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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Isaiah Irizarry, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JESSICA GETTLE, individually and on behalf
of all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

MILLENNIUM HEALTH, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00016334-CU-OE-CTL

Hon. Carolyn Caietti
Dept. 70

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff JESSICA GETTLE, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 MILLENNIUM HEALTH, LLC and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this class and representative action against Defendants for systemic
8 violations of the California Labor Code and IWC Wage Orders which deprived Plaintiff and other
9 similarly-situated employees of all wages and premiums owed, the opportunity to take all fully-
10 compliant meal and rest periods to which they were entitled, all reimbursements for necessary business
11 expenses, accurate itemized wage statements, and waiting time penalties.

12 2. Plaintiff also brings an individual claim for retaliation. After Plaintiff made bona fide
13 complaints about the working conditions Defendants maintained, including a complaint to the
14 Occupational Safety and Health Administration for maintaining an unsafe workplace, Defendants
15 engaged in retaliatory conduct against Plaintiff that culminated in her termination.

16 3. Therefore, Plaintiff seeks damages on behalf of herself and all those similarly situated
17 for all compensatory and punitive damages, including interest and attorneys’ fees and costs, injunction
18 relief, and restitution available to her and similarly-situated employees under the law.

19 **JURISDICTION & VENUE**

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

22 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
23 the Superior Court.

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

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

PARTIES

A. Plaintiff Jessica Gettle

8. Plaintiff Gettle is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2, 2021 to December 8, 2023. Plaintiff worked as a Lab Assistant.

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

B. Defendants

10. Defendant Millennium Health, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

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

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

13. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and

are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

CLASS ALLEGATIONS

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

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

16. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

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

GENERAL ALLEGATIONS

19. Defendants failed to pay Plaintiff and similarly-situated employees overtime wages and the lawful rate of pay for overtime hours worked because Defendants failed to include all qualifying forms of compensation in Plaintiff and other aggrieved employees' regular rate of pay for overtime pay.

20. For example, in the pay period between May 8, 2023 and May 21, 2023, Plaintiff earned a bonus of \$200 and recorded 4.15 overtime hours in the same pay period. However, Defendants failed to factor her bonus into her overtime rate properly. *Fig. 1.*

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 5/8/2023	Pay Date 5/26/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle [REDACTED]	Period Ending Date 5/21/2023	WGPS Advance Pay Date	File # 009001	Number 00210051	
Gross Pay					\$ 1,848.78
Regular	Rate: 18.8900		Hours: 63.80		\$ 1,205.18
Overtime	Rate: 29.5108		Hours: 4.15		\$ 122.47
CA Meal Pnlty (field 3)	Rate: 18.8900		Hours: 1.00		\$ 18.89
Vacation (field 3)	Rate: 18.8900		Hours: 16.00		\$ 302.24
Bonus Pymt (field 4)					\$ 200.00
Total Hours Worked: 67.95					

Fig. 1, wage statement for pay period May 8, 2023, to May 21, 2023.

21. Similarly, Defendants failed to properly incorporate shift differentials, “Award” pay, and other forms of non-discretionary pay into Plaintiff and other class members’ regular rate of pay for overtime purposes.

22. Defendants failed to comply with California’s paid sick leave laws with respect to the class. Defendants failed to pay sick leave wages at the proper rate of pay. For example, in March 2023, Plaintiff earned a bonus payment of \$847.98. Fig. 2.

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 3/13/2023	Pay Date 3/23/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle [REDACTED]	Period Ending Date 3/19/2023	WGPS Advance Pay Date	File # 009001	Number 00120036	Worked In Dept 000201
Gross Pay					\$ 847.98
Bonus Pymt (field 4)					\$ 847.98
Basis of Pay: HOURLY					

Fig. 2, wage statement for pay period Mar 13, 2023 to Mar 19, 2023.

23. A month later in April 2023, Plaintiff used eight sick leave hours. However, Defendants only paid Plaintiff at her base rate of pay for sick leave, failing to incorporate her bonus into her sick leave rate even though she used her sick leave within 90 days of earning the bonus. Fig. 3.

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 4/10/2023	Pay Date 4/28/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle [REDACTED]	Period Ending Date 4/23/2023	WGPS Advance Pay Date	File # 009001	Number 00174054	Worked In Dept 000201
Gross Pay					\$ 1,626.05
Regular	Rate: 18.8900		Hours: 71.93		\$ 1,358.76
Overtime	Rate: 28.3350		Hours: 4.10		\$ 116.17
Sick (field 3)	Rate: 18.8900		Hours: 8.00		\$ 151.12
Total Hours Worked: 76.03					

Fig. 3, wage statement for period Apr 10, 2023 to Apr 23, 2023.

