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VENTURA SUPERIOR COURT

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MAYRA MANZANO on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

MAYRA MANZANO, individuals, on behalf
of herself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

POM Medical, LLC, a Nevada limited liability
company; STRYKER EMPLOYMENT
COMPANY, LLC, a Michigan limited liability
company; and DOES 1-50, inclusive,

Defendant.

Case No.: 2024CUOE033928

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

VENTURA SUPERIOR COURT

FILED

11/26/2024

Brenda L. McCormick
Executive Officer and Clerk

Alex Lopez

PDF FILING

1 Plaintiff MAYRA MANZANO brings this PAGA representative action complaint on
2 behalf of herself, all aggrieved employees, and the State of California as a Private Attorneys
3 General, and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff MAYRA MANZANO worked as an employee for Defendants POM Medical,
6 LLC, and STRYKER EMPLOYMENT COMPANY, LLC, and Does 1-50 (collectively
7 “Defendant”). Plaintiff worked as a direct employee hired as a quality control inspector in
8 Defendant’s Moorpark, California, facility until February 2024. Plaintiff brings this action
9 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*,
10 on a representative basis. All current and former hourly, nonexempt employees of Defendant
11 within one year of serving notice on the LWDA to the present are aggrieved employees.

12 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
13 willful and intentional employment practices and policies. Plaintiff brings this representative
14 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below. Plaintiff provided notice of her claims
16 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
17 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
18 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
19 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
20 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

21 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
22 worked, including overtime hours worked; (2) improper calculation of regular rate; (3) failing to
23 properly calculate and pay sick leave wages; (4) failing to pay all wages owed twice per month;
24 (5) failing to pay minimum wage; (6) failing to provide rest breaks; (7) failing to provide
25 uninterrupted meal breaks; (8) failing to reimburse for required business expenses; (9) failing to
26 pay wages due upon termination; (10) failing to properly accrue and pay for unpaid vacation; (11)
27 failing to provide accurate itemized wage statements; (12) failing to produce personnel records.

1 Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private
2 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 4. Plaintiff MAYRA MANZANO is a resident of the State of California and worked for
5 Defendant as an inspector and quality control worker at the Pom Medical facility in Moorpark
6 until February 2024.

7 5. Defendant POM MEDICAL LLC, is a Nevada limited liability company authorized to
8 do business and doing business in California with the capacity to sue and to be sued, and doing
9 business, in the county of Ventura, State of California.

10 6. Defendant STRYKER EMPLOYMENT COMPANY LLC is a Michigan limited
11 liability company authorized to do business and doing business in California with the capacity to
12 sue and to be sued, and doing business, in the county of Ventura, State of California.

13 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
14 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
15 informed and believes and thereon alleges that said Defendant is legally responsible for the
16 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
17 will amend this complaint when their true names and capabilities are ascertained.

18 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
19 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
20 of the representative class, and exercised control over their wages, hours, and working conditions.
21 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
22 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
23 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
24 to the other Defendants.

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10. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

PAGA REPRESENTATIVE ACTION ALLEGATIONS

12. During the relevant time-period, Defendant committed various violations of the California Labor Code as alleged below in more detail. Defendant enforces multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendant engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

16. Defendant, and each of them, have committed the following violations of the California Labor Code:

1 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

2 (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
3 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders)

4 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 18. The Wage Orders define “hours worked” as “the time during which an employee is
7 subject to the control of an including all the time the employee is suffered or permitted to work,
8 whether or not required to do so.”

9 19. Defendant rounds Plaintiff and aggrieved employee timecards in a manner that favors
10 Defendant, despite readily available technology that will record clock in and out time to the exact
11 minute. Defendant does not pay aggrieved employees for all hours worked as a result of rounding
12 practices.

13 20. Plaintiff and aggrieved employees were also required to go through pre-shift security
14 and walk extensive distances from the entry of the facility, through security, to the inconveniently
15 located timeclocks, which are not located near the entry or break rooms, resulting in time spent
16 under the employer’s control performing required tasks.

