

Nicholas J. Ferraro (State Bar No. 306528)  
Lauren N. Vega (State Bar No. 306525)  
Ferraro Vega Employment Lawyers, Inc.  
3333 Camino del Rio South, Suite 300  
San Diego, California 92108  
(619) 693-7727 main / (619) 350-6855 fax  
nick@ferrarovega.com / lauren@ferrarovega.com

*Attorneys for Plaintiff Brianna Lippold*

ELECTRONICALLY FILED  
Superior Court of California,  
County of San Diego

8/12/2024 9:46:14 AM

Clerk of the Superior Court  
By N. Lopez ,Deputy Clerk

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

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

Plaintiffs,

vs.

FRESENIUS MEDICAL CARE PRACTICE  
HOLDINGS, INC; BIO-MEDICAL  
APPLICATIONS OF CALIFORNIA, INC.; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00027612-CU-OE-CTL

*Hon. Katherine Bacal*  
*Dept. 69*

**CLASS ACTION**

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT**

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

1 Plaintiff BRIANNA LIPPOLD, on behalf of all others similarly situated and the State of  
2 California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED  
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants FRESENIUS  
4 MEDICAL CARE PRACTICE HOLDINGS, INC; BIO-MEDICAL APPLICATIONS OF  
5 CALIFORNIA, INC.; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as  
6 follows:

### 7 **INTRODUCTION**

8 1. This is a class action brought under the California Code of Civil Procedure section 382  
9 for Defendants’ violations of the California Labor Code and Business Professions Code.

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

13 3. Defendants failed to pay Plaintiff and the class members all minimum and overtime  
14 wages due to unlawful policies and practices of requiring off-the-clock work.

15 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members  
16 to take all meal and rest periods to which they were entitled.

17 5. Defendants failed to properly reimburse Plaintiff and the class members for using their  
18 personal cell phones and devices to complete work-related duties.

19 6. Defendants’ employment policies, practices, and payroll administration systems  
20 enabled and facilitated these violations on a company-wide basis with respect to class members.

### 21 **JURISDICTION & VENUE**

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

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

26 9. This Court has jurisdiction over Defendants because, upon information and belief,  
27 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail  
28

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the  
2 California courts consistent with traditional notions of fair play and substantial justice.

3 10. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,  
4 and/or 395.5 because, upon information and belief, Defendants conducted business and committed  
5 some of the alleged violations in this County.

## 6 **PARTIES**

### 7 **A. Plaintiff Brianna Lippold**

8 11. Plaintiff Lippold is an individual over 18 years of age who worked for Defendants in  
9 California as a non-exempt employee from about March 2023 to April 2024. Plaintiff worked as a  
10 Registered Nurse.

11 12. The State of California, via the Labor and Workforce Development Agency  
12 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9  
13 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party  
14 in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*  
15 *Inc.*, Court of Appeals Case No. B326759 (2<sup>nd</sup> App. Dist.) \_\_\_\_ Cal. App. 5th \_\_\_\_ (Mar. 20, 2024,  
16 *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does  
17 not include arbitrable claims.

### 18 **B. Defendants**

19 13. Defendant Fresenius Medical Care Practice Holdings, Inc., is a Delaware corporation  
20 that maintains operations and conducts business throughout the State of California, including in this  
21 county.

22 14. Defendant Bio-Medical Applications of California, Inc., is a Delaware corporation that  
23 maintains operations and conducts business throughout the State of California, including in this  
24 county.

25 15. The true names and capacities, whether individual, corporate, or otherwise, of the  
26 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued  
27 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,  
28 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.

16. 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.

17. 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.

18. 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.

19. The following entities are joint employers and part of an integrated enterprise referred herein as Defendants. Defendants' policies define "employer" as "Fresenius Medical Care Practice Holdings, Inc., or a subsidiary thereof." As such, Class Members include all non-exempt employees within this joint employment and integrated enterprise operation, based on common policies and practices applicable to them.

