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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By D. Cortez ,Deputy Clerk

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

IRIANNY IBARRA, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

INSTITUTES OF HEALTH, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CU008055C

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff IRIANNY IBARRA, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants INSTITUTES OF HEALTH, LLC and DOES 1 through
4 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

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

8 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to include all
9 hours worked.

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

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

14 5. Defendants failed to reimburse employees for all work-related expenses including use
15 of personal cell phones and gas mileage for work-related purposes.

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

20 **JURISDICTION & VENUE**

21 7. 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 8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
24 the Superior Court.

25 9. 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.

10. 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 conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Irianny Ibarra

11. Plaintiff Ibarra is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2022 to April 2024. Plaintiff worked as a Physical Therapy Assistant.

12. 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.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

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

14. 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.

15. 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.

16. 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.

17. 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

18. Plaintiff and the aggrieved employees worked for Defendants as non-exempt employees compensated on an hourly basis.

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

20. Specifically, Defendants required Plaintiff and the aggrieved employees to complete off-the-clock work.

21. For example, Plaintiff and the aggrieved employees were regularly required to work through their unpaid meal periods. As discussed further below, Plaintiff and the aggrieved employees were required to clock out each day to make it appear as if they took a compliant meal period, when in reality, due to understaffing and scheduling issues, Plaintiff and the aggrieved employees routinely worked through this unpaid time.

22. Therefore, each time Plaintiff and the aggrieved employees clocked out for a meal period but continued working this resulted in unpaid hours worked.

23. Defendants also 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 24. First, as mentioned above, Defendants engaged in an unlawful policy and practice of
2 requiring off-the-clock work. To the extent that these unlawful practices resulted in unpaid hours
3 worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime hours.

4 25. Second, Defendants failed to pay overtime at the “regular rate of pay” by failing to
5 include Plaintiff and the aggrieved employees’ non-discretionary bonuses and other forms of
6 additional remuneration in the overtime rate. For example, in the pay period from October 9, 2023 to
7 October 22, 2023, Plaintiff earned a non-discretionary bonus of \$708.00 labeled “Month Wage
8 Adjustment.” However, this label is misleading, as these mere monthly bonuses based on a bonus tier
9 system determined by the number of patients treated each month. Thus, these non-discretionary
10 bonuses should have been included in the regular rate of pay. However, as a matter of common policy
11 and practice, Defendants failed to include these and other non-excludable additional remuneration into
12 the regular rate of pay, instead paying overtime at 1.5x Plaintiff’s base rate.

13 26. Additionally, Defendants failed to issue “true-up” payments for all overtime earned in
14 the month for which the bonus was earned.

15 27. Defendants failed to comply with California’s paid sick leave laws with respect to the
16 aggrieved employees. Specifically, Defendants failed to pay Plaintiff and the aggrieved employees
17 paid sick leave at the lawful rate, as the regular rate should have included non-discretionary bonuses
18 and all other forms of additional non-excludable remuneration.

19 28. For example, in the pay period from November 6, 2023 to November 19, 2023, Plaintiff
20 earned 16 hours of sick leave. Plaintiff also received a non-discretionary bonus of \$450.00 for the
21 month of November. However, Defendants failed to pay sick hours at the lawful statutory rate
22 including all earnings, instead paying the hours at Plaintiff’s base rate.

23 29. The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor
24 Code sections 246(1)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to
25 aggrieved employees in those periods where they earned non-discretionary monthly bonuses or other
26 forms of non-excludable remuneration and also received paid sick leave.

27 30. Plaintiff and the aggrieved employees often suffered late, short, missed, and/or
28 interrupted first and second meal periods due to the pressure to keep up with high demands of the job,

understaffing, and constant patient monitoring. Due to understaffing, Plaintiff and the aggrieved employees regularly had to step up and assist other departments.

31. For example, at the facility Plaintiff worked at the patients had a set lunch hour. When there were insufficient scheduled staff to serve patients, Plaintiff and others were required to assist. Additionally, Plaintiff and other aggrieved employees were often scheduled patients back-to-back without the ability to take a compliant meal period.

32. Nonetheless, Defendants actively avoided paying all meal period premiums by requiring Plaintiff and the aggrieved employees to report a compliant meal period, regardless of their ability to take one. As a matter of common policy and practice, Defendants failed to pay all owed meal period premiums.

33. Moreover, to the extent Defendants paid meal period premiums, Defendants failed to pay these premiums at the regular rate of compensation. Based on Defendants failure to pay overtime and paid sick leave at the regular rate of compensation, Plaintiff believes and alleges Defendants similarly failed to factor in all additional non-excludable remuneration into the regular rate of compensation. Instead, paying premiums at their base rate or an otherwise deficient rate.

