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LAURA RAZO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LAURA RAZO, in her individual and representative capacity,

Plaintiff,

vs.

EYE PHYSICIANS OF LONG BEACH, A MEDICAL GROUP INC., a California corporation; and DOES 1-10, Inclusive,

Defendants.

Case No. 24STCV31693

COMPLAINT FOR:

(1) VIOLATION OF CALIFORNIA'S WHISTLEBLOWER LAWS
(2) FAILURE TO PROVIDE PROPER REST PERIODS
(3) FAILURE TO PROVIDE PROPER MEAL PERIODS
(4) FAILURE TO PAY OVERTIME
(5) FAILURE TO PAY MINIMUM WAGES
(6) FAILURE TO REIMBURSE WORK-RELATED EXPENSES
(7) FAILURE TO PROVIDE PROPER WAGE STATEMENTS
(8) FAILURE TO TIMELY PAY WAGES UPON TERMINATION
(9) UNFAIR COMPETITION
(10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

JURY TRIAL DEMANDED

Plaintiff LAURA RAZO ("Plaintiff") is informed and believes and hereby alleges as follows:

FACTUAL BACKGROUND

1. Plaintiff worked defendant EYE PHYSICIANS OF LONG BEACH, A MEDICAL GROUP INC. ("Eye Physicians," the "Office," or "Defendant") as a technician and a manager. She was employed from January 2022 until she was abruptly fired on May 8, 2024, in retaliation for her complaints about misconduct committed by the lead eye surgeon (Dr. Carlos Martinez, Eye Physician's owner) in using an LAL laser machine following a cataract surgery and the failure to provide her meal and rest periods. At the time of her termination, Plaintiff was earning $30 per hour.

2. Plaintiff was never formally disciplined while working for Eye Physicians. She worked very hard, i.e., she was always "the first in and the last to leave," and very reliable. Plaintiff worked two positions, technician and manager, and she would also fill in when other staff members were sick or unavailable. Because the Office was severely understaffed and the clinic regularly saw over 75 patients per day, Plaintiff almost never had a chance to take meal periods or rest periods – i.e., she was just forced to work through them – and she often worked very long shifts of 10, 12, or even 14 hours. Plaintiff requested that Eye Physician's hire someone to relieve her extreme workload and allow her to take breaks, but the person they hired lasted only two (2) days and was not replaced, forcing Plaintiff to continue to work these very long hours without legally mandated breaks, among other things. Plaintiff was never paid premium pay for the many non-compliant rest periods, and she is informed and believes that the premium pay she did receive for non-compliant meal periods was insufficient and that her overtime pay was also insufficient and improperly calculated. As noted, Plaintiff regularly complained about not being provided meal periods and rest periods, but nothing was done to alleviate these issues. For instance, Plaintiff would raise her inability to take meal periods and rest periods to Jessica Barragan, the Chief Financial Officer/Human Resources representative, but she would just say something like "it's been a rough day." Plaintiff would also sometimes text Ms. Barragan on the company Basecamp portal and note that she had to "skip" lunch, i.e., she was forced to miss lunch because there was no one who would relieve her. Ms. Barragan would often reply something like "ok, thanks for letting me know." But no one did anything to address staffing shortages or restructure Plaintiff's work duties to allow her to take her legally mandated breaks.

3. Plaintiff regularly had to transport and deliver items to or between the several offices of Eye Physicians, but she was not sufficiently paid regular and/or overtime wages for this work and she was never reimbursed her mileage or costs for using her own vehicle. Similarly, Plaintiff regularly used her personal cellular telephone for work-related duties, but she was never paid nor reimbursed for these costs nor paid for the time she was working off-the-clock. Plaintiff also regularly received text messages and emails while she was supposedly "off-duty" that required her to perform work for which she was never credited nor paid regular wages and/or overtime.

4. Plaintiff, a certified laser technician, assisted with the LAL laser eye procedures at the request of Dr. Martinez, which included Plaintiff doing a preliminary inspection of the Rx LAL machine ("machine") used in these surgeries. In April 2024, Plaintiff inspected the machine and noted that the refractive calculations were grossly incorrect for an upcoming cataract surgery. If the machine settings were not ***manually corrected***, then a surgeon would implant the ***wrong lenses*** into the patient's eye(s), causing physical harm and complications to the patient(s).