- a. Fresenius Medical Care Alhambra, LLC
- b. Fresenius Medical Care Anaheim, LLC
- c. Fresenius Medical Care Bakersfield, LLC
- d. Fresenius Medical Care Balboa V, LLC
- e. Fresenius Medical Care Balboa VI, LLC
- f. Fresenius Medical Care Balboa VII, LLC
- g. Fresenius Medical Care Clovis, LLC
- h. Fresenius Defendant Medical Care Delano, LLC
- i. Fresenius Medical Care East Lakes, LLC

- j. Fresenius Medical Care Fresno North Home, LLC
- k. Fresenius Medical Care Fresno, LLC
- l. Fresenius Medical Care Glendale, LLC
- m. Fresenius Medical Care Goldenwest, LLC
- n. Fresenius Medical Care HT, LLC
- o. Fresenius Medical Care Irvine, LLC
- p. Fresenius Medical Care Los Alamitos, LLC
- q. Fresenius Medical Care Memorial, LLC
- r. Fresenius Medical Care Merced, LLC
- s. Fresenius Medical Care Mercy Medical, LLC
- t. Fresenius Medical Care Northcoast, LLC
- u. Fresenius Medical Care Norwalk, LLC
- v. Fresenius Medical Care Woodland (California), LLC
- w. Fresenius Medical Care Oceanside, LLC
- x. Fresenius Medical Care Orange County, LLC
- y. Fresenius Medical Care Palm Springs, LLC
- z. Fresenius Medical Care Pegasus, LLC
- aa. Fresenius Medical Care Reedley Home, LLC
- bb. Fresenius Medical Care Reedley, LLC
- cc. Fresenius Medical Care Renal Therapeutics, LLC
- dd. Fresenius Medical Care RX, LLC
- ee. Fresenius Medical Care San Bernardino, LLC
- ff. Fresenius Medical Care San Juan Capistrano, LLC
- gg. Fresenius Medical Care Santa Ana, LLC
- hh. Fresenius Medical Care Santa Monica, LLC
- ii. Fresenius Medical Care Solano County, LLC
- jj. Fresenius Medical Care Temecula, LLC
- kk. Fresenius Medical Care Ventura Coast, LLC



1 e. Superiority: A class action is superior to other means for adjudicating this  
2 dispute. Individual joinder is impractical. Class treatment will allow for  
3 common issues to be resolved in a single forum, simultaneously, and without  
4 duplication of effort and expense.

5 f. Public Policy Considerations: Certification of this lawsuit as a class action  
6 advances the State of California's strong public interest in ensuring its  
7 approximately millions of employed residents are properly paid the wages they  
8 earned for the hours they worked. Class actions provide a mechanism for  
9 enforcement of labor laws and allow for vindication of employee rights by  
10 unnamed class members.

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

### 15 **GENERAL ALLEGATIONS**

16 24. Defendants failed to pay Plaintiff and the class members the lawful minimum wage for  
17 all hours worked.

18 25. First, Defendants had a policy and practice of unlawfully requiring off-the-clock work.

19 26. Due to the high demands of the job and being severely understaffed, Defendants  
20 regularly required Plaintiff and the class members to work through their unpaid meal period.

21 27. Second, Plaintiff and the class members were required to arrive approximately 15  
22 minutes before or stay after their scheduled shift in order to prepare and open/close the clinic.

23 28. Specifically, opening the clinic required completing certain tasks such as taking  
24 inventory of medications, preparing the "crash cart" and verifying the chlorine levels in the water were  
25 within safe parameters for patients, etc.

26 29. Despite arriving to work approximately 15 minutes before their scheduled shift and  
27 completing work duties, Plaintiff and the class members were not allowed to clock in until their  
28 scheduled shift, resulting in unpaid off-the-clock work.