34. Due to the same reasons explained above, such as understaffing and back-to-back appointments, Plaintiff and the aggrieved employees also were not authorized or permitted to take their rest periods.

35. Accordingly, Defendants failed to pay all owed rest period premiums at the regular rate of compensation. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums would have factored in all non-excludable remuneration and other forms of compensation.

36. Defendants also required Plaintiff and the aggrieved employees to incur necessary, work-related costs, without adequate reimbursement.

37. Specifically, Defendants required Plaintiff and the aggrieved employees to use their personal cell phones and devices for work related tasks such as responding to emails, communicating with patients, and maintaining contact with colleagues.

38. Additionally, Defendants also required Plaintiff and, on information and belief, the aggrieved employees to travel to different clinics for training using their personal vehicles.

39. Defendants failed to properly reimburse Plaintiff and the aggrieved employees for mileage and personal cell phone usage. Thus, 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. To the extent Defendants provided reimbursement, these payments were insufficient.

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

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

42. Defendants 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 requiring off-the-clock work.

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

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

7 46. Plaintiff reserves the right to amend, supplement, or add to this description of the
8 aggrieved employees, according to proof.

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

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

19 49. Labor Code section 2699(f) provides: “For all provisions of this code except those for
20 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
21 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
22 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation.”

25 50. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

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

52. On or about **June 21, 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.

53. 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").

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

55. 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.

56. 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.*

57. 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.

58. 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).

1 **PRAYER**

2 Plaintiff prays for judgment as follows:

- 3 a. For recovery of damages in amount according to proof;
- 4 b. For all recoverable pre- and post-judgment interest;
- 5 c. For this action to be maintained as a representative action under the PAGA;
- 6 d. For Plaintiff and counsel of record to be provided with all enforcement capability as if
- 7 the action were brought by the State of California or the California Division of Labor
- 8 Enforcement;
- 9 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 10 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 11 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
- 12 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 13 g. For such other relief the Court deems just and proper.

14 Dated: August 27, 2024

15 ***Ferraro Vega Employment Lawyers, Inc.***

16 
17 _____
18 Nicholas J. Ferraro
19 Attorney for Plaintiff Irianny Ibarra

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 21, 2024

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

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

Institutes of Health, LLC
9246 Lightwave Avenue
Suite 120
San Diego, California 92123

- 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 **IRIANNY IBARRA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

INSTITUTES OF HEALTH, LLC

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Physical Therapy Assistant from about May 2022 to April 2024. 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.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendants required Plaintiff and the aggrieved employee to complete off-the-clock work.

Plaintiff and the aggrieved employees were regularly required to work through their unpaid meal periods. As discussed in further detail in the “Meal Period Premium” section below Plaintiff and the aggrieved employees were required to clock out each day to make it appear as if they took a compliant meal period, when in reality due to understaffing and scheduling issues Plaintiff and the aggrieved employees routinely worked through this unpaid time.

Each time Plaintiff and the aggrieved employees clocked out for a meal period but continued working this resulted in unpaid hours worked.

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**

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

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

First, to the extent that Defendant’s unlawful policy and practice requiring off-the-clock work resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime hours.

Second, Defendants failed to pay overtime at the “regular rate of pay.” Defendants paid Plaintiff and the aggrieved employees non-discretionary bonuses and other forms of additional remuneration which Defendants improperly excluded from the overtime rates. Instead, Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate.

An illustrative example is shown on Plaintiff’s wage statements below:

Voucher #: 015970 Sort Order: 1

IRIANNY G IBARRA

INSTITUTES OF HEALTH - SAN DIEGO (6727)

SSN#
EMP# N00122

Period Start Date 10-09-2023
Period End Date 11-03-2023

Check Date
Check Number 0001235559

11-10-2023 Federal Filing Status SS/Single
State Filing Status S/2/0

Earnings - Current					Deductions / Taxes		
Date	Pay Description	Pay Rate	Hours Paid	Pay Amount	Description	Amount	YTD
11-03-2023	MONTH WAGE ADJ	708.0000	0.00	708.00	HOSPITAL IND	0.00	31.05
					CLIENT CANCER	0.00	7.20
					CRITICAL ILL	0.00	35.73
					401(K)	0.00	1623.10
					FEDERAL TAX	46.53	6260.72
					MEDICARE	10.23	613.10
					SOC SECURITY	43.77	3625.88
					CA INCOME TAX	0.00	1649.39
					CA DISABILITY	6.35	589.84
TOTAL				0.00	708.00		

Earnings - Year To Date		Net Pay Distribution	
Description	YTD	Type	Amount
REGULAR PAY	49855.65	CHECK	\$0.00
OVERTIME	938.49		
HOLIDAY	280.00	DIRECT DEPOSIT	\$597.12
FLOATING HOLIDAY	1080.50		
MONTH WAGE ADJ	9655.50	TOTAL NET PAY	\$597.12
SICK	1120.00		
PAID TIME OFF	1400.00	TOTAL NET PAY YTD	\$45,022.28
TOTAL	\$53,443.75		