5. Plaintiff told optometrist Dr. Grattan that the machine settings were "way off," and she agreed and said she "did not know what happened." Plaintiff then told Dr. Martinez that the patient's astigmatism was higher than the machine maximum allowed – i.e., the machine calculations were too high and the machine would not accommodate the residual astigmatism. Plaintiff indicated that the machine needed to be manually corrected before the upcoming cataract surgery. Dr. Martinez said to just input the measurements and "just do it." Plaintiff told him that the machine only accounts for -4.00 diopters and the patient had a residual of about -2.00/-3.00 diopters. Dr. Martinez said he "understood," and that Plaintiff should just "input the 4.00 and rest will be corrected on a second [future] surgery."

6. Unfortunately for that patient (and perhaps many others), Dr. Martinez was wrong. The machine does not self-correct as Dr. Martinez incorrectly claimed. Thus, Dr. Martinez implanted the wrong lenses into this patient and perhaps many others either due to gross ignorance regarding the machine he uses in many of his surgeries, or else he did this in an effort to "create" the "need" for additional corrective surgeries. After the failed initial surgery, Plaintiff met with the patient and she expressed grave concern about her poor vision that resulted from the surgery. She said Dr. Martinez had told her "not to worry" and this problem could be corrected with another procedure, a "PRK" laser."

The patient asked Plaintiff what had happened to cause her to have such poor vision due to the surgery. The patient questioned whether she would have to pay for the "additional" surgery, given that her vision was made worse and she had already paid for her implanted lens.

7. Dr. Martinez holds himself out as a prolific eye surgeon "who specializes in cataract, refractive, and glaucoma surgery" (eyephysiciansoflongbeach.com). If he is truly ignorant of how the machine works, then it is very likely that he has incompletely performed other eye surgeries and thereby harmed many other patients. In duly performing her job duties and trying to protect patients, Plaintiff inadvertently exposed the ignorance and potential incompetence of the owner and lead surgery of Eye Physicians.

8. On May 8, 2024, several weeks after Plaintiff's run-in with Dr. Martinez, Eye Physicians' fired Plaintiff based on the pretext that it was based on her performance. However, it is clear that Plaintiff's complaints about the machine settings and the risks posed to patients, and well as her repeated complaints about her inability to take legally mandated breaks, were at least a "contributing factor" in Eye Physicians' decision to abruptly fire Plaintiff notwithstanding her history of outstanding performance and commitment.

9. As noted, Eye Physicians committed an array of wage and hour violations against Plaintiff, including: (i) failing to provide compliant off-duty rest periods and/or required premium wages; (ii) failing to provide compliant off-duty meal periods and/or required premium wages; (iii) failing to pay earned minimum wages, regular wages, and/or overtime wages; (iv) failing to pay or reimburse for business expenses; (v) based on the foregoing violations, willfully furnishing itemized wage statements to Plaintiff and many other similarly situated employees that did not accurately state, among other things, gross wages earned, total hours worked, deductions, net wages earned, hourly rates, the number of hours worked, and hourly rates as applied to hours worked; and (vi) and failing to timely pay all wages due upon termination and then pay the required "waiting time" penalties.

PRELIMINARY ALLEGATIONS

10. This Court has jurisdiction over this matter under PAGA and this Court's general powers granted by statutory law and the California Constitution.

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11. Plaintiff LAURA RAZO is, and at relevant times was, an individual domiciled in the State of California and a citizen of the State of California who worked as a non-exempt employee at Defendants' Los Angeles, California locations.

12. Defendant EYE PHYSICIANS OF LONG BEACH, A MEDICAL GROUP INC. is a California Corporation doing business in Los Angeles, California.

13. Venue is proper because Plaintiff worked and resided in Los Angeles, California and a substantial portion of the events at issue in this matter occurred within Los Angeles County, California.

14. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

15. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants. Defendant Eye Physicians and Doe Defendants are hereafter collectively referred to as "Defendants."

16. At all relevant times, Defendants were, and are, legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of *respondeat superior*. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

17. Plaintiff gave written notice by certified mail of Defendant's violations of various provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce Development Agency ("LWDA") and Defendants, which is attached hereto as **Exhibit 1**.

18. The LWDA did not provide notice of its intention to investigate Defendants' violations.

FIRST CAUSE OF ACTION

Violation Of California's Whistleblower Laws [Lab. Code §§ 1102.5, 98.6]

(By Plaintiff Against All Defendants)

19. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

20. At all relevant times, Labor Code section 1102.5 has precluded, among other things, retaliating "against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation or state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Cal. Lab. Code 1102.5(b).