17 21. As a result of these ongoing violations, Defendant is liable for, among other things,
18 civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

19 **Improper Calculation of Regular Rate**

20 (Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq.*)

21 22. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 23. Defendant pays nondiscretionary bonuses to its hourly, non-exempt employees. It is
24 well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase
25 the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The
26 “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned
27 for that week. When an employee is later paid a bonus that is partly due to work performed in that
28

1 week, this additional pay must be added into the total compensation for the week, increasing the
2 employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

3 24. Defendant paid bonuses, including nondiscretionary production bonuses which were
4 not incorporated into aggrieved employees' regular rate of pay for purposes of calculating
5 overtime, sick pay, or premium pay.

6 25. Defendant has failed to properly calculate and pay overtime compensation. Plaintiff
7 and other employees have been denied "the unpaid balance of the full amount of this... overtime
8 compensation" as required by Cal. Labor Code. §1194, and Defendant is liable for civil penalties
9 pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Defendant has violated Cal. Labor Code
10 §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1)
11 for failure to pay overtime. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558
12 and 2698 *et seq.*

13 **Failure to Properly Calculate and Pay Sick Leave Wages**

14 (Cal. Lab. Code §§246, 2698 *et seq.*)

15 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
16 incorporate said paragraphs herein by reference.

17 27. Employers must calculate paid sick leave for non-exempt employees in one of two
18 ways:

19 A. Paid sick time for nonexempt employees shall be calculated in the
20 same manner as the regular rate of pay for the workweek in which the employee
21 uses paid sick time, whether or not the employee actually works overtime in
22 that workweek; [or]

23 B. Paid sick time for nonexempt employees shall be calculated by
24 dividing the employee's total wages, not including overtime premium pay, by
25 the employee's total hours worked in the full pay periods of the prior 90 days
26 of employment.

27 Labor Code § 246 (l)
28

1 28. As discussed above, Defendant paid bonuses, including nondiscretionary bonuses
2 which were not incorporated into aggrieved employees' regular rate of pay for purposes of
3 calculating overtime, sick pay, or premium pay. Plaintiff and aggrieved employees were paid sick
4 leave wages at their base hourly rates of pay, which is less than required under either of the two
5 alternative methods of calculation provided by Labor Code section 246(l).

6 **Failure to Pay All Wages Owed Twice Per Month**

7 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

8 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 30. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
11 twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay all
12 wages earned to employees as a result of the unlawful employment policies and practices discussed
13 herein. As a result of these practices, employees were underpaid for hours worked, including
14 overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed
15 twice per month. Due to this failure, Defendant is liable under Labor Code §210 for failure to pay
16 wages as required by law.

17 **Failure to Pay Minimum Wage**

18 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

19 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 32. Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to
22 suffer or permit a California employee to work without paying wages at the proper minimum wage
23 for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage
24 Orders "hours worked" include "the time during which an employee is subject to the control of an
25 employer, and includes all the time the employee is suffered or permitted to work, whether or not
26 required to do so."

27 33. During the applicable recovery period, Aggrieved Employees were suffered, permitted,
28 and required to perform work by Defendant for which they received no pay. The aforementioned

1 acts by Defendant were undertaken with the intention of depriving Aggrieved Employees of their
2 earned wages. Additionally, employees were required to use their personal phones for work
3 purpose but were not reimbursed for these expenses, therefore requiring that they pay from their
4 own wages. As a result of these ongoing violations, Defendant is liable for, among other things,
5 civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

6 **Failure to Provide Rest Breaks**

7 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

8 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 35. Defendant has failed to maintain a compliant rest period policy and practice that
11 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
12 noncompliant rest breaks resulting from the extensive time it took for her and her coworkers to
13 commute from their workstations to the break room and back to their workstations within the break
14 time. Additionally, employees were required to sanitize hands prior to returning to their work
15 stations during their break time. Accordingly, breaks were consistently short and noncompliant.

