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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/28/2024 at 09:53:19 AM

Clerk of the Superior Court
By Yuan Chiang, Deputy Clerk

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

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

Plaintiffs,

vs.

SANTA MARIA HEALTHCARE, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00024758-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff MELINDA CONDE, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants SANTA MARIA
4 HEALTHCARE, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. This is a representative action complaint brought under the California Private Attorneys
8 General Act (Labor Code sections 2968 *et seq.*)

9 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to include
10 shift differentials and all other forms of non-excludable remuneration into the regular rate of pay
11 calculations.

12 3. Defendants failed to pay all regular and overtime hours due to requiring off-the-clock
13 work.

14 4. Defendants failed to provide, authorize, and/or permit the aggrieved employees to take
15 all meal and rest periods to which they were entitled.

16 5. As set forth in the PAGA notice, Defendants failed to maintain lawful meal and rest
17 periods, regular, overtime, and paid sick leave policies. Defendants’ employment policies, practices,
18 and payroll administration systems enabled and facilitated these violations on a company-wide basis
19 with respect to the aggrieved employees.

20 **JURISDICTION & VENUE**

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

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

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

9. 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 Melinda Conde

10. Plaintiff Conde is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2023 to present. Plaintiff worked as a Certified Nursing Assistant.

11. 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

12. Defendant Santa Maria Healthcare, Inc. is a Nevada corporation that maintains operations and conducts business throughout the State of California, including in this county. Defendant does business as Villa Maria Post Acute.

13. 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.

14. 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.

15. 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.

16. 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.

GENERAL ALLEGATIONS

17. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

18. First, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work, resulting in unpaid minimum wages.

19. Specifically, Defendants required Plaintiff and the aggrieved employees to complete approximately 40 training videos followed by a 10-question quiz.

20. As a result, of understaffing and the high demands of the job, Defendants failed to give Plaintiff and the aggrieved employees adequate time to complete this mandatory training during their shift, forcing them to complete it while they were off-the-clock. Plaintiff and the aggrieved employees were not compensated for this time.

21. Second, Defendants failed to pay Plaintiff and the aggrieved employees all hours worked by forcing them to add 30-minute unpaid meal periods to their time records, regardless of their ability to actually take one.

22. Specifically, Defendants routinely required Plaintiff and the other aggrieved employees to sign a Time Adjustment Request Form ("TARF") stating they experienced compliant meal periods, even when none were taken.

23. Plaintiff and the aggrieved employees were deprived of regular wages each time Defendant altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had continued working.

24. Defendants additionally failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

1 25. First, to the extent Plaintiff and the aggrieved employees completed off-the-clock work
2 due to unpaid training or working through their meal periods, over 8 hours in a day or 40 hours in a
3 week, this resulted in unpaid overtime.

4 26. Second, Defendants failed to pay overtime at the regular rate of pay.

5 27. Plaintiff and the aggrieved employees earned shift differentials for overnight shifts,
6 which Defendants failed to include in the regular rate of pay. Instead, Defendants paid overtime at a
7 deficient rate.

8 28. Similarly, Defendants failed to factor these additional forms of non-discretionary
9 compensation into Plaintiff's and the aggrieved employees' regular rate of pay with respect to paid
10 sick leave.

11 29. An illustrative example of this violation is shown on Plaintiff's wage statement with
12 the pay date of 10/25/2023. In this pay period, Plaintiff earned a shift differential of \$19.00 per hour
13 and 16 hours of paid sick leave, however, Plaintiff's sick leave was improperly paid at Plaintiff's base
14 rate of \$18.00 per hour.

15 30. Plaintiff and the aggrieved employees experienced missed, late, short, and interrupted
16 meal periods in order to keep up with the high demands of the job and understaffing.

17 31. Defendants engaged in a pattern and practice of actively avoiding paying all owed meal
18 period premiums by forcing Plaintiff and the aggrieved employees to sign TARFs which added meal
19 periods even when they were not taken.

20 32. Each time Plaintiff and the aggrieved employees were forced to sign a TARF when
21 they did not experience a compliant meal period, this resulted in unpaid meal period premiums.