Paid Time Off			Direct Deposit Detail		Employer Contributions				
Description	Accrued	Used	Balance	Account	Type	Amount	Description	Amount	YTD
CASPSL	80.00	0.00	80.00	82808	SAVINGS	119.42	Nonelective	21.18	1866.77
				13841	CHECKING	477.70			

Plaintiff's Wage Statement for the Pay Period 10/9/2023 to 11/3/2023

IRIANNY G IBARRA

INSTITUTES OF HEALTH - SAN DIEGO (6727)

SSN#

Period Start Date 10-09-2023

Check Date

10-26-2023

Federal Filing Status SS/Single

EMP# N00122

Period End Date 10-22-2023

Check Number

0001213691

State Filing Status S/2/0

Earnings - Current

Deductions / Taxes

Date	Pay Description	Pay Rate	Hours Paid	Pay Amount	Description	Amount	YTD
10-22-2023	REGULAR PAY	35.0500	62.82	2284.36	401(K)	74.49	1746.91
10-22-2023	OVERTIME	54.0750	0.70	37.85	CRITICAL ILL	11.91	11.91
10-22-2023	FLOATING HOLIDAY	35.0500	5.00	160.25	HOSPITAL IND	10.55	10.55
10-22-2023	BENEFITS COMP	68.7500	0.00	88.75	CLIENT CANCER	2.42	2.42
					FEDERAL TAX	403.84	8795.34
					MEDICARE	36.99	870.04
					SOC SECURITY	158.19	3720.19
					CA INCOME TAX	87.63	1756.91
					CA DISABILITY	22.93	540.02
TOTAL				68.62	2,561.51		

Earnings - Year To Date

Net Pay Distribution

Description	YTD	Type	Amount
REGULAR PAY	47,122.03	CHECK	\$0.00
OVERTIME	930.54		
HOLIDAY	280.00	DIRECT DEPOSIT	\$1,742.74
FLOATING HOLIDAY	1960.50		
MONTH WAGE ADJ	7962.50	TOTAL NET PAY	\$1,742.74
SICK	1120.00		
PAID TIME OFF	1400.00	TOTAL NET PAY YTD	\$42,675.17
EXPENSE - MILEAGE	\$60,120.48		
BENEFITS COMP	197.50		
TOTAL			

Paid Time Off

Direct Deposit Detail

Employer Contributions

Description	Accrued	Used	Balance	Account	Type	Amount	Description	Amount	YTD
CASPSL	80.00	0.00	80.00	82808	SAVINGS	348.55	Nonelective	74.48	1789.40
				13841	CHECKING	1,394.19			

Plaintiff's Wage Statement for the Pay Period 10/9/2023 to 10/22/2023

Here, Plaintiff earned a non-discretionary bonus of \$708.00 labeled "Month Wage Adjustment." However, this label is misleading, as these were monthly bonuses based on a bonus tier system determined by the number of patients treated each month.

II.8.2 Basis for Determining Pay

Several factors may influence your rate of pay. Some of the items IOH considers are the nature and scope of your job, what other employers pay their employees for comparable jobs (external equity), what IOH pays its employees in comparable positions (internal equity), and individual as well as IOH's performance. It is the IOH's goal to have a current Job Description on hand, which broadly defines your job responsibilities.

Each professional has a base salary and a bonus tier. The bonus tier is designed to reward their contribution to the overall functioning and success of IOH. As we treat more patients and we grow, each staff member's bonus increases. Bonuses are paid monthly so as to contribute to each employee's quality of life. The bonus tier system also builds in overall compensation raises to reward a staff member continuing employment and loyalty.

The key to maintaining the success of IOH is each staff member going the extra mile in all areas. That means in the quality of care we deliver, concierge quality customer service and the overall building of our brand, image and reputation. That is part of the reason we have the tiered bonus program for every one of our staff.

Extract of Defendant's Monthly Bonus Policy

Thus, these were non-discretionary bonuses which should have been included in the regular rate of pay. However, as a matter of common policy and practice, Defendants failed to include these and other non-excludable additional remuneration into the regular rate of pay, instead paying overtime at 1.5x Plaintiff's base rate. Additionally, Defendants failed to issue "true-up" payments for all overtime earned in the month for which the bonus was earned.

For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code section 510(a) 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 sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave

Violation of Labor Code §§ 246 through 248.7

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid

sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate should have included non-discretionary bonuses and all other forms of additional non-excludable remuneration.

