniforms. As such, Defendants failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using their personal vehicles, purchasing tools/equipment, and uniform maintenance.

As a result of the claims alleged above, Defendants engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff are aggrieved employees within the meaning PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

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Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendants' employ. As such, Plaintiff are aggrieved employees and Defendants failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

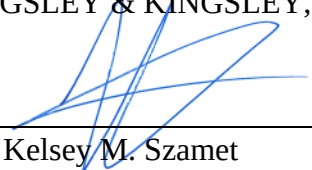
Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendants. Defendants refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

Further, under Labor Code § 2699.3(c)(2)(A), Defendants may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 510, 512, 1194, 1194.2, 1198.5, 1199, 2802 and IWC Wage Order No. 4-2001 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet
Liane Katzenstein Ly

LKL/km

Cc: 1. Davtyan Law Firm, Inc., 880 E. Broadway Glendale, CA 91205