1           30. To the extent class members worked the closing shift, these class members were  
2 required to clock-out, but keep working to complete tasks like cleaning and preparing the beds for the  
3 next day.

4           31. First, to the extent Defendants' off-the-clock work policies and practices resulted in  
5 unpaid work over 8 hours in a day and 40 hours in a week, this resulted in unpaid overtime.

6           32. Second, Defendants failed to pay overtime at the regular rate of pay. Plaintiff and the  
7 class members earned shift differentials and other forms of non-discretionary compensation, which  
8 Defendants failed to include in the regular rate of pay for overtime hours.

9           33. Defendants unlawfully paid overtime to Plaintiff and the class members at 1.5x their  
10 straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the class  
11 members earned the additional forms of remuneration, Defendants should have (but failed to) pay  
12 overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and  
13 "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code  
14 section 510(a) and the IWC Wage Orders.

15           34. An illustrative example of this violation is shown on Plaintiff's wage statement from  
16 the pay period 2/18/2024 to 3/2/2024. Here, Plaintiff earned a shift differential in the same period she  
17 worked approximately 11 hours of overtime, however, Plaintiff's overtime was paid at a straight 1.5x  
18 multiple of Plaintiff's base rate.

19           35. Defendants failed to properly factor shift differentials and all other types of non-  
20 excludable remuneration into the overtime rate. To the extent other class members earned shift  
21 differentials or other forms of remuneration, Defendants failed to properly factor these payments into  
22 the regular rate of pay with respect to overtime.

23           36. Similarly, Defendants failed to factor these additional forms of non-discretionary  
24 compensation into Plaintiff's and the class member's regular rate of pay with respect to paid sick leave.

25           37. Defendants failed to comply with California's paid sick leave laws with respect to the  
26 class members. The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor  
27 Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to class  
28 members.

1           38.     Plaintiff and the class members experienced missed, late, short, and interrupted meal  
2 periods due to the pressure to keep up with the high demands of the job, understaffing, and constant  
3 patient monitoring.

4           39.     Defendants had an unlawful policy and practice of requiring Plaintiff and the class  
5 members work through their unpaid meal periods.

6           40.     Plaintiff recalls being instructed during her orientation to clock out before the fifth hour  
7 of work and turn on a 30-minute timer on her watch then clock back in after the time had lapsed, all  
8 while never taking a meal period. Plaintiff was told “this is what we do here.”

9           41.     As a result of this unlawful common practice, Defendants avoided paying all owed  
10 meal period premiums.

11          42.     Each time Plaintiff and the class members experienced a non-compliant meal period  
12 they were owed a meal period premium. As a matter of policy and practice, Defendants failed to pay  
13 all owed meal period premiums.

14          43.     To the extent Defendants paid meal period premiums, these were underpaid because  
15 Defendants improperly excluded shift differentials and all other types of additional remuneration from  
16 the premium rate, instead paying premiums at Plaintiff and the class members’ base rate or an  
17 otherwise deficient rate.

18          44.     Based on Defendants failure to pay overtime at the regular rate of compensation,  
19 Plaintiff believes and alleges Defendants similarly failed to factor in all additional non-excludable  
20 remuneration into the regular rate of pay. Instead, paying premiums at their base rate or an otherwise  
21 deficient rate.

22          45.     Due to the same reasons Plaintiff and the class members experienced non-compliant  
23 meal periods, Plaintiff and the class members also experienced non-compliant rest periods.

24          46.     As a matter of policy and practice, Defendants failed to pay all owed rest period  
25 premiums at the regular rate.

26          47.     To the extent Defendants ever paid rest period premiums, Defendants violated Labor  
27 Code section 226.7 because such premiums were not paid at the correct regular rate of compensation  
28 which would have factored in all non-discretionary bonuses and other forms of compensation.

48. 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 which were not paid at the lawful rate due to the regular rate violations as well as the off-the-clock violations.

