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David W. Slayton,
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By Y. Tarasyuk, Deputy Clerk**

Attorneys for Plaintiffs
LESLY ARREGUIN and GIAVANNA PEÑA,
individually, and on behalf of Aggrieved
Employees pursuant to the California
Private Attorneys General Act,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LESLY ARREGUIN and GIAVANNA PEÑA, individually, and on behalf of Aggrieved Employees pursuant to the California Private Attorneys General Act, Plaintiffs, vs. INTERCARE THERAPY, INC.; and DOES 1 through 25, inclusive, Defendants.	Case No. 23STCV27972 **COMPLAINT FOR ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CAL. LABOR CODE §§ 2698 *ET SEQ.***

COMES NOW, Plaintiffs LESLY ARREGUIN and GIAVANNA PEÑA ("Plaintiff Arreguin" and "Plaintiff Peña" respectively; collectively, "Plaintiffs"), individually, and on behalf of other Aggrieved Employees pursuant to the California Labor Code Private Attorneys General Act, and alleges as follow:

INTRODUCTION

1. This is an enforcement action under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties on behalf of Plaintiffs, the State of California, and all individuals who worked for Defendants in the State of California as hourly-paid and/or non-exempt employees at any time during the period from September 10, 2022 to final judgment ("Aggrieved Employees").

2. Plaintiffs allege that Defendants hired Plaintiffs and Aggrieved Employees but failed to properly pay them all wages owed for all time worked (including minimum wages, straight time/regular rate wages, reporting time pay, and overtime wages), failed to provide them with all meal periods and rest periods and associated premium wages to which they were entitled, failed to timely pay them all wages due during their employment, failed to timely pay them all wages due upon termination of their employment, failed to provide them with accurate itemized wage statements, failed to maintain accurate payroll records, and failed to reimburse them for necessary business expenses.

3. As a result, Defendants violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission ("IWC") Wage Order. Through this action, Plaintiffs seek to recover all available remedies under PAGA, including, but not limited to, civil penalties and attorney's fees and costs.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

5. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or

otherwise intentionally availed themselves of the California market to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles. Moreover, many of the acts, events, and violations alleged herein relating to Plaintiffs occurred in the State of California, County of Los Angeles.

THE PARTIES

7. At all times herein mentioned, Plaintiff Arreguin was and is a resident of San Diego County in the State of California.

8. At all times herein mentioned, Plaintiff Peña was and is a resident of Los Angeles County in the State of California.

9. At all times herein mentioned, Defendant INTERCARE THERAPY, INC was and is, an employer is organized under the laws of the state of California, who does business in California, with locations throughout the state of California, and whose employees are engaged throughout Los Angeles County and the State of California, including at 4221 Wilshire Blvd, Suite 300, Los Angeles, CA 90010.

10. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

11. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein were performed by, or are attributable to INTERCARE THERAPY, INC., and/or DOES 1 through 25 (collectively "Defendants"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official policy.

12. At all relevant times, Defendants were the employers of Plaintiffs within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs to make each of said Defendants employers, and employers liable under the statutory provisions set forth herein.

13. Defendants had the authority to hire and terminate Plaintiffs and the Aggrieved Employees, to set work rules and conditions governing their employment, and to supervise their daily employment activities.

14. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs and the Aggrieved Employees' employment for them to be their joint employers.

15. Defendants directly hired and paid wages and benefits to Plaintiffs and the Aggrieved Employees.

16. Defendants continue to employ hourly paid and/or non-exempt employees within the State of California.

17. At all relevant times, Defendants, and each of them, ratified the acts and omissions complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

18. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

19. Plaintiff Arreguin worked for Defendants from approximately August 2022 through approximately December 2022 as a behavior interventionist. Defendants employed Plaintiff Arreguin based out of Defendants' location in Escondido, CA 92025. Plaintiff Arreguin performed various duties for Defendants including, among other things, providing follow ups for each patient, helping during session with program managers assistance, working on language and language skills with patients, helping with patient tantrums and other behavioral problems, assisting patients with other cognition issues, reading with patients, and watching over patients.

