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County of San Diego

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

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

Plaintiffs,

vs.

HEALTHCARE STAFFING
PROFESSIONALS, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 25CU001196C

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff CESAR PEREZ, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants HEALTHCARE STAFFING
4 PROFESSIONALS, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. This is a class and representative action for wage and hour violations of the California
8 Labor Code.

9 2. Defendants failed to compensate Plaintiff and class members for all hours suffered or
10 permitted to work in violation of the applicable IWC Wage Order. Defendants’ underpayment of
11 wages was facilitated by their unlawful company-wide policy and practices of failing to include all
12 additional forms of non-discretionary remuneration into the regular rate of pay.

13 3. Defendants failed to reimburse Plaintiff and class members for necessary expenses
14 incurred in furtherance of class members’ job duties.

15 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members
16 to take compliant meal and rest periods to which they were entitled. Further, Defendants failed to pay
17 meal and rest period premiums.

18 5. Defendants failed to provide all paid sick leave due to Defendants’ policy and practice.

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

21 7. Defendants are further liable for derivative claims for wage statements, untimely
22 payment, and other associated violations.

23 8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
24 attorney’s fees, and costs.

25 **JURISDICTION & VENUE**

26 9. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
27 California Constitution as the causes of action are premised upon violations of California law.
28

10. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

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

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

PARTIES

A. Plaintiff Cesar Perez

13. Plaintiff Perez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2023 to August 2024. Plaintiff worked as a Mental Health Aide.

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

B. Defendants

15. Defendant Healthcare Staffing Professionals, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

17. 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.

18. 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.

19. 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.

CLASS ALLEGATIONS

20. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

21. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

22. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so

1 numerous that joinder of all class members is impracticable. The identities of
2 class members are ascertainable by inspection of Defendants' employment and
3 payroll records.

4 b. Typicality: Plaintiff's claims are typical of the claims of the other class
5 members. They were subject to the same policies and practices of Defendants,
6 which resulted in losses to the class. Proof of common unlawful business
7 practices, which Plaintiff experienced, will establish the right of the class to
8 recover on the causes of action alleged herein.

9 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
10 steps to protect the class members' interests adequately and fairly; has no
11 interest antagonistic to other class members; and is represented by attorneys
12 who have substantial experience prosecuting, defending, resolving, and
13 litigating wage and hour class, collective, and representative actions in
14 California state and federal courts.

15 d. Superiority: A class action is superior to other means for adjudicating this
16 dispute. Individual joinder is impractical. Class treatment will allow for
17 common issues to be resolved in a single forum, simultaneously, and without
18 duplication of effort and expense.

19 e. Public Policy Considerations: Certification of this lawsuit as a class action
20 advances the State of California's strong public interest in ensuring its
21 approximately millions of employed residents are properly paid the wages they
22 earned for the hours they worked. Class actions provide a mechanism for
23 enforcement of labor laws and allow for vindication of employee rights by
24 unnamed class members.

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

GENERAL ALLEGATIONS

24. Plaintiff and class members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

25. Defendants failed to pay Plaintiff and the class members overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. An illustrative example of Defendants' regular rate of pay violation is found on Plaintiff's wage statement for the pay period from 08/04/2024 to 08/10/2024 as it pertains to overtime. During this pay period, Plaintiff earned \$600 in "Other Earnings." However, Defendants failed to properly include the additional pay in Plaintiff's overtime rate, as the 8 overtime hours were paid at 1.5x Plaintiff's base rate of \$25, rather than 1.5x his regular rate of pay. Additionally, the 3.73 double time hours were paid at 2x Plaintiff's base rate of \$25, rather than 2x his regular rate of pay. Defendants committed the same "regular rate of pay" violation against Plaintiff and other class members as a matter of common payroll administration and company policy in a manner susceptible to common proof. This resulted in the underpayment of wages to employees.

26. Defendants failed to comply with California's paid sick leave laws with respect to the class members. Defendants failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions, and/or other forms of remuneration, as required by section 246, resulting in underpaid sick leave.