24. Defendants systematically underpaid class members sick leave wages by failing to include all qualifying forms of remuneration into their rate of pay for sick leave purposes.

25. Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Just as they failed to incorporate all non-discretionary bonuses, shift differentials, and other forms of qualifying remuneration into class members' rate of pay for overtime and sick leave, Defendants also failed to incorporate all qualifying remuneration into class members' "final rate" for the purposes of paying vacation wages.

26. Plaintiff and other class members routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the demands of the job and as a result of scheduling issues. For example, managers often had employees stay for meetings during the times allotted for their meal periods.

27. Nonetheless, Defendants maintained a pattern of avoiding and failing to pay meal premiums to Plaintiff and other class members when they did not have the opportunity to take legally compliant meal periods.

28. To the extent that Defendants paid meal period premiums, Defendant failed to pay Plaintiff and other class members a meal period premium at the "regular rate of compensation" because premiums paid did not factor in all forms of remuneration including commissions, bonuses, and/or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate.

1 29. For example, the wage statement in *Fig. 1* above shows that Plaintiff earned a bonus in
2 the same pay period that she received a meal period premium. However, Defendants did not pay the
3 meal period premium at Plaintiff's regular rate of pay, factoring in the bonus. Rather, Defendants paid
4 the premium at Plaintiff's base rate of pay.

5 30. Due to scheduling issues and the volume of work assigned, Plaintiff and other class
6 members regularly missed their rest periods. However, Defendants failed to pay aggrieved employees
7 all premiums owed in lieu of compliant rest periods.

8 31. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
9 Code section 226.7 because such premiums were not paid at the correct regular rate of compensation
10 to the class, which would have factored all forms of qualifying compensation. As discussed
11 throughout this complaint, Defendants had a non-compliant policy and practice of miscalculating and
12 underpaying the regular rate of pay applicable to overtime and other premiums.

13 32. Because Defendants failed to pay all wages and premiums in each pay period in which
14 such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b
15 (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by
16 failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within
17 seven calendar days of the close of the payroll period, as a result of the policies and practices set forth
18 in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, meal, rest, sick leave,
19 and other earnings within seven days of the close of each pay period.

20 33. Defendants failed to pay all wages and premiums owed to aggrieved employees during
21 their employment as set forth in this notice, and failed to timely pay those amounts to departing
22 employees upon separation of employment. Defendants have also failed to pay waiting time penalties
23 for the late payments, which remain outstanding.

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

1 violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements
2 each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as
3 Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead
4 depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

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

14 37. Defendants required Plaintiff and other class members to incur costs for work-related
15 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and other
16 class members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter
17 of policy and practice. For example, Plaintiff and other class members had to use their personal phones
18 to maintain contact with each other and management in the discharge of their duties but Defendants
19 did not reimburse them for the use of their phones.

20 38. Defendants maintained an unsafe workplace in violation of applicable California law.
21 For example, Defendants used bakery trays to store liquid specimens and had Plaintiff and other
22 aggrieved employees carry the trays loaded with specimens during transport. This created a danger
23 for Plaintiff and other aggrieved employees due to the heavy weight of the trays when they were loaded
24 with specimens, as well as the precarious balance of having many individual specimens on the trays.
25 During Plaintiff's employment with Defendants, multiple people, including Plaintiff herself, were
26 injured due to Defendants' unsafe working conditions.

27 39. After Plaintiff suffered a workplace injury in June 2023, she made a report to the
28 Occupational Safety and Health Administration about unsafe conditions at Defendants' facility.

1 Thereafter, Defendants began a campaign of discriminatory, retaliatory treatment towards Plaintiff,
2 including pretextual disciplinary write-ups which barred her from advancing in the company, and
3 ultimately ended in her termination.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **Violation of Labor Code §§ 510 and 1194**

7 40. All outside paragraphs of this Complaint are incorporated into this section.

8 41. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
10 wages all overtime hours worked, and which further provide a private right of action for an employer's
11 failure to pay all overtime compensation for overtime hours worked.