20. Plaintiff Peña worked for Defendants from approximately August 2022 through

approximately November 2022 as a behavior interventionist as well. Defendants employed Plaintiff Peña based out of their location in Los Angeles, CA. Plaintiff Peña performed various duties for Defendants including, among other things, duties as described above with Plaintiff Arreguin, as well as collecting data about patients and providing assistance to minor-age patients on individual bases, particularly in classroom settings.

21. Defendants hired Plaintiffs and the Aggrieved Employees but failed to properly pay them all minimum wages, regular rate/straight time wages, reporting time pay, or overtime compensation for all hours worked, failed to provide all meal and rest breaks to which they were entitled, failed to timely pay all wages during or upon termination of employment, failed to provide accurate wage statements, failed to keep accurate employment records, failed to reimburse necessary business-related expenses, and failed to adhere to other related protections afforded by the California Labor Code and applicable Industrial Welfare Commission Wage Order.

22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the Aggrieved Employees were entitled to the protections afforded by the Labor Code and the applicable Wage Order, yet as set forth in detail below, engaged in a systematic pattern and practice of violating the California Labor Code and the applicable Wage Order.

PAGA ALLEGATIONS

23. At all times set forth herein, PAGA was applicable to Plaintiffs employment by Defendants.

24. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

25. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person employed by the alleged violator and against whom one or more of the alleged violations

was committed.

26. Plaintiffs and the other employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) because they are current or former employees of Defendants against whom one of more of the alleged violations were committed.

27. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The Aggrieved Employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter "LWDA Response") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Response, or if the LWDA Response is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

28. On September 6, 2023, Plaintiffs provided notice by electronic submission to the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3. **A true and correct copy of the Employee's Notice is attached hereto as Exhibit A.**

29. Plaintiffs did not receive a LWDA Response within sixty-five calendar days of providing the Employee's Notice.

30. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of

California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, *ET SEQ.*

(Against All Defendants and DOES 1 – 25)

31. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

32. Plaintiffs bring this action on an individual basis and on a representative basis on behalf of other Aggrieved Employees and the State of California, in Plaintiffs capacities, each as as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

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

34. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

35. Plaintiffs and the other hourly-paid, non-exempt employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

36. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay minimum wages, regular rate/straight time wages, or reporting time pay, as set forth more fully below;

(b) Violation of California Labor Code sections 510 and 1198 for failure to pay overtime wages, as set forth more fully below;

(c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully below;

(d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay required meal period premiums, as set forth more fully below;

(e) Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully below;

(f) Violation of California Labor Code section 226.7 for failure to pay required rest period premiums, as set forth more fully below;

(g) Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiffs and Aggrieved Employees during employment, as set forth more fully before;

(h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;

(i) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiffs and Aggrieved Employees, as set forth more fully below;

(j) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiffs and Aggrieved Employees, as set forth more fully below; and

(k) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiffs and Aggrieved Employees for necessary business-related expenses, as set forth more fully below.

37. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for Plaintiffs, all Aggrieved Employees, and the State of California against Defendants

for violations of Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes.

38. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees.

39. Plaintiffs retained counsel to file this court action, and to assess and collect the civil penalties owed by Defendants. Plaintiffs therefore seek an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 210, 218.5, 2699(g)(1), and any other applicable statute.

Failure to Pay Minimum Wages

40. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

41. The IWC set the minimum wage for Plaintiffs and the Aggrieved Employees in the applicable IWC Wage Order.

42. Plaintiffs and the other Aggrieved Employees were frequently suffered or permitted to work "off-the-clock", such that they were not paid minimum wage for all hours worked.