27. Plaintiff and the class members routinely experienced missed, late, short, and interrupted meal periods due to understaffing and to keep up with the high demands of the job. Specifically, in the Emergency Psychiatric Unit ("EPU") Department, Defendants expected Plaintiff and class members to be with patients one-on-one, therefore, Plaintiff and the class members were unable to leave patients unattended due to concern about the patient's safety and well-being. Defendants had a policy and practice of requiring Plaintiff and class members to stay with the patient at all times until someone was available to cover. However, due to understaffing and the demands of the job, there was often no one to cover until long after the fifth hour of work. Plaintiff and class members often started their shift at 7:00 p.m. and were unable to take their meal period until around 3:00 a.m.

1 28. Likewise, Plaintiff and the class members often experienced missed second meal
2 periods, when working over 10 hours due to the demands of the job. For example, Plaintiff and the
3 class members often worked 16-hour shifts, but were required to stay with their patients at all times,
4 which prevented Plaintiff and class members from being able to take their second meal period when
5 working more than 10 hours in a day. As a result, Plaintiff and class members suffered from non-
6 compliant meal periods. To the extent Defendants paid any meal period premiums, the premiums
7 were not paid at the regular rate of compensation because the premiums did not factor in commissions,
8 bonuses, or other forms of remuneration, instead electing to pay Plaintiff and the class members at
9 their base hourly rate, in violation of California law.

10 29. Due to the same reasons Plaintiff and the class members experienced non-compliant
11 meal periods, Plaintiff and the class members also experienced non-compliant rest periods. As stated
12 above, Defendants expected Plaintiff and class members to continuously remain with patients one-on-
13 one. Plaintiff and class members worked with high-risk patients that required constant monitoring.
14 For example, sometimes patients would not sleep the entire 12-hour shift and would start walking
15 around, constantly knocking things over. When this occurred, Plaintiff and class members would be
16 required to monitor the patients and walk with them anywhere they went. Plaintiff and class members
17 were also required to provide food for the patients at set times and would have to monitor their eating
18 to ensure their safety and well-being. This prevented Plaintiff and class members from taking lawful
19 rest periods. To the extent Defendants paid any rest period premiums, the premiums were not paid at
20 the regular rate of compensation because the premiums did not factor in commissions, bonuses, or
21 other forms of remuneration, instead electing to pay Plaintiff and the class members at their base
22 hourly rate, in violation of California law.

23 30. Defendants required Plaintiff and the class members to incur costs for work-related
24 purposes without full reimbursement. First, Plaintiff and the class members were required to drive to
25 the mandatory Crisis Prevention Intervention (“CPI”) training in their personal vehicles as required
26 by Defendants but were not reimbursed for this mileage as required by California law. Second,
27 Defendants required Plaintiff and other class members to use their personal cell phones for work-
28 related duties and purposes but did not reimburse them. For example, Plaintiff and the class members

1 were required to use their personal cell phones to coordinate scheduling and communicate with the
2 scheduler. Further, Plaintiff and the class members were required to log all their hours worked on the
3 application “Elevate” on their personal cell phones. However, Defendants failed to reimburse Plaintiff
4 and the class members for these expenses. Third, Plaintiff and the class members paid for CPR training
5 as required by Defendants. Plaintiff paid approximately \$115 for this required training but Defendants
6 failed to reimburse them for this. Thus, in direct consequence of their job duties, Plaintiff and the class
7 members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of
8 policy and practice.

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

11 32. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
12 statements to Plaintiff and class members each pay period as a result of the policies set forth above.
13 Defendants failed to list the correct “gross wages earned” as employees earned wages and premiums
14 that were not paid, resulting in an inaccurate reflection and recording of “gross wages earned” on those
15 wage statements. Likewise, Defendants failed to state on employee wage statements each pay period
16 the applicable hourly rates in effect and the number of hours worked at that rate as Defendant failed
17 to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and
18 underpaid, resulting in an inaccurate reflection on the pay stub.

19 33. Further, Defendants’ wage statements failed to accurately list employees’ “total hours
20 worked.” Thus, Plaintiff and class members cannot promptly and easily determine from the wage
21 statement alone the wages paid or earned without reference to other documents or information. These
22 wage statement violations are significant because they create confusion among Plaintiff and class
23 members with respect to what amounts were owed and paid, at what rate, the number of hours
24 worked, and how those amounts were or should be calculated. The wage statements reflect a false
25 statement of earnings and conceal the underpayments of employee wages.