49. 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 the class members worked due to Defendants' policy and practice of requiring off-the-clock work.

50. 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 Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

### FIRST CAUSE OF ACTION

## MINIMUM WAGE VIOLATIONS

### **Violation of Labor Code §§ 1194, 1194.2 and 1197**

**(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

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

53. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer’s failure to pay all minimum wages (plus liquidated damages).

54. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections

1 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of  
2 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful  
3 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all  
4 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor  
5 Code § 1194.2.

6 55. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of  
7 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class  
8 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an  
9 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’  
10 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

## 11 **SECOND CAUSE OF ACTION**

### 12 **FAILURE TO PAY ALL OVERTIME WAGES**

#### 13 **Violation of Labor Code §§ 510 and 1194**

14 56. All outside paragraphs of this Complaint are incorporated into this section.

15 57. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code  
16 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime  
17 wages all overtime hours worked, and which further provide a private right of action for an employer’s  
18 failure to pay all overtime compensation for overtime hours worked.

19 58. Defendants failed in their affirmative obligation to pay Plaintiff and class members no  
20 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess  
21 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of  
22 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours  
23 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for  
24 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC  
25 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

26 59. Plaintiff and class members are entitled to recover the full amount of the unpaid  
27 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the  
28 extent permitted by law.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## 2

## 3

4

5  
6  
7  
8  
9

10  
11  
12  
13  
14  
15

16  
17  
18  
19  
20

21  
22  
23

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

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

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

5 66. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code  
6 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods  
7 (or rest period premiums in lieu thereof), and which further provide a private right of action for an  
8 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful  
9 regular rate of compensation.

10 67. Defendants willfully failed in their affirmative obligation to consistently authorize and  
11 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten  
12 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code  
13 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the  
14 applicable orders).

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

22 69. All outside paragraphs of this Complaint are incorporated into this section.

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

71. Labor Code section 246(1), in conjunction with Labor Code section 248 *et seq.*, 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class members, govern how Defendants were required to calculate paid sick leave.

72. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

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

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

## SIXTH CAUSE OF ACTION

## UNTIMELY PAYMENT OF WAGES

### Violation of Labor Code §§ 204, 210, 218

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

76. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

77. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

1           78. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,  
2 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay  
3 each employee and \$200 for all subsequent violations and for all willful or intentional violations for  
4 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided  
5 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

6                                   **SEVENTH CAUSE OF ACTION**

7                                   **WAGE STATEMENT VIOLATIONS**

8                                   **Violation of Labor Code § 226**

9           79. All outside paragraphs of this Complaint are incorporated into this section.

10          80. This cause of action is brought by a wage statement subclass pursuant to Labor Code  
11 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each  
12 pay period, and which further provide a private right of action for an employer's failure to comply  
13 with this obligation.

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

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

21          83. As a result, Plaintiff and class members are entitled to recover the statutory penalty of  
22 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for  
23 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in  
24 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor  
25 Code section 226(e).

1 **EIGHTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

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

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

5 85. This cause of action is brought by a waiting time subclass pursuant to Labor Code  
6 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of  
7 employment, and which further provide a private right of action to recover statutory waiting time  
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days  
9 wages.

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

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

17 **NINTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

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

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

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

24 90. Defendants' dependence on these unfair and/or unlawful business practices deprived  
25 Plaintiff and continue to deprive other class members of compensation to which they are legally  
26 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to  
27 Defendants over competitors who have been and/or are currently employing workers in compliance  
28

1 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair  
2 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

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

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

11 93. Plaintiff and class members are entitled to injunctive relief against Defendants,  
12 restitution, and other equitable relief to return all funds over which Plaintiff and class members have  
13 an ownership interest and to prevent future damage and the public interest under Business and  
14 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,  
15 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure  
16 § 1021.5.

17 **TENTH CAUSE OF ACTION**

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

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

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

21 94. All outside paragraphs of this Complaint are incorporated into this section.