43. Additionally, Plaintiffs and Aggrieved Employees were not paid reporting time where appropriate (*See Ward v. Tilly's, Inc*. (2019) 31 Cal.App.5th 1167, where the court held that reporting time pay is triggered, among other things, when the employee physically appears at the workplace at the shift's start). Plaintiffs and Aggrieved Employees were entitled to receive at least the minimum wage rate for all hours actually worked, in addition to report time pay depending on the length of the shift cancelled and/or shortened, when Plaintiffs and Aggrieved Employees showed up to Defendants' workplace and had their schedules changed or their shifts otherwise cancelled.

44. Such "off-the-clock" work that Plaintiffs and Aggrieved Employees were suffered and/or permitted to work, and for which Plaintiffs and class members did not receive minimum wage,

regular/straight time wages, or reporting time pay include *inter alia*:

i. Suffering or permitting Plaintiffs and Aggrieved Employees to perform work for the benefit of Defendants prior to clocking-in for their shift(s) including *inter alia:* waiting for patients (*e.g*., minor-age patients) to arrive before shifts frequently. Plaintiffs and Aggrieved Employees could wait anywhere from 30 minute to two hours and sometimes only paid based on the arrival of patients (*e.g*., with minor-age patients);

ii. Suffering or permitting Plaintiffs and Aggrieved Employees to perform work for the benefit of Defendants after clocking-out from their shift(s) including *inter alia:* Defendants required Plaintiffs and Aggrieved Employees to attend to patients after clock-out (*e.g*., helping with minor-age patients having medical or emotional crises until parents or other on-the-clock employees arrived to relieve Plaintiffs);

iii. Suffering or permitting Plaintiffs and Aggrieved Employees to perform off-the-clock work for the benefit of Defendants in between their shift(s) including *inter alia:* mandatory work-related classes such as sexual harassment classes, courses related employee handbooks and policies, courses related to job duty training, such as interventionist training, and school policies as it related to minor-age patients. Additionally, Plaintiffs and Aggrieved Employees had to respond to various off-the-clock work-related communications between shifts.

45. Moreover, Defendants had a policy, practice and procedure of rounding employee time such that Plaintiffs and Aggrieved Employees were systematically unpaid and/or underpaid for time worked over the course of their employment.

46. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs and the Aggrieved Employees for all hours they worked in violation of California Labor Code sections 1194, 1197, and 1197.1.

Failure to Pay Proper Overtime Wages

47. Labor Code section 510 and the applicable IWC Wage Order require Defendants to pay Plaintiffs and Aggrieved Employees who worked more than eight (8) hours in a day; more than forty (40) hours in a workweek, and/or seven (7) consecutive days, at the rate of one-and-a-half times their

regular rate for all such hours worked.

48. Labor Code section 510 and the applicable IWC Wage Order further requires Defendants to pay Plaintiffs and Aggrieved Employees who worked more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day, overtime compensation at a rate of two (2) times their regular rate of pay for all such hours worked.

49. During the relevant time period, Plaintiffs and Aggrieved Employees regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a workweek and/or for seven (7) or more consecutive days, but Defendants routinely failed to properly account for all such overtime hours and further failed to compensate Plaintiffs and Aggrieved Employees at the correct overtime rates.

50. Defendants' failure to pay correct overtime wages included, *inter alia*: (a) when the combined total of the off-the-clock work discussed *supra* and the on-the-clock work exceed the number of hours that trigger the payment of overtime wages under Labor Code sections 510 and/or the applicable Wage Order; (b) when Defendants intentionally, willfully and/or negligently mischaracterized overtime as straight time/regular rate or minimum wage, or else mischaracterized double time as time-and-a-half, straight time/regular rate, or minimum wage; (c) when Defendants assigned more work than could reasonably be completed in a workday or workweek to Plaintiffs and Aggrieved Employees, but refused to authorize the overtime necessary for them to complete the assigned work; and (d) when Defendants failed to include all required wages and renumeration when calculating the overtime rate.

51. Defendants' failure to pay Plaintiffs and Aggrieved Employees proper overtime compensation, as required by California law, violates the provisions of California Labor Code section 510, and is therefore unlawful.