21. The protections of section 1102.5 apply to employees. *See e.g., Bennett v. Ranch California Water Dist.*, 35 Cal.App.5th 908, 911 (2019). To qualify as "protected activity," an employee need only disclose a suspicion of a potential legal violation that is held in good faith and reasonable, regardless of whether it ultimately proves correct. *See e.g., Diego v. Pilgrim United Church of Christ*, 231 Cal.4th 913, 922 (2014). The disclosure does not need to be the first or only report of suspected illegal activity to qualify as "protected activity." *Hager v. County of Los Angeles*, 228 Cal.4th 1538, 1551-52 (2014); and "protected activity" need not implicate nor concern a violation of public policy. *See Cardenas v. M. Fanaian, D.D.S., Inc*., 194 Cal.Rptr.3d 1, 9-10, review granted and opinion superseded sub nom. *Cardenas v. Fanaian*, 362 P.3d 431 (Cal. 2015), and review dismissed on Feb. 24, 2016.

22. A qualifying "adverse employment action" is any action or course or pattern of conduct that, taken as a whole, materially and adversely affects the terms, conditions, or privileges of employment. *See Yanowitz v. L'Oreal USA, Inc*., 36 Cal.4th 1028, 1052-56 (2005). A determination of whether an adverse employment action occurred must "take into consideration the unique circumstances of the affected employee as well as the workplace conduct of the claims." *Whitehall v. County of San*

Bernardino, 17 Cal.App.5th 352, 366-67 (2017). Termination of employment plainly constitutes an adverse employment action.

23. Similarly, California Labor Code section 98.6(a) prohibits an employer from discharging, discriminating, retaliating against, or taking any adverse action against any employee who, among other things, "made a written or oral complaint that he or she is owed unpaid wages . . . or because of the exercise by the employee . . . of any rights afforded him or her." Section 98.6(b) provides that any employee who is discharged, retaliated against, or subject to an adverse action for any conduct delineated in Chapter 4 of the Labor Code [which includes section 98.6(a)] "shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer."

24. Plaintiff complained to Defendants regarding violations of California wage and hour laws for meal periods and rest periods that were not duly provided and otherwise exercised her right to be paid for wages under the Labor Code. Similarly, Plaintiff complained to Defendants about practices that grossly endangered patient safety and would, if uncorrected, cause great bodily harm, lack of informed consent, and other potential violations of patients and their rights under law.

25. Plaintiff's employment was terminated by Defendants on or about May 8, 2024, in direct retaliation for her actions.

26. As a direct and proximate result of Defendants' illegal termination of Plaintiff's employment, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

27. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Labor Code section 1102.5 and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

28. Defendants are also liable for a $10,000 per violation penalty pursuant to Labor Code section 1102.5 and/or other applicable law.

29. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights

and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

SECOND CAUSE OF ACTION

Failure To Provide Proper Rest Periods [Lab. Code §§ 226.7, 512, 1194]

(By Plaintiff Against All Defendants)

30. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

31. For the relevant time period, Defendants were required to provide Plaintiff with rest periods that comply with the Labor Code and applicable regulations and Wage Orders, including Labor Code section 226.7.

32. Defendants regularly failed to provide, and in fact denied, Plaintiff with statutorily compliant rest periods. Among other things, Defendants: (i) regularly designed and staffed shifts in a way that did not allow Plaintiff to timely take adequate off-duty rest periods mandated by law; (ii) failed to pay Plaintiff the premium compensation mandated by Labor Code section 226.7; and (iii) otherwise deterred and prevented employees from taking paid 10-minute rest breaks as mandated under California law.

33. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed to pay Plaintiff the proper rest period premium wages for all non-compliant or missed rest periods.

THIRD CAUSE OF ACTION

Failure To Provide Proper Meal Periods [Lab. Code §§ 226.7, 512, 1194]

(By Plaintiff Against All Defendants)

34. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

35. For the relevant time period, Defendants were required to provide Plaintiff with meal periods that comply with the California Labor Code and applicable regulations and wage orders, including Labor Code sections 226.7 and 512.

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36. Defendants regularly failed to provide, and in fact denied, Plaintiff with statutorily compliant meal periods. Among other things, Defendants: (i) regularly designed and staffed shifts in a way that did not allow Plaintiff to timely take adequate off-duty meal periods mandated by law, including the requisite second meal period during work shifts; (ii) failed to pay Plaintiff the premium compensation mandated by Labor Code section 226.7; and (iii) discouraged the taking of proper meal breaks via a companywide, systematic policy.

37. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed to pay Plaintiff the proper meal period premium wages for all non-compliant or missed meal periods.

FOURTH CAUSE OF ACTION

Failure To Pay Overtime Wages [Lab. Code §§ 510, 558, 1194]

(By Plaintiff Against All Defendants)

38. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

39. Defendants have failed to maintain a policy that compensates Plaintiff and other non-exempt employees for all hours worked, including overtime.

40. Defendants have required Plaintiff to work hours qualifying her for significant overtime compensation but has not paid her overtime compensation. As a result, Plaintiff has been denied "the unpaid balance of the full amount of this . . . overtime compensation" as required by Labor Code section 1194.

41. As a result of these violations and violations of the Labor Code sections 510, 558, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, Plaintiff and other non-exempt employees are entitled to wages, penalties, interest and attorney's fees.

FIFTH CAUSE OF ACTION

Failure To Pay Minimum and/or Straight Wages [Lab. Code §§ 204, 1182.12, 1194, 1194.2, 1197, 1197.1]

(By Plaintiff Against All Defendants)

42. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

43. Defendants regularly failed to pay Plaintiff earned minimum wages and straight time wages by, among other things, failing to pay her for work done during meal periods and before and after work shifts as required by Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and applicable wage orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

44. As a result of violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, 1199 and applicable wage orders for failure to pay minimum wage, Employer is liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2698 *et seq*.

SIXTH CAUSE OF ACTION

Failure To Pay Work-Related Expenses [Lab. Code § 2802]

(By Plaintiff Against All Defendants)

45. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

46. Labor Code section 2802 provides that "[a]n employer shall indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." Subsection (c) of Labor Code section 2802 further provides that "[f]or purposes of this section, the terms necessary expenditures or losses" shall include all reasonable costs, including but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section." *See also Cochran v. Schwan's Home Services, Inc*., 228 Cal.App.4th 1137 (2014).

47. As set forth herein, Defendants required Plaintiff to incur, without payment or reimbursement, various work-related expenses including, among other things, regularly and consistently using her own personal cellular phone, her own personal vehicle, and incurring other work-related cots without reimbursement. Such costs were incurred in direct consequence of the employees' discharge of his or her duties and they were reasonable and necessary. Such costs should have been, but never were, reimbursed.

48. Pursuant to section 2802 and other applicable law, Plaintiff is entitled to recover from Defendants reimbursement of all necessary expenditures or losses, interest, penalties, and attorneys' fees, among other things.

SEVENTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements [Labor Code §§ 226, 226.3]

(By Plaintiff Against All Defendants)

49. Plaintiffs incorporate by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

50. California Labor Code section 226(a) sets forth reporting requirements for Employers when they pay wages: "Every Defendants shall . . . at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (5) net wages earned . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Lab. Code § 226(a). "An employee suffering injury as a result of a knowing and intentional failure by an Defendants to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e)(1). "An employee is deemed to suffer injury for purposes of this subdivision if the Defendants fails to provide accurate and complete information as required by . . . subdivision (a) . . . ."

51. During the relevant time period, Defendants have not furnished Plaintiff with timely itemized wage statements accurately showing, among other things, gross wages earned, total hours worked, net wages earned, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate of Plaintiff.

52. Defendants intentionally failed to furnish Plaintiff accurate wage statements upon each payment of wages, in violation of California Labor Code section 226(a). Plaintiff was injured and damaged by these failures because, among other things, these failures led her to believe she was not entitled to overtime wages or paid premium pay wages for non-compliant meal periods and rest periods, although she was so entitled.

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53. Pursuant to Labor Code sections 204, 218.5, and 226, or other applicable law, Plaintiff is entitled to recover her regular wages, as well as penalties, interest, injunctive relief, costs, and attorneys' fees.

EIGHTH CAUSE OF ACTION

Failure to Pay Wages Upon Termination [Labor Code §§ 201-203, 227.3, 1199]

(By Plaintiff Against All Defendants)

54. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

55. Labor Code section 201 provides "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting." Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

56. Defendants have violated Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Plaintiff at the time employment was terminated because of, as noted herein, said unpaid overtime wages, regular wages, minimum wages, one-hour penalties for missed, interrupted, or untimely meal periods and rest periods, and unreimbursed work-related expenses, among others.