16 36. Rest periods were often either less than ten minutes, not provided, interrupted or late,
17 “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as
18 prescribed by California law because Defendant: (1) did not account for all hours worked that were
19 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
20 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
21 inform and train employees about when, where and how to take timely and uninterrupted ten-
22 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
23 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
24 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
25 break policy.

26 37. Defendant did not authorize or permit all of its hourly employees to take at least a ten
27 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
28 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks

1 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
2 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
3 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

4 **Failure to Provide Uninterrupted Meal Breaks**

5 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

6 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 39. During Plaintiff's employment, Defendant failed to maintain a compliant meal period
9 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
10 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not
11 employ an employee for a work period of more than five hours per day without providing the
12 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
13 employer shall require an employee to work during any meal... period mandated by an applicable
14 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
15 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
16 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
17 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

18 40. Plaintiff and aggrieved employees often had noncompliant meal periods because of
19 long distances between their work stations and the timeclocks. Additionally, because the
20 timeclocks were not near the break rooms, employees spent much of their unpaid time transporting
21 throughout employer's facility. Plaintiff and aggrieved employees are also required to sanitize
22 while off the clock prior to returning to work.

23 41. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
24 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
25 (2) did not adequately inform and train employees about their rights to meal periods and premium
26 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
27 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
28 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal

1 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
2 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
3 and aggrieved employees were not paid a premium payment, paid as an hour's wage when meal
4 periods were not given to them in compliance with California law.

5 **Failure to Reimburse For Required Business Expenses**

6 (Cal. Labor Code §§ 1198, 2802, 2699)

7 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 43. Labor Code §2802 requires employers to indemnify employees for necessary
10 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
11 some employees were required to clock in and out using an app on their phones for which they
12 were uncompensated. Plaintiff and aggrieved employees were also required to use their phones to
13 send messages and photos for various tasks including labels and inserts but were not reimbursed
14 for this expense.

15 **Failure to Pay Wages Due Upon Termination**

16 (Cal. Labor Code §§ 201, 202, 203, 256 and 2698 *et seq*)

17 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 45. An employee who is discharged must be paid all of his or her wages, including accrued
20 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
21 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
22 Plaintiff at the time employment terminated.

23 46. Defendant willfully failed to pay employees who are no longer employed by it all
24 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
25 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
26 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
27 Cal. Lab. Code § 2698 *et. seq.*
28

1 **Failure to Properly Accrue and Pay for Unpaid Vacation**

2 (Cal. Labor Code §§ 227.3, and 2698 *et seq.*)

3 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 48. Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer
6 policy provides for paid vacations, and an employee is terminated without having taken off his
7 vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this
8 case, Defendant failed to properly calculate all accrued vacation and further failed to pay all
9 accrued vacation wages to Plaintiff and aggrieved employees upon termination. Defendant is liable
10 for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

11 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**

12 **Requirements**

13 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

14 49. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 50. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
17 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
18 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
19 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
20 actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all
21 hours worked, and overtime pay, and pay for meal and rest period premium wages.

22 51. §226 (a) requires:

23 A. An employer, semimonthly or at the time of each payment of wages,
24 shall furnish to his or her employee, either as a detachable part of the check,
25 draft, or voucher paying the employee’s wages, or separately if wages are paid
26 by personal check or cash, an accurate itemized statement in writing showing
27 (1) gross wages earned, (2) total hours worked by the employee, except as
28 provided in subdivision (j), (3) the number of piece-rate units earned and any

1 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
2 deductions, provided that all deductions made on written orders of the employee
3 may be aggregated and shown as one item, (5) net wages earned, (6) the
4 inclusive dates of the period for which the employee is paid, (7) the name of the
5 employee and only the last four digits of his or her social security number or an
6 employee identification number other than a social security number, (8) the
7 name and address of the legal entity that is the employer and, if the employer is
8 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
9 and address of the legal entity that secured the services of the employer, and (9)
10 all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee...