Failure to Provide Meal Periods

52. California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

53. California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the

employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

54. California Labor Code section 512(a) further provides that an employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

55. The applicable IWC Wage Order sets forth the same requirements for meal breaks.

56. Plaintiffs and Aggrieved Employees who were scheduled to work for no longer than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

57. Plaintiffs and the Aggrieved Employees who were scheduled to work for more than six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

58. Plaintiffs and the Aggrieved Employees, who were scheduled to work for more than ten (10) hours but no longer then twelve (12) hours, and who did not waive their legally mandated meal periods by mutual consent, were required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.

59. Plaintiffs and the Aggrieved Employees, who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30) minutes.

60. Moreover, when meal breaks were provided, they were often interrupted, cut short, and/or Plaintiffs and the Aggrieved Employees were not relieved of all duties as required by law.

61. Such conduct violates California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order.

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Failure to Pay Compliant Meal Break Premiums

62. California Labor Code section 226.7 provides: "[i]f an employer fails to provide an employee a [meal] period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the [meal] period is not provided.

63. The applicable IWC Wage Order provides: "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

64. Defendants failed to pay Plaintiffs and Aggrieved Employees meal period premiums due in violation of California Labor Code sections 226.7 and 512 on each day when a complete, timely, and uninterrupted meal period of at least thirty (30) minutes was not provided.

65. Moreover, if and when meal break premiums were provided, Defendants failed to incorporate all nondiscretionary payments for work performed by Plaintiffs and the Aggrieved Employees in the regular rate of compensation for purposes of such premiums.

66. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code section 226.7.

Failure to Provide Rest Periods

67. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

68. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

69. Defendants required Plaintiffs and the Aggrieved Employees to work four (4) or more hours without authorizing or permitting a timely ten (10) minute uninterrupted rest period during

which time they were relieved of their duties per each four (4) hour period, or major fraction thereof worked.

70. Defendants' conduct therefore violates the applicable IWC Wage Orders and California Labor Code section 226.7.

Failure to Pay Rest Break Premiums

71. California Labor Code section 226.7 provides: "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission,… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the [rest] period is not provided.

72. The applicable IWC Wage Order provides: "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

73. Defendants failed to pay Plaintiffs and Aggrieved Employees required rest break premiums due when compliant rest periods were not provided.

74. Such conduct is in direct violation of California Labor Code section 226.7.

Failure to Timely Pay Wages During Employment

75. California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. It further provides all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

76. California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

77. During the relevant time period, Defendants intentionally and willfully failed to pay

Plaintiffs and the Aggrieved Employees all wages due to them, within any time period permissible under California Labor Code section 204, including wages for minimum wage compensation, regular rate/straight time compensation, reporting time pay, overtime wages, meal period premiums, rest period premiums, and all other wages, remuneration, pay, or monies as they became due, *e.g*., accrued gratuities, bonuses, commissions, etc.

78. Such conduct violates Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

79. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required to timely pay all earned and unpaid wages to an employee who is discharged.

80. California Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

81. California Labor Code section 202 mandates that if an employee quits, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

82. California Labor Code section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code sections 201 and 202, 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 therefore is commenced; but the wages shall not continue for more than thirty (30) days.

83. At the time that Plaintiffs and Aggrieved Employees' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiffs and the Aggrieved Employees all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, wages for minimum wage compensation, regular rate/straight time compensation, reporting time pay, overtime wages, meal period premiums, rest period premiums, and all other wages, remuneration, pay, or monies as they became due, *e.g*., accrued gratuities, bonuses, commissions, etc.

84. Such conduct violates Labor Code sections 201, 202 and 203.

Failure to Provide Compliant Wage Statements

85. California Labor Code section 226(a) provides that every employer shall furnish each of its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, 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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

86. Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to state all correct rates of pay, all hours worked, all meal period premium wages earned, and all rest period premium wages earned.