PERSONAL AND CHECK INFORMATION			EARNINGS						
IRIANNY G ISABREA			BASIS OF DESCRIPTION		HRS/UNITS	RATE	CURRENT (\$)	YTD HRS/UNITS	YTD (\$)
Redacted			PAY						
Employee ID: 122			Hourly		467700	39000	1886.06	437700	1686.06
Home Department: 5 Rehab Staff / 1 Main			Overtime		02300	50000	12.44	92300	12.44
Pay Period: 11/06/23 to 11/19/23			Sick		160000	36000	576.80	160000	576.80
Check Date: 11/24/23 Check #: 88			Total Hours		630000			890000	
NET PAY ALLOCATIONS			Total Hrs Worked		470000				
DESCRIPTION THIS PERIOD (\$) YTD (\$)			Gross Earnings				2275.30		2275.30
Check Amount 0.00 0.00			WITHHOLDINGS		DESCRIPTION	FILING STATUS	CURRENT (\$)	YTD (\$)	
Chkg 641 1531.74 1531.74			GS		Social Security		141.07	141.07	
Savg 808 270.81 270.81					Medicare		33.00	33.00	
NET PAY 1602.05 1602.05					Fed Income Tax	SM3	202.89	202.89	
					CA Income Tax	SM/2 1 0	75.81	75.81	
					CA Disability		20.48	20.48	
					TOTAL		473.26	473.26	

Extract of Plaintiff's Wage Statement for the Pay Period 11/6/2023 to 11/19/2023

PERSONAL AND CHECK INFORMATION		EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE	CURRENT (\$)	YTD HRS/UNITS	YTD (\$)
IRIANNY G IBARRA				Hourly				83.1900	3959.50
Redacted				Monthly Wage			450.50		450.50
Employee ID: 122				Overtime				0.4000	24.33
Home Department: 5 Rehab Staff / 1 Main				Sick				16.0000	576.20
Pay Period: 11/06/23 to 12/03/23				Total Hours				109.5900	
Check Date: 12/08/23 Check #: 378				Total Hrs Worked					
NET PAY ALLOCATIONS				Gross Earnings			450.50		4421.08
				Expense Office Rel					98.10
				REIMB & OTHER PAYMENTS					98.10

Extract of Plaintiff's Wage Statement for the Pay Period 11/6/2023 to 12/03/2023

Here, Plaintiff earned 16 hours of sick leave. Plaintiff also received a non-discretionary bonus of \$450.00 for the month of November. However, Defendants failed to pay sick hours at the lawful statutory rate including of all earnings, instead paying the hours at Plaintiff's 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 non-discretionary monthly bonuses or other forms of non-excludable remuneration 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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours

of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

First, Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted first and second meal periods due to the pressure to keep up with the high demands of the job, understaffing, and constant patient monitoring.

Due to understaffing, Plaintiff and the aggrieved employees regularly had to step up and assist other departments. For example, at the facility Plaintiff worked at the patients had a set lunch hour. When there were insufficient scheduled staff to serve patients Plaintiff and others were required to assist. Additionally, Plaintiff and the aggrieved employees were often scheduled patients back to back without the ability to take a compliant meal period.

Despite these practices, Defendants actively avoided paying all meal period premiums by requiring Plaintiff and the aggrieved employees to report a compliant meal period, regardless of their ability to take one. As a matter of policy and practice, Defendants failed to pay all owed meal period premiums.

Second, to the extent Defendants paid meal period premiums, Defendants failed to pay these premiums at the regular rate of compensation. Based on Defendants failure to pay overtime and paid sick leave at the regular rate of compensation, Plaintiff believes and alleges Defendants similarly failed to factor in all additional non-excludable remuneration into the regular rate of compensation. Instead, paying premiums at their base rate or an otherwise deficient rate.

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

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

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

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

Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff and the aggrieved employees experienced non-compliant meal periods, like understaffing and back-to-back appointments, they also experienced non-compliant rest periods.

Accordingly, Defendants failed to pay all owed rest period premiums at the regular rate of compensation. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums would have factored in all non-excludable remuneration and other forms of compensation.

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

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

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

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

penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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 requiring off-the-clock work.

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement.

Plaintiff and, on information and belief, the aggrieved employees were required to use their personal cell phones and devices for work related tasks such as responding to emails, communicating with patients, and maintaining contact with colleagues. Defendants also required Plaintiff and, on information and belief, the aggrieved employees to travel to different clinics for training using their personal vehicles. Defendants failed to properly reimburse Plaintiff and the aggrieved employees for mileage and personal cell phone use.

Thus, 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. To the extent Defendants provided reimbursement, these payments were insufficient.

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

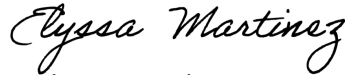
scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,


Elyssa Martinez, Esq.

Cc Plaintiff Irianny Ibarra
Bgalido@institutesofhealth.org