12 52. Such failures called injury to Plaintiff and others, by, among other things, impeding
13 them from knowing the total hours worked and the amount of wages to which they are and were
14 entitled. Defendant knowingly and intentionally failed to accurately itemize the correct gross
15 wages earned, net wages earned, meal and rest premium pay, and total hours worked. Defendant
16 is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

17 **Failure to Provide Personnel Records**

18 (Cal. Labor Code §§ 226, 432, 1109.5, 2698 *et seq.*)

19 53. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 54. In addition to their right to time and pay records, employees, and their representatives,
22 have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section
23 1198.5. This statute applies to both former and current employees. Labor Code section 432 further
24 specifies that employers must furnish copies of all employment records bearing the employee's
25 signature.

26 55. Labor Code section 1198.5 also requires that the file be made available for inspection
27 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
28 the employer receives a written request." An employer's failure to comply within this timeframe

likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

56. Defendant failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Moreover, Defendant continues to fail to produce Plaintiff's records, and the records of other aggrieved employees upon request, as required.

57. These violations subject Defendant to penalties under Labor Code sections 226, 1198.5, and 2699.

58. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

FIRST CAUSE OF ACTION

Against Defendant for Violation of the Private Attorneys General Act ("PAGA")

(California Labor Code §2698 *et seq.*)

59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

60. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

61. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

62. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders);
- b. Improper Calculation of Regular Rate (Cal. Labor Code §§218, 510 *et seq.*, 1194, 2698 *et seq.*);
- c. Failure to Properly Calculate and Pay Sick Leave Wages (Cal. Lab. Code §§246, and 2698 *et seq.*)
- d. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)
- e. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)
- g. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)
- h. Failure to Reimburse For Required Business Expenses (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)
- i. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)
- j. Failure to Properly Accrue and Pay for Unpaid Vacation (Cal. Lab. Code §§227.3 and 2698 *et seq.*)
- k. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).
- l. Failure to Produce Personnel Records (Cal. Labor Code §§ 226, 432, 1109.5, 2698 *et seq.*).

63. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per

aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

64. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

65. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

66. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

67. At the time of each violation, Defendant employed one or more employees.

68. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

69. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

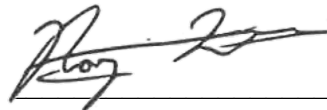
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
3 judgement against Defendant as follows:

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
5 determined at trial, but at least the jurisdictional amount of this Court;
- 6 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
7 and/or other applicable law;
- 8 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
9 law;
- 10 4. Pre-judgement and post-judgement interest as provided by law; and
- 11 5. Such other and further relief that the Court may deem just and proper.
- 12

13 DATED: November 25, 2024

KOUL LAW FIRM, APC

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16 BY: Nazo Koulloukian, Esq.
17 Attorneys for Plaintiff MAYRA MANZANO, and
18 all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

May 15, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

POM Medical, LLC
5456 ENDEAVOUR COURT
MOORPARK, CA 93021

STRYKER EMPLOYMENT COMPANY, LLC
1941 STRYKER WAY
PORTAGE, MI 49002

KELLY SERVICES GLOBAL, LLC
999 W. BIG BEAVER RD. STE. 601A
TROY, MI 48084

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Mayra Manzano
Employers: POM Medical, LLC
STRYKER EMPLOYMENT COMPANY, LLC
KELLY SERVICES GLOBAL, LLC

Dear Sir or Madam:

Claimant and aggrieved employee Mayra Manzano has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent her, and all other aggrieved employees in California, for wage and hour claims against her former employers, POM Medical, LLC, STRYKER EMPLOYMENT COMPANY, LLC, and KELLY SERVICES GLOBAL, LLC (hereafter collectively referred to as “Employer”). Employer hired, assigned, and paid Claimant to work as an inspector and quality control worker at the Pom Medical facility in Moorpark until February 2024.