57. Labor Code sections 201 and 227.3 require an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as

required by sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

58. Defendants willfully failed to pay Plaintiff all compensation due upon termination of employment as required under Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Plaintiff is now entitled to recover up to thirty (30) days of wages due to Defendants' willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

<u>NINTH CAUSE OF ACTION</u>

Unfair Competition [Bus. & Prof. Code § 17200]

(By Plaintiff Against All Defendants)

59. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

60. Defendants' acts constitute a continuing and ongoing unlawful activity prohibited by the Business and Professions Code section 17200 ("UCL") and justifies the issuance of an injunction, restitution, and other equitable relief pursuant to California Business and Professions Code section 17203.

61. California Labor Code section 90.5 articulates the public policy of California to vigorously enforce minimum labor standards, including the requirements to employees' work-related expenses pursuant to Labor Code section 2802, pay overtime wages pursuant to Labor Code section 510, pay minimum wages pursuant to Labor Code section 1197, and provide adequate meal and rest periods pursuant to Labor Code sections 226.7 and 512, among other things.

62. Defendants' conduct directly violates state law, constitutes unfair competition and unlawful and unfair acts and practices within the meaning of the UCL.

63. For the four (4) years preceding this lawsuit, Defendants engaged and continued to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above.

64. Defendants' use of such unlawful and unfair business practices constitutes unfair competition and provides an unfair advantage over their competitors.

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65. Defendants' wrongful business practices have caused injury to Plaintiff and others, depriving them of the minimum working standards and conditions due them under California law and the Industrial Welfare Commission wage orders.

66. Pursuant to section 17203 of the California Business and Professions Code, Plaintiff seeks an order of this court enjoining Defendants from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in the complaint. Plaintiff also seeks an order requiring Defendants to make full restitution of all moneys it wrongfully obtained and withheld from Plaintiff.

TENTH CAUSE OF ACTION

Violation of Private Attorneys General Act [Lab. Code § 2698 *et seq*.]

(By Plaintiff Against All Defendants)

67. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

68. Plaintiff is an "Aggrieved Employee" under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

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

70. Plaintiff seeks civil penalties pursuant to PAGA for Defendants' unlawful wage and hour practices, including but not limited to, as stated herein: (i) failing to provide uninterrupted off-duty meal periods and/or required penalties; (ii) failing to provide uninterrupted off-duty rest periods and/or required penalties; (iii) failing to pay overtime; (iv) failing to pay minimum wages and straight wages; (v) failing to pay and/or reimburse employees for costs incurred for business-related expenses; (vi) failing to maintain adequate records; (vii) failing to furnish accurate wage statements; and (viii) failing to timely pay all wages due upon termination.

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71. Plaintiff seeks PAGA penalties as forth and allowed under Labor Code section 2699(f) and/or other applicable sections.

72. Labor Code violations alleged in this PAGA action include the following:

a. California Labor Code sections 226.7 and 512(a) (unpaid meal period premiums);

b. California Labor Code sections 226.7 (unpaid rest break premiums);

c. California Labor Code section 510 (failure to pay overtime/double-time);

d. California Labor Code sections 1194, 1194.2, 1197 and 1197.1 (failure to pay minimum wages);

e. California Labor Code section 2802 (failure to pay work-related expenses);

f. California Labor Code section 1198 (standard conditions of labor);

g. California Labor Code sections 204, 210 (payment of wages);

h. California Labor Code sections 1174, Industrial Wage Orders (failure to maintain records);

i. California Labor Code section 558 (failure to comply with requirements regulating hours and days of work);

j. California Labor Code sections 226(a) and 226.3 (non-compliant wage statements); and

k. California Labor Code sections 201, 202 and 203 (wages not timely paid upon termination).

73. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in her favor as described herein.