22 95. Plaintiff brings this cause of action as a proxy for the State of California on behalf of  
23 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),  
24 codified as Labor Code section 2698 *et seq.*:

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

1           96. Plaintiff reserves the right to amend, supplement, or add to this description of the  
2 aggrieved employees, according to proof.

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

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

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

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

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

24           102. On or about **June 7, 2024**, Plaintiff paid the requisite PAGA filing fee and provided  
25 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of  
26 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged  
27 violations.  
28

1           103. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor  
2 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set  
3 forth herein (the "PAGA notice").

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

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

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

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

- 16           g.     ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,  
17                   1197, 1198; IWC Wage Orders.
- 18           h.     ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage  
19                   Orders.
- 20           i.     ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21           j.     ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,  
22                   1198; IWC Wage Orders.
- 23           k.     ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,  
24                   1198; IWC Wage Orders.
- 25           l.     ***Untimely Payment of Wages During Employment.*** Violation of Labor Code  
26                   §§ 204, 204b, 210.
- 27           m.     ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of  
28                   Labor Code §§ 201, 202, 203, 256.

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

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

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

### **PRAYER**

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent  
2 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,  
3 and Code of Civil Procedure section 1021.5 and any other applicable sections; and  
4 o. For such other relief the Court deems just and proper.

5  
6 Dated: August 12, 2024

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

7   
8 \_\_\_\_\_  
9 Nicholas J. Ferraro  
Lauren N. Vega  
Attorneys for Plaintiff Brianna Lippold

**EXHIBIT 1**

**Notice of Labor Code Violations**

---

**FERRARO VEGA**  
SAN DIEGO EMPLOYMENT LAWYERS

---

Nicholas J. Ferraro  
[nick@ferrarovega.com](mailto:nick@ferrarovega.com)  
Lauren N. Vega  
[lauren@ferrarovega.com](mailto:lauren@ferrarovega.com)

**ATTORNEYS AT LAW**  
3333 Camino del Rio South, Suite 300  
San Diego, California 92108

619-693-7727  
619-350-6855 fax  
[ferrarovega.com](http://ferrarovega.com)

June 7, 2024

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

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

**Fresenius Medical Care Practice Holdings, Inc.**  
920 Winter Street  
Waltham, Massachusetts 02451

*Additional Defendants are Listed on the Final Page.*

**Bio-Medical Applications of California, Inc.**  
920 Winter Street  
Waltham, Massachusetts 02451

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

**FRESENIUS MEDICAL CARE PRACTICE HOLDINGS, INC.;**  
**BIO-MED APPL OF CALIFORNIA INC**  
***Additional Defendants are Listed on the Final Page***

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 Registered Nurse from about March 2023 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.

First, as discussed in further detail in the Unpaid Meal Period Premiums section below, due to the high demands of the job and being severely understaffed, Defendants regularly required Plaintiff and the aggrieved employees to work through their unpaid meal period. Plaintiff and the aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue working.

Second, Plaintiff and the aggrieved employees were required to arrive 15 minutes before their scheduled shift in order to prepare and open the clinic. This included completing tasks such as taking inventory of medications, preparing the “crash cart” and verifying the chlorine levels in the water were within safe parameters for patients, etc. Aggrieved employees who worked at closing time were required to clock out but continue working in order to complete tasks necessary to close the clinic like cleaning and preparing the beds for the following day.