Claimant brings this action against the above employers, including the staffing agency and its client employer, pursuant to Labor Code Section 2810.3. This PAGA Notice letter shall also serve as notice, pursuant to subdivision 6 (d) of Section 2810.3, that Claimant, on behalf of herself

and similarly situated employees, will file a civil action against all employers named above in accordance with Labor Code Section 2810.3, subdivision 6 (b-f), which provide:

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimants to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by her, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Claimants need not have actually suffered all of the Labor Code violations that they alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those she did not personally suffer.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer, despite readily available technology that will record clock in and out time to the exact minute. Employer does not pay aggrieved employees for all hours worked as a result of rounding practices.

Employees were also required to go through pre-shift security and walk extensive distances from the entry of the facility, through security, to the inconveniently located timeclocks, which are not located near the entry or break rooms, resulting in time spent under the employer’s control performing required tasks.

As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Improper Calculation of Regular Rate

Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq*

Employer pays nondiscretionary bonuses to its hourly, non-exempt employees. It is well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer paid bonuses, including nondiscretionary production bonuses which were not incorporated into aggrieved employees’ regular rate of pay for purposes of calculating overtime, sick pay, or premium pay.

Employer has failed to properly calculate and pay overtime compensation. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194, and Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages

Cal. Labor Code §§246, 2698 *et seq*

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (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; [or]
- (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.

Labor Code § 246 (l)

As discussed above, Employer paid bonuses, including nondiscretionary bonuses which were not incorporated into aggrieved employees' regular rate of pay for purposes of calculating overtime, sick pay, or premium pay. Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Failure to Pay All Wages Owed Twice Per Month

Cal. Lab. Code §§204, 210, and 2698 *et seq*.

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq*.

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage Orders "hours worked" include "the time during which an employee is subject to the control of an

employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

During the applicable recovery period, Aggrieved Employees were suffered, permitted, and required to perform work by Employer for which they received no pay. The aforementioned acts by Employer were undertaken with the intention of depriving Aggrieved Employees of their earned wages. Additionally, employees were required to use their personal phones for work purpose but were not reimbursed for these expenses, therefore requiring that they pay from their own wages. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports noncompliant rest breaks resulting from the extensive time it took for her and her coworkers to commute from their workstations to the break room and back to their workstations within the break time. Additionally, employees were required to sanitize hands prior to returning to their work stations during their break time. Accordingly, breaks were consistently short and noncompliant.

Rest periods were often either less than ten minutes, not provided, interrupted or late, “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees often had noncompliant meal periods because of long distances between their work stations and the timeclocks. Additionally, because the timeclocks were not near the break rooms, employees spent much of their unpaid time transporting throughout employer's facility. Employees are also required to sanitize while off the clock prior to returning to work.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

Cal. Labor Code §§1198, 2802, 2699 *et seq.*

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, some employees were required to clock in and out using an app on their phones for which they were uncompensated. Employees were also required to use their phones to send messages and photos for various tasks including labels and inserts but were not reimbursed for this expense.

Failure to Pay Wages Due Upon Termination

Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimants and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Properly Accrue and Pay for Unpaid Vacation

(Cal. Lab. Code §227.3 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that “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 this case, Employer failed to properly calculate all accrued vacation and further failed to pay all accrued vacation wages to Claimant and aggrieved employees upon termination. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided

in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Employer further failed to state the name of the locations where temporary employees were scheduled to and staffed at work as required where the employer is a temporary services employer as defined in Labor Code 201.3.

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the correct gross wages earned, net wages earned, meal and rest premium pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Failure to Produce Personnel Records
(Cal. Labor Code §§ 226, 432, 1109.5, 2698 *et seq.*)

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Employer failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226,

1198.5, 432, and/or the applicable Wage Order. Moreover, Employer continues to fail to produce Claimant's records, and the records of other aggrieved employees upon request, as required.

These violations subject Employer to penalties under Labor Code sections 226, 1198.5, and 2699.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue the claims as a representative action in civil court.

Respectfully submitted,


Nazo Koulloukian, Esq.
Attorney for Claimant