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

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

22 **SECOND CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **Violation of Labor Code §§ 226.7 and 512**

25 44. All outside paragraphs of this Complaint are incorporated into this section.

26 45. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
28 meal period premiums in lieu thereof), and which further provide a private right of action for an

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

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

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

14 48. Plaintiff and class members are entitled to recover the full amount of the meal period
15 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
16 the extent permitted by law.

17 **THIRD CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7 and 516**

20 49. All outside paragraphs of this Complaint are incorporated into this section.

21 50. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

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

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

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

10 58. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
11 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
12 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
13 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
14 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
15 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
16 to September 30, 2022, and may be extended thereafter.

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

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

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

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

28 (III) The state minimum wage.

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

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

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

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

9 **FIFTH CAUSE OF ACTION**

10 **UNPAID VACATION WAGES**

11 **Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198**

12 64. All outside paragraphs of this Complaint are incorporated into this section.

13 65. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor
14 Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be
15 timely paid all vested vacation wages at their final rate of pay upon separation of employment, and
16 which further provide a private right of action for an employer's timely failure to pay all vacation
17 compensation upon termination.

18 66. Defendant offered Plaintiff and class members an employment contract or policy
19 providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued
20 vacation and/or PTO pursuant to the contract or policy.

21 67. Upon separation of Plaintiff and class members, Defendants willfully failed in their
22 affirmative obligation to timely pay Plaintiff and class members all accrued but unused vacation at
23 their final rate during their employment with Defendants, in violation of Labor Code sections 201(a),
24 202(a), and 227.3.

25 68. Plaintiff and class members are entitled to recover the full amount of the accrued
26 vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and
27 costs to the extent permitted by law.

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

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

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

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

79. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

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

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

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 82. All outside paragraphs of this Complaint are incorporated into this section.

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

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

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 85. All outside paragraphs of this Complaint are incorporated into this section.

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

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

26 88. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
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1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

7 90. Plaintiff and class members are entitled to injunctive relief against Defendants,
8 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
9 an ownership interest and to prevent future damage and the public interest under Business and
10 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
11 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure §
12 1021.5.

13 **ELEVENTH CAUSE OF ACTION**

14 **RETALIATION**

15 **Violation of Labor Code §§ 98.6, 1102.5, and 6310.**

16 91. All outside paragraphs of this Complaint are incorporated into this section.

17 92. Plaintiff brings this cause of action in her individual capacity.

18 93. Defendants violated Labor Code sections 98.6, 1102.5, and 6310 by retaliating against
19 Plaintiff for making complaints about workplace conditions.

20 94. Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any
21 adverse action against any employee or applicant for employment because the employee or applicant
22 engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k)
23 of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the
24 employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused
25 to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the
26 Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because
27 the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to
28

1 testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant
2 for employment on behalf of themselves or others of any rights afforded them.”

3 95. Section 1102.5 provides that no employer, or person acting on behalf of an employer,
4 shall “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing
5 information to a government or law enforcement agency, to a person with authority over the employee,
6 or to another employee who has authority to investigate, discover, or correct the violation or
7 noncompliance, or from providing information to, or testifying before, any public body conducting an
8 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information
9 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state,
10 or federal rule or regulation, regardless of whether disclosing the information is part of the employee's
11 job duties.”

12 96. Section 6310 provides that no employer “shall discharge or in any manner discriminate
13 against any employee because the employee has done any of the following: (1) Made any oral or
14 written complaint to the division, other governmental agencies having statutory responsibility for or
15 assisting the division with reference to employee safety or health, their employer, or their
16 representative; (2) Instituted or caused to be instituted any proceeding under or relating to their rights
17 or has testified or is about to testify in the proceeding or because of the exercise by the employee on
18 behalf of themselves, or others of any rights afforded to them; (3) Participated in an occupational
19 health and safety committee established pursuant to Section 6401.7; (4) Reported a work-related
20 fatality, injury, or illness, requested access to occupational injury or illness reports and records that
21 are made or maintained pursuant to Subchapter 1.”

22 97. As described above, Defendants engaged in retaliation against Plaintiff for making
23 bona fide complaints about the workplace conditions that Defendants maintained.

24 98. As such, Plaintiff seeks all compensatory and punitive damages, as well as injunctive
25 and equitable relief available to her under the law.
26
27
28

1 **TWELFTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

5 99. All outside paragraphs of this Complaint are incorporated into this section.