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, as discussed in the minimum wage section above, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work. To the extent that these unlawful practices 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 and double time at the “regular rate of pay.” Defendants paid Plaintiff and the aggrieved employees shift differentials and other forms of remuneration that Defendants failed to include in the overtime and double time rate in the pay periods when employees worked overtime hours.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. 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.*

An illustrative example of this violation is shown below:

|                                                                                                                                                                                                |             |                    |                |                 |                                                                                                                                                                                                                                                         |                |            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------------------|----------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------|
| TOR Dept: 9382      000000-000000<br>DBL      004536016<br>CA071-Buena Creek Ca<br>Bio-Med Appl of California Inc<br>781/699-9000<br>920 Winter Street<br>Waltham, MA 02451<br>Emplid: 4536016 |             |                    |                |                 | <b>Earnings Statement</b><br>Page 001 of 002<br>Pay Rate: \$43.41<br>Basis of Pay: Hourly<br>Pay Period: 02/18/2024 - 03/02/2024<br>Advice Date: 03/08/2024<br>Advice Number: 0020781417<br>Batch Number: 000000005358<br>BRIANNA LIPPOLD<br>[REDACTED] |                |            |
| Total Hours Worked: 76.74<br>Employer ID # CA 384-5298                                                                                                                                         |             |                    |                |                 |                                                                                                                                                                                                                                                         |                |            |
| <b>Earnings</b>                                                                                                                                                                                | <b>Rate</b> | <b>Hours/Units</b> | <b>Amount</b>  | <b>YTD</b>      | <b>Deductions</b>                                                                                                                                                                                                                                       | <b>Current</b> | <b>YTD</b> |
| Regular                                                                                                                                                                                        | 43.4100     | 51.68              | 2243.43        | 5368.95         | *Medical                                                                                                                                                                                                                                                | 348.64         | 873.64     |
| Overtime                                                                                                                                                                                       | 65.1154     | 11.70              | 761.85         | 3478.24         | *Dental                                                                                                                                                                                                                                                 | 9.84           | 39.36      |
| Double Time                                                                                                                                                                                    | 86.8226     | 0.62               | 53.83          | 1265.32         | *Vision                                                                                                                                                                                                                                                 | 2.75           | 11.00      |
| Overtime                                                                                                                                                                                       | 85.3110     | 11.82              | 772.00         | 0.00            | Crit Ill EE Child                                                                                                                                                                                                                                       | 32.78          | 51.12      |
| Double Time                                                                                                                                                                                    | 87.2174     | 0.92               | 80.24          | 0.00            | Accidental Injury                                                                                                                                                                                                                                       | 6.40           | 25.60      |
| Sunday Diff 10                                                                                                                                                                                 | 4.3397      | 3.68               | 15.97          | 57.99           | Hospital Indemnit                                                                                                                                                                                                                                       | 7.77           | 31.08      |
| Night 10%                                                                                                                                                                                      | 0.00        | 0.00               | 0.00           | 23.10           | 401(k)                                                                                                                                                                                                                                                  | 196.37         | 590.68     |
| LOA-PTO/VAC                                                                                                                                                                                    | 0.00        | 0.00               | 0.00           | 1389.12         | *401(k)                                                                                                                                                                                                                                                 | 196.37         | 590.68     |
| PTO/VAC Adjust                                                                                                                                                                                 | 0.00        | 0.00               | 0.00           | 0.00            | *Health Care FSA                                                                                                                                                                                                                                        | 26.04          | 103.12     |
| RSI/SCK Adjust                                                                                                                                                                                 | 0.00        | 0.00               | 0.00           | 0.00            |                                                                                                                                                                                                                                                         |                |            |
| Critical Needs                                                                                                                                                                                 | 0.00        | 0.00               | 0.00           | 167.45          |                                                                                                                                                                                                                                                         |                |            |
| <b>Total Pay</b>                                                                                                                                                                               |             | <b>76.74</b>       | <b>3927.32</b> | <b>11813.31</b> |                                                                                                                                                                                                                                                         |                |            |

Extract from Plaintiff's Wage Statement with a Pay Date of 03/08/24

Here, Plaintiff earned a shift differential in the same period she worked approximately 11 hours of overtime, however, Plaintiff's overtime was paid at 1.5x Plaintiff's base rate. Defendants failed to properly factor shift differentials and all other types of non-excludable remuneration into the overtime rate. To the extent other aggrieved employees earned shift differentials or other forms of remuneration, Defendants failed to properly factor these payments into the regular rate of pay with respect to overtime.