22 33. To the extent Defendant paid any meal period premiums, Defendant underpaid these
23 premiums by failing to properly factor all forms of non-excludable additional remuneration into the
24 regular rate of pay.

25 34. For the same reasons Plaintiff and the aggrieved employees experienced non-compliant
26 meal periods, they also experienced non-compliant rest periods.

27 35. For example, Plaintiff routinely worked the overnight shift, where only 4 CNA's were
28 scheduled, making each of them responsible for about 20 patients, and rarely able to take a rest period.

1 36. Defendants further failed to pay rest period premiums as required by Labor Code
2 section 226.7 each time Plaintiff and the aggrieved employees experienced a non-compliant rest
3 period.

4 37. To the extent Defendant paid any rest period premiums in the same pay period that the
5 aggrieved employees earned shift differential or other forms of non-excludable remuneration,
6 Defendant underpaid these premiums by failing to properly factor all forms of non-discretionary
7 income into the regular rate of pay.

8 38. Defendants failed to reimburse Plaintiff and the aggrieved employees for work-related
9 expenses.

10 39. Specifically, Defendants required Plaintiff and the aggrieved employees to use their
11 cell phones for work-related purposes, including completing online training.

12 40. Because of these violations, Defendants failed to provide accurate, itemized wage
13 statements to employees that included accurate gross or net wages earned as employees earned
14 overtime, sick leave, and premiums which were not paid at the lawful rate due to the regular rate
15 violations as well as the off-the-clock violations.

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

21 42. Defendants violated Labor Code section 226(a)(2) by failing to accurately list
22 employees' "total hours worked," as the wage statements did not accurately include the
23 uncompensated time Plaintiff and other aggrieved employees worked due to Defendants' policy and
24 practice of editing time records to reflect meal periods that were not taken.

25 43. An illustrative example of this violation is shown on Plaintiff's wage statement with a
26 pay date of 12/8/2023. Here, Defendants list a payment titled "Details Not Displayed" with an amount
27 of \$1,666.76. Defendants failed to list the reason for this payment and the hourly rate in violation of
28 the Labor Code.

1 44. These violations create derivative liability for failure to pay all wages owed each
2 payday or upon separation of employment.

3 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

14 47. Plaintiff reserves the right to amend, supplement, or add to this description of the
15 aggrieved employees, according to proof.

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

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

26 50. Labor Code section 2699(f) provides: “For all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
28 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

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

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

53. On or about **March 22, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 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.

59. 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 recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;

- 1 d. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
6 permitted by law, including (without limitation) under Labor Code § 2699, and Code
7 of Civil Procedure section 1021.5; and
8 g. For such other relief the Court deems just and proper.

9
10 Dated: May 28, 2024

Ferraro Vega Employment Lawyers, Inc.

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12 Nicholas J. Ferraro

13 *Attorneys for Plaintiff Melinda Conde*
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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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March 22, 2024

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

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

Santa Maria Healthcare, Inc.
425 Barcellus Avenue
Santa Maria, CA 93454

- 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 **MELINDA CONDE** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendant”:

SANTA MARIA HEALTHCARE, INC.
dba VILLA MARIA POST ACUTE

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 in the position of Certified Nursing Assistant (“CNA”) from about May 2023 to present. 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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” 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 California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendant failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

First, Defendant engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock, resulting in unpaid minimum wages.

Specifically, Defendant required Plaintiff and the aggrieved employees to complete various online trainings. These trainings consisted of roughly 40 videos which on average were an hour and a half long followed by a 10-question quiz. As a result of understaffing and the high demands of the job, Defendants failed to give Plaintiff and the aggrieved employees were not adequate time to complete the mandatory training during their scheduled shift and were forced to complete them while they were off-the-clock. Defendants failed to compensate Plaintiff and the aggrieved employees for the time spent completing these trainings while off-the-clock, resulting in unpaid minimum wages.

Second, Defendant further failed to pay Plaintiff and the aggrieved employees for all hours worked, due to their unlawful policy and practice requiring them to add meal periods to their time records regardless of their ability to take them.