6 100. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

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

12 101. Plaintiff reserves the right to amend, supplement, or add to this description of the
13 aggrieved employees, according to proof.

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

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

24 104. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.”

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

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

8 107. On or about **March 27, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
9 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
10 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
11 violations.

12 108. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
13 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
14 forth herein (the “PAGA notice”).

15 109. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
16 written PAGA notice from the LWDA.

17 110. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
18 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
19 providing a description of any actions taken to cure the alleged violations.

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

24 112. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
25 Complaint, Defendants committed the following violations and are liable for all corresponding civil
26 penalties:

- 27 a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
28 Orders.

- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- k. ***Unsafe Workplace.*** Violation of Labor Code §§ 6400, 6317, 6423.
- l. ***Retaliation.*** Violation of Labor Code §§ 98.6, 1102.5, and 6310.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;

- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- o. For such other relief the Court deems just and proper.

Dated: June 11, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Lauren N. Vega

Mariela R. Romo

Attorneys for Plaintiff Jessica Gettle

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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March 27, 2024

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

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

Millennium Health, LLC
16981 Via Tazon
San Diego, CA 92127

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

Dear LWDA Officer and Company Representatives:

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

MILLENNIUM HEALTH, LLC;

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period as a non-exempt employee in the position of Lab Assistant from about August 2, 2021 to December 8, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

Unpaid Overtime

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked because Defendants failed to include all qualifying forms of compensation in Plaintiff and other aggrieved employees’ regular rate of pay for overtime pay. For example, in the pay period between May 8, 2023 and May 21, 2023, Plaintiff earned a bonus of \$200 and recorded 4.15 overtime hours in the same pay period. However, Defendants failed to factor her bonus into her overtime rate properly. *Fig. 1*.

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 5/8/2023	Pay Date 5/26/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle [REDACTED]	Period Ending Date 5/21/2023	WGPS Advance Pay Date	File # 009001	Number 00210051	
Gross Pay					\$ 1,848.78
Regular	Rate: 18.8900		Hours: 63.80		\$ 1,205.18
Overtime	Rate: 29.5108		Hours: 4.15		\$ 122.47
CA Meal Pnlty (field 3)	Rate: 18.8900		Hours: 1.00		\$ 18.89
Vacation (field 3)	Rate: 18.8900		Hours: 16.00		\$ 302.24
Bonus Pymt (field 4)					\$ 200.00
Total Hours Worked: 67.95					

Fig. 1, wage statement for pay period May 8, 2023 to May 21, 2023.

Similarly, Defendants failed to properly incorporate shift differentials, “Award” pay, and other forms of non-discretionary pay into Plaintiff and other aggrieved employees’ regular rate of pay for overtime purposes.

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

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants failed to pay sick leave at the proper rate of pay. For example, in March 2023, Plaintiff earned a bonus payment of \$847.98. *Fig. 2.*

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 3/13/2023	Pay Date 3/23/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle [REDACTED]	Period Ending Date 3/19/2023	WGPS Advance Pay Date	File # 009001	Number 00120036	Worked In Dept 000201
Gross Pay					\$ 847.98
Bonus Pymt (field 4)					\$ 847.98
Basis of Pay: HOURLY					

Fig. 2, wage statement for pay period Mar 13, 2023 to Mar 19, 2023.

A month later in April 2023, Plaintiff used eight sick leave hours. However, Defendants only paid Plaintiff at her base rate of pay for sick leave, failing to incorporate her bonus into her sick leave rate even though she used her sick leave within 90 days of earning the bonus. *Fig. 3.*

Millennium Health, LLC 16981 Via Tazon San Diego, CA 92127	Period Beginning Date 4/10/2023	Pay Date 4/28/2023	Co. IDO	Clock	Home Dept 000201
Jessica Gettle 	Period Ending Date 4/23/2023	WGPS Advance Pay Date	File # 009001	Number 00174054	Worked In Dept 000201
Gross Pay					\$ 1,626.05
Regular	Rate: 18.8900		Hours: 71.93		\$ 1,358.76
Overtime	Rate: 28.3350		Hours: 4.10		\$ 116.17
Sick (field 3)	Rate: 18.8900		Hours: 8.00		\$ 151.12
Total Hours Worked: 76.03					

Fig. 3, wage statement for period Apr 10, 2023 to Apr 23, 2023.

Defendants systematically underpaid aggrieved employees sick leave wages by failing to include all qualifying forms of remuneration into their rate of pay for sick leave purposes.