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. To the extent the aggrieved employees earned sick pay in the same period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, 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 commissions and all other forms of additional non-excludable remuneration.

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 I those periods where they earned shift differentials or other forms of non-excludable remuneration, such as bonuses 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.

Defendants had an unlawful policy and practice of requiring Plaintiff and other aggrieved employees work through their unpaid meal periods. Plaintiff and the aggrieved employees were responsible for constantly monitoring their patients, even during their unpaid meal periods. Plaintiff recalls being instructed during her orientation to clock out before the fifth hour of work and turn on a 30-minute timer on her watch then clock back in after the time had lapsed, all while never taking a meal period. Plaintiff was told "this is what we do here."

As a result of this unlawful common practice, Defendants avoided paying all owed meal period premiums.

Each time Plaintiff and the aggrieved employees experienced a non-compliant meal period they were owed a meal period premium. 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 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 pay. 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 the pressure to keep up with the high demands of the job, they also experienced non-compliant rest periods. Plaintiff and the aggrieved employees barely had the opportunity to step off the floor to use the restroom and when complained were told to be a "team player."

As a matter of policy and practice, Defendants failed to pay all owed rest period premiums at the regular rate. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular

rate of compensation which 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.

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 for 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.

**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.

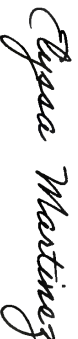
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

## **- 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

Cc Plaintiff Brianna Darlene Lippold  
Kristian Johnson - [kristian.johnson@freseniusmedicalcare.com](mailto:kristian.johnson@freseniusmedicalcare.com)

*Additional Defendants:*

**Fresenius Medical Care Alhambra,  
LLC**

**Fresenius Medical Care Bakersfield,  
LLC**

**Fresenius Medical Care Anaheim, LLC**

Fresenius Medical Care Balboa V, LLC

Fresenius Medical Care Balboa VI,  
LLC

Fresenius Medical Care Balboa VII,  
LLC

Fresenius Medical Care Clovis, LLC

Fresenius Medical Care Delano, LLC

Fresenius Medical Care East Lakes,  
LLC

Fresenius Medical Care Fresno North  
Home, LLC

Fresenius Medical Care Fresno, LLC

Fresenius Medical Care Glendale, LLC

Fresenius Medical Care Goldenwest,  
LLC

Fresenius Medical Care HT, LLC

Fresenius Medical Care Irvine, LLC

Fresenius Medical Care Los Alamitos,  
LLC

Fresenius Medical Care Memorial,  
LLC

Fresenius Medical Care Merced, LLC

Fresenius Medical Care Mercy  
Medical, LLC

Fresenius Medical Care Northcoast,  
LLC

Fresenius Medical Care Norwalk, LLC

Fresenius Medical Care Oceanside,  
LLC

Fresenius Medical Care Orange  
County, LLC

Fresenius Medical Care Palm Springs,  
LLC

Fresenius Medical Care Pegasus, LLC

Fresenius Medical Care Reedley  
Home, LLC

Fresenius Medical Care Reedley, LLC

Fresenius Medical Care Renal  
Therapeutics, LLC

Fresenius Medical Care RX, LLC

Fresenius Medical Care San  
Bernardino, LLC

Fresenius Medical Care San Juan  
Capistrano, LLC

Fresenius Medical Care Santa Ana,  
LLC

Fresenius Medical Care Santa Monica,  
LLC

Fresenius Medical Care Solano  
County, LLC

Fresenius Medical Care Temecula,  
LLC

Fresenius Medical Care Ventura Coast,  
LLC

Fresenius Medical Care Ventures, LLC

**Fresenius Medical Care Woodland  
(California),  
LLC**

920 Winter Street  
Waltham, Massachusetts 02451