Specifically, Defendant routinely forced Plaintiff to sign a Time Adjustment Request Form (“TARF”) stating that she was able to take a meal period even when one was not taken. Plaintiff was told that if she did not sign the TARF, she would not be paid for that day. On information and belief, this was a common policy and practice. Plaintiff and the aggrieved employees were deprived of minimum wages each time Defendant altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had continued working.

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), 1197.1 (\$100/\$250), 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 Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendant 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.

Defendant failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as discussed in the “Unpaid Hours Worked” section above, Plaintiff and the aggrieved employees were required to complete training videos and quizzes while off-the-clock. To the extent the training resulted in work over eight (8) hours in a day or forty (40) hours in a week, this resulted in unpaid overtime hours.

Second, as discussed in the “Unpaid Hours Worked” section above, Defendant’s had an unlawful policy and practice of editing Plaintiff and other aggrieved employees time records to make it appear as if a compliant 30-minute meal period regardless of their ability to take one, resulting in off the clock work. To the extent, this practice resulted in in work over eight (8) hours in a day or forty (40) hours in a week, this resulted in unpaid overtime hours.

Third, Defendant failed to pay overtime at the regular rate of pay. Plaintiff and the aggrieved employees earned shift differentials for overnight shifts, which Defendant failed to include in the regular rate of pay. When Plaintiff and the aggrieved employees earned shift differentials

or other forms of non-excludable remuneration in the same pay period they earned overtime, Defendant failed to properly pay overtime at the regular rate of pay. Instead, Defendant paid overtime at a deficient rate, violating the Labor Code accordingly.

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**

Defendant 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.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. As illustrated on the wage statement below, Defendant failed to pay paid sick leave at the regular rate of pay. Plaintiff and the aggrieved employees earned shift differentials which Defendant failed to factor in the regular rate of pay with respect to paid sick leave.

Villa Maria Post Acute 425 Barcelus Avenue Santa Maria, CA 93454						
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Melinda Conde	Villa Maria Post Acute	123755045	10/01/2023	10/15/2023	10/25/2023	
	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	57.42	1,383.50	9.98	141.75	0.25	1,231.52
YTD	858.47	17,062.61	49.90	2,224.45	0.25	14,788.01
Earnings				Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD Amount	YTD
DT Premium		0		0.366666	6.97	1,054.79
Double Time		0		0.366666	6.97	246.88
OT Premium	10/08/2023 - 10/14/2023	0.483333	9.5	4.59	34.216677	324.88
Overtime	10/08/2023 - 10/14/2023	0.483333	19	9.18	34.216677	846.47
Orientation		0		103.066666	1,950.26	
Regular Time	10/01/2023 - 10/07/2023	17.233333	19	327.43		
Regular Time	10/08/2023 - 10/14/2023	39.7	19	754.30	720.816668	13,695.06
Sick	10/01/2023 - 10/15/2023	16	18	288.00	24	432.00
Earnings				1,383.50	17,062.61	
				Employee Taxes		
				Amount	YTD	
				85.16	1,054.79	
				19.91	246.88	
				0.00	404.45	
				24.32	365.42	
				12.36	153.11	
				141.75	2,224.45	

Extract from Plaintiff's Wage Statement with a Pay Date of 10/25/2023

Here, Plaintiff earned a shift differential when she worked overnight shifts amounting to \$19.00/hour while her regular base rate was only \$18.00/hour. Defendants improperly paid Plaintiff's sick leave hours at her base rate rather than the regular rate of pay which would have factored in the base rate.

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned premiums or other forms of non-excludable remuneration, such as the shift differential pay and also received paid sick leave.

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

Defendant 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.

First, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job and as a result of understaffing.

Nonetheless, Defendants has a policy and practice of avoiding paying all meal period premiums owed by forcing Plaintiff and the aggrieved employees to sign TARFs stating that they did take a meal period even if they had not. Each time Plaintiff and the aggrieved employees were forced to sign a TARF, this resulted in unpaid meal period premiums. In violation of Labor Code 226.7, Defendant did not consistently pay meal period premiums for missed, late, short, or interrupted meal periods.