74. Pursuant to section 2699(g) of the Labor Code, or other applicable law, Plaintiff is entitled to recover statutory penalties, interest, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Applicable statutory and/or civil penalties pursuant to PAGA;

2. Reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g) and other applicable law;

3. Wages, civil penalties, and applicable statutory penalties;

4. General and compensatory damages;

5. Pre-judgment and post-judgment interest;

6. Attorneys' fees and costs reasonably incurred, including without limitation under Labor Code sections 218.5, 1102.5, 1194(a), 204, 226(e), and 2802(c);

7. Punitive and/or exemplary damages, if allowed;

8. Equitable relief in the nature of declaratory relief, injunctive relief, and/or restitution as applicable;

9. Such other relief that the Court deems proper.

Dated: December 2, 2024

HARDIN LAW GROUP, APC

By: ______________________________

James Hardin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: December 2, 2024

HARDIN LAW GROUP, APC

By:______________________________
James Hardin
Attorneys for Plaintiff

EXHIBIT 1

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310.606.2122

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Newport Beach, CA 92660
949.337.4810

One Sansome Street, Suite 3500
San Francisco, CA 94104
415.510.2211

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September 19, 2024

Via Certified U.S. Mail

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Online Submission)

Eye Physicians of Long Beach,
A Medical Group Inc.
2925 Palo Verde Ave.
Long Beach, CA 90815

Dr. Carlos Martinez
Owner
Eye Physicians of Long Beach,
A Medical Group Inc.
14 61 St. Place
Long Beach, CA 90803

Re: PAGA Notice Pursuant to California Labor Code § 2699: Laura Razo v. Employer(s) (Eye Physicians of Long Beach, A Medical Group Inc. and owner Dr. Carlos Martinez)

Dear Sir or Madam:

Please be advised that Laura Razo ("Plaintiff" or "Ms. Razo") has retained Hardin Law Group, APC to represent her and other aggrieved employees for wage and hour claims against their current and/or former employer(s) Eye Physicians of Long Beach, A Medical Group Inc. and owner Dr. Carlos Martinez and/or any other responsible entities or affiliates, (collectively "Employer"). This notice is being provided via certified mail to the Employer at their principal place of business and agent for service of process (if any) and is being filed with the California Labor and Workforce Development Agency ("LWDA") via the LWDA's electronic filing system under Section 2699.3(b) of the Labor Code. Plaintiff requests that the LWDA regard this Notice as written notice of her intent to seek civil penalties against Employer.

The Employer

Employer owns and operates one or more business locations in California. Employer hired various non-exempt employees to perform services in California who were subjected to the violations

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alleged herein ("Aggrieved Employees"). Plaintiff is informed and believes that Employer has generally employed more than twenty-five (25) employees working within California.

Employer has violated or caused to be violated several Labor Code provisions and is therefore liable for civil penalties under Labor Code sections 2698-2699.5, *et seq*. Plaintiff respectfully requests that your agency investigate the claims alleged against it herein. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Cal. Lab. Code § 2699.3.

Factual Background – Plaintiff and Aggrieved Employees

At all relevant times, Plaintiff was an aggrieved employee, as defined in Labor Code section 2699(c) as: "any person who was employed by the alleged violator and against whom one or more violations was committed." Plaintiff seeks recovery for the Labor Code and Wage Order violations set forth herein on behalf of herself and other current and former employees, including but not limited to all similarly situated employees in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and Wage Order violations as Plaintiff.

First, Plaintiff and Aggrieved Employees were not "provided" the requisite 10-minute rest periods because Employer did not schedule the required 10-minute rest periods, and Employer's facilities were so understaffed that employees were not able to regularly take the required, uninterrupted rest periods; and Employer regularly failed to pay the requisite one-hour wage penalty for such non-compliant rest periods.

Second, Plaintiff and Aggrieved Employees were not "provided" the requisite 30-minute meal periods for shifts greater than 5 hours, often because Employer's facilities were so understaffed that employees were not able to regularly take the required, uninterrupted meal periods; and Employer regularly failed to pay the requisite one-hour wage penalty for such non-compliant meal periods.

Third, Plaintiff and Aggrieved Employees are owed minimum wages, regular wages, and overtime wages for not being paid for "all time worked" because Plaintiff and Aggrieved employees regularly worked through lunch periods and worked before and after scheduled shifts carrying out duties for Employer. Plaintiff regularly worked more than eight hours per day, more than forty hours per week, and worked through lunches without ever being paid overtime wages. She also was often not paid regular wages or minimum wages for her work for Employer.

Fourth, Plaintiff and Aggrieved Employees are owed reimbursement for the cost of having to regularly incur costs for business-related functions, including transporting and delivering items between work locations in her personal vehicle without reimbursement for mileage or costs, using her personal cellular phone, and other work-related expenses.

Fifth, Employer violated section Labor Code section 226(a) by willfully failing to furnish Plaintiff and Aggrieved Employees with accurate itemized wage statements on many pay periods, in that the itemized wage statements provided did not accurately state, among other things, gross wages earned, total hours worked, deductions, net wages earned, hourly rates, the number of hours worked, and hourly rates as applied to hours worked.