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

Unpaid Vacation Wages **Violation of Labor Code § 227.3**

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Just as they failed to incorporate all non-discretionary bonuses, shift differentials, and other forms of qualifying remuneration into aggrieved employees’ rate of pay for overtime and sick leave, Defendants also failed to incorporate all qualifying remuneration into aggrieved employees’ “final rate” for the purposes of paying vacation wages.

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

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

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

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

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the demands of the job and as a result of scheduling issues. For example, managers often had employees stay for meetings during the times allotted for their meal periods.

Nonetheless, Defendants maintained a pattern of avoiding and failing to pay meal premiums to Plaintiff and, on information and belief, other aggrieved employees when they did not have the opportunity to take legally compliant meal periods.

To the extent that Defendants paid meal period premiums, Defendant failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because premiums paid did not factor in all forms of remuneration including commissions, bonuses, and/or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate. For example, the wage statement in *Fig. 1* above shows that Plaintiff earned a bonus in the same pay period that she received a meal period premium. However, Defendants did not pay the meal period premium at Plaintiff’s regular rate of pay, factoring in the bonus. Rather, Defendants paid the premium at Plaintiff’s base rate of pay.

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

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

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

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

Due to scheduling issues and the volume of work assigned, Plaintiff and other aggrieved employees regularly missed their rest periods. However, Defendants failed to pay aggrieved employees all premiums owed in lieu of compliant rest periods.

To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation to the aggrieved employees, which would have factored in commissions and other forms of compensation. As discussed throughout this notice, Defendants had a non-compliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums.

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

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

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

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

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

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

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

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

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

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants have also failed to pay waiting time penalties for the late payments, which remain outstanding.

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

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

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

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

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

statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

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

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

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

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

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

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. For example, Plaintiff and other aggrieved employees had to use their personal phones to maintain contact with each other and management in the discharge of their duties but Defendants did not reimburse them for the use of their phones.

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

Unsafe Workplace
Violation of Labor Code §§ 6400, 6317, 6423

Under California Labor Code section 6400, “every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.” For violations of Labor Code sections 6400 et seq., Labor Code section 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in section 6423, which states the following: “[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates

any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).”

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

Defendants maintained an unsafe workplace in violation of applicable California law. For example, Defendants used bakery trays and sheet pan racks to store liquid specimens and had Plaintiff and other aggrieved employees carry the trays loaded with specimens during transport, as well as sliding the trays onto and off of the sheet pan racks. This created a danger for Plaintiff and other aggrieved employees due to the heavy weight of the trays when they were loaded with specimens, as well as the precarious balance of having many individual specimens on the trays. During Plaintiff’s employment with Defendants, multiple people, including Plaintiff herself, were injured due to Defendants’ unsafe working conditions.

As described above, the Company failed to provide Claimant a safe workplace. Claimant will seek all available remedies for these violations on behalf of herself and other aggrieved employees.

Retaliation

Violation of Labor Code §§ 98.6, 1102.5, and 6310

Defendants violated Labor Code sections 98.6 and 1102.5 by retaliating against Plaintiff for making complaints about workplace conditions.

Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”

Section 1102.5 provides that no employer, or person acting on behalf of an employer, shall “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority

over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.”

Section 6310 provides that no employer “shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1.”

After Plaintiff suffered a workplace injury in June 2023, she made a report to the Division of Occupational Safety and Health about unsafe conditions at Defendants’ facility. Thereafter, Defendants began a campaign of discriminatory, retaliatory treatment towards Plaintiff, including pretextual disciplinary write-ups which barred her from advancing in the company, and ultimately ended in her termination.

Sections 98.6 and 1102.5 each provide for \$10,000 in civil penalties in addition to whatever other remedies Plaintiff may recover. Labor Code §§ 98.6(b)(3), 1102.5(e)(1). Plaintiff will seek recovery of civil penalties under each section as well as other compensatory, statutory, and punitive damages.

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

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

- LITIGATION HOLD NOTICE -

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

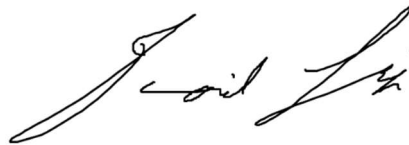
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Lin", with a stylized flourish at the end.

David X. Lin

Cc Plaintiff Jessica Gettle

Tarin Green
Human Resources Business Partner
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