26 34. Because of these policies and practices set forth above, Defendants failed to accurately
27 maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.
28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Violation of Labor Code §§ 510 and 1194**

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

5 36. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
7 wages all overtime hours worked, and which further provide a private right of action for an employer's
8 failure to pay all overtime compensation for overtime hours worked.

9 37. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
10 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
11 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
12 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
13 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
14 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
15 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

16 38. Plaintiff and class members are entitled to recover the full amount of the unpaid
17 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
18 extent permitted by law.

19 **SECOND CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **Violation of Labor Code §§ 226.7 and 512**

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

23 40. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
24 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
25 meal period premiums in lieu thereof), and which further provide a private right of action for an
26 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
27 regular rate of compensation.
28

41. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

42. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

43. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

50. 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.

51. 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).

52. 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.*

53. 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.

1 **FIFTH CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

3 **Violation of Labor Code §§ 204, 210, 218**

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

5 55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
7 period, and which further provide a private right of action for an employer's failure to comply with
8 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
9 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

21 **SIXTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **Violation of Labor Code § 226**

24 58. All outside paragraphs of this Complaint are incorporated into this section.

25 59. This cause of action is brought by a wage statement subclass pursuant to Labor Code
26 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
27 pay period, and which further provide a private right of action for an employer's failure to comply
28 with this obligation.

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

5 61. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
6 accurate itemized wage statements, causing confusion and concealing wage and premium
7 underpayments.

8 62. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
9 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
10 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 226(e).

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

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

16 63. All outside paragraphs of this Complaint are incorporated into this section.

17 64. This cause of action is brought by a waiting time subclass pursuant to Labor Code
18 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
19 employment, and which further provide a private right of action to recover statutory waiting time
20 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
21 wages.

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

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

5 68. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a
6 reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them
7 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

8 69. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
10 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 2802.

13 **NINTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 70. All outside paragraphs of this Complaint are incorporated into this section.

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

20 72. Defendants' dependence on these unfair and/or unlawful business practices deprived
21 Plaintiff and continue to deprive other class members of compensation to which they are legally
22 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
23 Defendants over competitors who have been and/or are currently employing workers in compliance
24 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
25 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

26 73. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28

1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

13 **TENTH CAUSE OF ACTION**

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

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

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

17 76. All outside paragraphs of this Complaint are incorporated into this section.

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

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

24 78. Plaintiff reserves the right to amend, supplement, or add to this description of the
25 aggrieved employees, according to proof.

26 79. The State of California, via the Labor and Workforce Development Agency
27 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
28

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

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

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

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

15 83. On or about **December 19, 2024**, Plaintiff paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

19 84. On or about **January 3, 2025**, Plaintiff paid the requisite PAGA filing fee and provided
20 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
21 Defendants’ alleged *amended* Labor Code violations, including the facts and theories to support the
22 alleged violations.

23 85. A true and correct copy of Plaintiff’s written *Amended* PAGA notice, entitled
24 “Amended Notice of Labor Code Violations” is attached hereto as Exhibit 1 and incorporated by
25 reference as though fully set forth herein (the “PAGA notice”). The original PAGA Notice is included
26 with this *amended* notice.

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

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

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

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

- 11 a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
12 Orders.
- 13 b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 14 c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
15 1198; IWC Wage Orders.
- 16 d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
17 1198; IWC Wage Orders.
- 18 e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
19 §§ 204, 204b, 210.
- 20 f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
21 Labor Code §§ 201, 202, 203, 256.
- 22 g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 23 h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 24 i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
25 Wage Orders.

26 90. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
27 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
28

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(k).

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;

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- 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: March 10, 2025

Ferraro Vega Employment Lawyers, Inc.

7 
8 _____
9 Nicholas J. Ferraro
Attorneys for Plaintiff Cesar Perez

EXHIBIT 1

Amended Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
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San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

January 3, 2025

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

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

Healthcare Staffing Professionals, Inc.
6914 Canby Ave., Suite 109
Reseda, CA 91335

- *PAGA Notice & Filing Fee* -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as an amended written notice under Labor Code section 2699.3 on behalf of Plaintiff **CESAR PEREZ** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

HEALTHCARE STAFFING PROFESSIONALS, INC.