Sixth, given Employer's wage and hour violations noted herein, Employer failed to pay all wages due to Plaintiff and Aggrieved Employees upon termination.

Thus, at all relevant times, Employer regularly fails to pay and/or provide Plaintiff and Aggrieved Employees: (1) compliant off-duty rest periods and/or required premium wages; (2) compliant off-duty meal periods and/or required premium wages; (3) earned minimum wages, regular wages, and/or overtime wages due; (4) proper and/or accurate wage statements; (5) reimbursement for business expenses such as use of personal cellular phones; (6) all wages due upon termination; (7) the required "waiting time" penalties; and (8) adequate recordkeeping as required by Labor Code.

Labor Code Violations

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Labor Code section 226.7 and Wage Orders require every California employer to authorize and permit all non-exempt employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours, or a major fraction thereon. Under subdivision (a), an employer shall not require an employee to work during rest periods mandated by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a rest period in compliance with an applicable statute, wage order, etc. . . the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest . . . period is not provided."

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty rest periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take compliant rest periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late rest period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided compliant rest periods and were not paid an additional hour of pay at their regular rate of for each such rest period.

As a result of Employer's violations of Labor Code sections 226.7, 226.7(b), and 512, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Labor Code section 512 and Wage Orders require every California employer to provide all non-exempt employees a duty-free meal period of not less than 30 minutes, for a work period of more than five (5) hours, "except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours work is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." Under subdivision (a) of Labor Code section 226.7, an employer shall not require an employee to work during meal periods mandated by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a meal . . . period in compliance with an applicable statute, wage order, etc. . . . the employer shall pay the employee one

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(1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal . . . period is not provided."

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty meal periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take compliant meal periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late meal period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided compliant meal periods and were not paid an additional hour of pay at their regular rate of for each such meal period.

As a result of Employer's violations of Labor Code sections 226.7, 226.7(b), 512, and 1198, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq*.

Unlawful Failure to Pay Minimum Wages, Regular Wages, and Overtime Wages

Employee and Aggrieved Employees are owed minimum wages, regular wages, and overtime wages for not being paid for "all time worked." Employee and Aggrieved Employees regularly worked more than eight hours per day, more than forty hours per week, and worked through lunches without ever being paid overtime wages. Employee and Aggrieved Employees were often not paid regular wages or minimum wages for their work at Employer.

As a result of violations of the Labor Code sections 510, 1194, and applicable Wage Orders for failure to pay overtime, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq*. Employer has also failed to compensate Plaintiff and Aggrieved Employees an amount equal to or greater than the minimum wage for all hours worked, as required by Labor Code sections 1182.12, 1194, 1197, 1197.1, and applicable Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. As a result of violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198 and applicable Wage Orders for failure to pay minimum wage, Employer is liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699 *et seq*.

Unlawful Failure to Reimburse Business Expenses

Labor Code section 2802 provides that "[a]n employer shall indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." Labor Code section 2802(c) provides that 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section" and section 2802(d) provides that "citations or civil penalties shall be the same as those set forth in Section 1197.1." *See also Cochran v. Schwan's Home Services, Inc.*, 228 Cal.App.4th 1137 (2014).

Among other things, Employer required Plaintiff and Aggrieved Employees to incur out-of-pocket expenses, such as using their personal cellular phones and/or using their personal vehicle to make deliveries between Employer's locations or run other work-related errands, among other things.

As a result of Employer's violations of Labor Code section 2802, Employer is liable for civil penalties pursuant to Labor Code sections 2802, 1197.1, and 2699 *et seq*.

Unlawful Failure to Furnish Accurate Wage Statements

Labor Code section 226 requires an employer to provide employees with accurate itemized wage statements showing (1) gross wages earned, (2) total hours worked by an non-exempt employee, (3) piece rates, if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is being paid, (7) the name of the employee and his or her social security number or identification number, (8) the name and address of the legal entity that is the employer, and (9) all hourly rates in effect and the corresponding number of hours worked. In addition, any payment made in cash must be accompanied by an itemized wage statement that meets the conditions set forth above. Wage Order 5, section 7(B) requires an employer to provide the same information.