Second, to the extent Defendant paid meal period premiums in the same pay period that the aggrieved employees earned shift differential pay or other forms of non-excludable remuneration, Defendant underpaid these premiums by failing to properly factor all forms of non-discretionary income into the regular 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**

Defendant 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.

Defendant failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As discussed above, due to understaffing and the high demands of the job, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Specifically, on overnight shifts there were only 4 CNA's scheduled, making them responsible for approximately 20 patients each, and rarely if ever able to take a compliant rest period.

As a matter of common policy and practice, Defendant failed to pay Plaintiff and the aggrieved employees rest period premiums when they were unable to take rest periods. When Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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**

Defendant 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 Defendant failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendant 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, Defendant failed to pay all premiums, overtime, regular, 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 did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

Defendant 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.

Defendant 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. Defendant 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), Defendant 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 Defendant 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.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of editing time records to reflect meal periods that were not taken and requiring employees to complete unpaid training.

Below is an illustrative example of Defendant’s failure to accurately reflect Plaintiff’s total hours worked.

Villa Maria Post Acute 425 Barceilus Avenue Santa Maria, CA 93454									
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number			
Melinda Conde	Villa Maria Post Acute	123755945	11/16/2023	11/30/2023	12/08/2023				
	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay			
Current	77.08	1,897.45	9.98	236.50	0.25	1,650.72			
YTD	1,078.47	21,976.76	79.84	2,776.82	1.00	19,119.10			
Earnings							Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount	Description	Amount	YTD
DT Premium		0		0.366666	6.97		OASDI	117.02	1,357.61
Double Time		0		0.366666	6.97		Medicare	27.37	317.51
Holiday	11/16/2023 - 11/30/2023	8	18	144.00	8	144.00	Federal Withholding	26.08	430.53
In-Service	11/26/2023 - 11/30/2023	4	18	72.00	4	72.00	State Tax - CA	49.05	474.10
OT Premium	11/16/2023 - 11/16/2023	0.033333	9.5	0.32			CA SDI - CASDI	16.98	197.07
OT Premium	11/19/2023 - 11/25/2023	0.2	9.5	1.90					
OT Premium	11/26/2023 - 11/30/2023	0.283333	9.4	2.66	36.133342	343.06			
Overtime	11/16/2023 - 11/16/2023	0.033333	19	0.63					
Overtime	11/19/2023 - 11/25/2023	0.2	19	3.80					
Overtime	11/26/2023 - 11/30/2023	0.283333	19	5.38	36.133342	682.88			
Details Not Displayed				1,666.76		20,720.88			
Earnings				1,897.45		21,976.76	Employee Taxes		236.50 2,776.82

Extract from Plaintiff's Wage Statement with a Pay Date of 12/8/2023

As shown above in Plaintiff's Wage Statement, Defendant would routinely have a line item on Wage Statements that reads “Details Not Displayed” which would exclude the rate and number of hours Plaintiff worked during that pay period.

Defendant violated Labor Code section 226(a)(8) by failing to list the last four digits of Plaintiff's SSN or EIN. Defendant further violated Labor Code section 226(a)(8) by failing to accurately list the legal name of the employer. Plaintiff's Wage Statements list the company as Villa Maria Post Acute; however, the legal name of the company is Santa Maria Healthcare, Inc.

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.

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

Defendant 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."

Defendant 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.

Defendant 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. Defendant expected Plaintiff and aggrieved employees to utilize their personal cell phone to complete necessary work tasks. As stated above, Plaintiff was required to use her personal cell phone to complete trainings as required by company policy.

Defendant did not provide reimbursement for the use of personal cell phones. Instead, Plaintiff and aggrieved employees bore the cost of these requirements, without reimbursement.

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.

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

Defendant 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, Defendant 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.

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 Defendant 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, Defendant's 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. Defendant may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Melinda Conde

Kevin Holloway – kholloway@ensignservices.net
Counsel for Defendant