87. Such conduct violates Labor Code section 226.

Failure to Keep Requisite Payroll Records

88. California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

89. Defendants intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiffs and the Aggrieved Employees.

90. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiffs and the Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

91. More specifically, Plaintiffs and the Aggrieved Employees have been injured by

Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

92. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

93. Plaintiffs and the Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to the use of personal cell phones and related internet usage for work-related purposes, mileage reimbursement, clothing to comply with uniform requirements, or tools or implements for the classroom or for interfacing with minor-age patients.

94. Defendants intentionally and willfully failed to reimburse Plaintiffs and the Aggrieved Employees for all necessary business-related expenses and costs.

95. Such conduct violates Labor Code sections 2802.

<u>PRAYER FOR RELIEF</u>

Plaintiffs prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code and/or other applicable statutes;

2. For statutory attorneys' fees and costs pursuant to sections 210, 218.5 and 2699(g)(1) of California Labor Code; and

3. For such other and further relief as the Court may deem proper.

DATED: November 14, 2023

BLACKSTONE LAW, APC

By: ______________________________

Jonathan M. Genish, Esq.

Barbara DuVan-Clarke, Esq.
Alexander K. Spellman, Esq.
P.J. Van Ert, Esq.

Attorneys for Plaintiffs
LESLY ARREGUIN AND GIAVANNA PEÑA, individually, and on behalf of Aggrieved Employees pursuant to the California Private Attorneys General Act,

EXHIBIT A

BLACKSTONE LAW

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P.J. Van Ert
pjvanert@blackstonepc.com

September 6, 2023

PAGA Claim Notice Via Online Electronic Submission
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

RE: ***Lesly Arreguin v. Intercare Therapy, Inc.***
Giavanna Peña v. Intercare Therapy, Inc.

Dear Representative:

This office represents Lesly Arreguin and Giavanna Peña ("Claimants") with respect to their claims under the California Labor Code against Intercare Therapy, Inc. (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as "Employers"). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimants Lesly Arreguin and Giavanna Peña starting from approximately August 2022 to November and December 2022, respectively, as non-exempt, hourly-paid employees. During this employment with Employers, both claimants were employed as Behavior Interventionists in the Los Angeles area.

Claimants intend to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*. ("PAGA"). Claimants are seeking penalties on behalf of themselves and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period ("Aggrieved Employees"). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimants' notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California's wage and hour laws during Claimants' employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial

Welfare Commission Wage Orders ("IWC Wage Orders"). The claims made on behalf of Claimants and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimants and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Orders require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Orders further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimants and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, providing assistance to Employers' clients/patients in various forms before clock-in, while Claimants and Aggrieved Employees were clocked-out for meal periods, or after Claimants and Aggrieved Employees had clocked out from their shift. Such routine assistance to the clients/patients of Employers included fielding calls, other communications, and transport between different locations of clients/patients. Employers failed to compensate Claimants and other Aggrieved Employees for any of this off-the-clock work, in violation of California law. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimants and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimants and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimants and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimants and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimants and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Orders and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimants and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimants and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimants and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5^{th}) hour of work, and/or to take their second meal periods after their tenth (10^{th}) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimants and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes rest for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimants and other Aggrieved Employees to take legally compliant 10-minute rest periods. Employers required Claimants and other Aggrieved Employees to work through rest periods. Claimants and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimants and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.,* 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimants and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimants and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia,* overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, 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, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimants and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimants and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimants and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimants and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 1198.5 and 1174(d).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The IWC Wage Orders require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimants and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of routine items for events held for Employers or clients/patients of Employer (e.g., minor party supplies such as balloons), additional specific attire as requested by Employers, the usage of personal cell phones and internet usage related thereto for work-related purposes, and mileage reimbursement for work-related purposes.

Accordingly, Employers violated the IWC Orders and California Labor Code sections 2800 and 2802. Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc*. (2018) 25 Cal.App.5th 745 ("*Huff*"), as Aggrieved Employees, Claimants have standing, and intend, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimants, as "aggrieved" employees affected by at least one Labor Code violation may, and hereby do, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimants' intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Patricia J. Van Ert

P.J. Van Ert, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

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