Labor Code 226.3 provides that "any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two-hundred and fifty dollars ($250) per employee per violation in an initial citation, and one-thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records in subdivision (a) of section 226. The penalties provided for in this section are in addition to any other penalty provided by law."

Employer has violated Labor Code section 226(a) by willfully furnishing Plaintiff and Aggrieved Employees with itemized wage statements that did not accurately state, among other things, gross wages earned, total hours worked, deductions, net wages earned, hourly rates and number of hours worked, and the legal entity that is the employer. As a result of violations of Labor Code section 226(a), Employers are liable for civil penalties pursuant to Labor Code sections 226.3 and 2698 *et seq*.

Unlawful Failure to Timely Pay Wages Owed Including those Due Upon Termination

Labor Code section 201 provides "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting." Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

Employer has violated Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Plaintiff and all former Aggrieved Employees at the time employment was terminated because of, as noted herein, said unpaid overtime, regular wages and/or minimum wages and unpaid one-hour penalties for missed, interrupted, or untimely meal periods and rest periods, among others. Labor Code sections 201 and 227.3 require an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72-hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 workdays.

Pursuant to Labor Code section 1199, "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

Employer willfully failed to pay Aggrieved Employees no longer employed by it all compensation due upon termination of employment as required under Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days of wages due to Employer's willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. In addition, because Employer violated Labor Code sections 201, 202, and 203, Employer is liable for civil penalties pursuant to Labor Code section 2699 *et seq*.

<u>Unlawful Violation of Labor Code Section 1199</u>

Under Labor Code sections 1199(a) and (c) and 2699.5 *et seq*., an employer who "requires or causes an employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions is subject to PAGA penalties. Employers have violated the Labor Code in various ways set forth herein.

<u>Unlawful Failure to Maintain Adequate Records</u>

Labor Code section 1174 states, in pertinent part, that "[e]very person employee labor in this state shall . . . (c) Keep a record showing the names and addresses of all employees employed . . . [and] (d) Keep, at a central location in the state . . . or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective . . . establishments. These records shall be kept . . . in a file for not less than three years. . . Likewise, Wage Order 5, section 7 requires that "(A) [e]very employer shall keep accurate information with respect to each employee including the following: (1) the full name, home address, occupation and social security number (2) Birth date . . . (3) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked shall also be recorded . . . (5) Total hours worked in the payroll period and the applicable rates of pay. This information shall be made readily available to the employee upon reasonable request . . . ." In addition, Labor Code section 353 also requires employers to keep accurate records of all gratuities or tips they receive, directly or indirectly, which may not be collected by "managers" or owners under Labor Code section 351. Labor Code section 1174.5 provides that "any person employing labor who willfully fails

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to maintain the records required under subdivision (c) of section 1174 or accurate or complete records required by subdivision (d) of section 1174 . . . shall be subject to a civil penalty of five hundred dollars ($500). Subdivision (d) of section 1174.5 states that "[a]ny person, or officer or agent thereof, is guilty of a misdemeanor who fails to keep any of the records required by section 1174.

For the reasons and bases noted here, Employer has, among other things, willfully failed to maintain adequate records regarding Plaintiff and Aggrieved Employees.

Conclusion

Based on the above, Employer is in violation of California Labor Code section 2699.5 including but limited to the following[1]:

1. California Labor Code § 226.7 (unpaid rest break premiums);
2. California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums);
3. California Labor Code § 510 (failure to pay overtime/doubletime);
4. California Labor Code §§ 1194, 1194.2, 1197 and 1197.1 (unpaid minimum wages).
5. California Labor Code § 2802 *et seq.* (failure to reimburse for business expenses)
6. California Labor Code §§ 226(a) and 226.3 (non-compliant wage statements);
7. California Labor Code §§ 201, 202 and 203 (wages not timely paid upon termination);
8. California Labor Code § 1198 (standard conditions of labor);
9. California Labor Code §§ 204 and 210 (payment of wages); and
10. California Labor Code § 1174, Industrial Wage Orders (failure to maintain records);
11. California Labor Code § 558 (failure to comply with requirements regulating hours and days of work).

Plaintiff requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provision. Alternatively, Plaintiff requests the agency inform them if

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[1] Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each of the following that are applicable, as is set forth in Labor Code Section 2699.5, which states:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202,203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (I), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

it does not intend to investigate these violations so that she may include in their lawsuit the violations discussed in this letter.

Very truly yours,

HARDIN LAW GROUP, APC
A Professional Corporation

James B. Hardin

JBH/br