Plaintiff hereby amends the December 19, 2024, LWDA Notice, attached hereto as **Exhibit 1**, to include additional facts and allegations that have been identified through subsequent investigation. The date of this notice may be deemed to relate back to the date of the original filing. The facts, theories, and allegations set forth in the original notice are hereby incorporated into this notice by reference as well.

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s

“regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

First, Plaintiffs and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to understaffing and the demands of the job. Specifically, in the Emergency Psychiatric Unit (“EPU”) Department, Plaintiff and the aggrieved employees were required to be with patients one-on-one. Plaintiff and the aggrieved employees were unable to leave patients unattended due to concern about the patient’s safety and well-being. Defendant had a policy and practice of requiring Plaintiff and the aggrieved employees to stay with the patient at all times until someone was available to cover. However, due to understaffing and the demands of the job, there was often no one to cover until long after the fifth hour of work. Plaintiff and the aggrieved employees often started their shift at 7:00 p.m. and were unable to take their meal period until around 3:00 a.m. As a result, Plaintiff and the aggrieved employees suffered from non-compliant meal periods.

Second, Plaintiff and the aggrieved employees often experienced missed second meal periods, when working over 10 hours due to the demands of the job. For example, Plaintiff and the aggrieved employees often worked 16-hour shifts but were required to stay with their patients at all times. This prevented Plaintiff and the aggrieved employees from being able to take their second meal period when working more than 10 hours in a day.

Third, Plaintiff and the aggrieved employees often experienced missed third meal periods, when working over 15 hours due to the demands of the job. As mentioned above, Plaintiff and the aggrieved employees often worked 16-hour shifts. However, Defendant required Plaintiff and the aggrieved employees to monitor patients at all times and not leave patients

unattended. This prevented Plaintiff and the aggrieved employees from being able to take their third meal period when working more than 15 hours in a day.

To the extent Defendant paid any meal period premium, the premiums were not paid at the regular rate of compensation because the premium did not factor in commissions, bonuses, or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

Defendant had an unlawful policy and practice of failing to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As stated above in the "Unpaid Meal Period Premium" section, Plaintiff and the aggrieved employees were required to be with the patient at all times. Plaintiff and the aggrieved employees worked with high-risk patients that required constant monitoring. For example, sometimes patients would not sleep the entire 12-hour shift and would start walking around, consistently knocking things over. When this occurred, Plaintiff and the aggrieved employees would be required to monitor the patients and walk with them anywhere they went. Plaintiff and the aggrieved employees were also required to provide food for the patients at set times and would have to monitor their eating to ensure their safety and well-being. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods.

Further, Plaintiff and the aggrieved employees often worked 16-hour shifts due to the demands of the job. On these days, Plaintiff and the aggrieved employees should have received 4 rest periods. However, due to Defendant's policy and practice of requiring Plaintiff and the aggrieved employees to constantly stay with patients and monitor them at all times, they did not receive a single rest period. This prevented Plaintiff and the aggrieved employees from being able to take their lawful rest periods when working 16-hour shifts.

When Defendant did not provide compliant rest periods, Defendant failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. To the extent Defendant ever paid a rest period premium, Defendant violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in bonuses, commissions, and other forms of remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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).

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela Romo." with a stylized flourish at the end.

Mariela Romo

Cc Plaintiff Cesar Perez

Healthcare Staffing Professionals, Inc. Human Resources
Christopher Navarajo
cristophern@hsp-inc.com

jkl

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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December 19, 2024

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

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

Healthcare Staffing Professionals, Inc.
6914 Canby Ave., Suite 109
Reseda, CA 91335

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

HEALTHCARE STAFFING PROFESSIONALS, INC.

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 an aggrieved employee.

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(s). 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 Mental Health Aid from about October 2023 to August 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 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.

Defendant failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. An illustrative example of Defendant’s regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from 08/04/2024 to 08/10/2024 as it pertains to overtime is shown below:

CO. FILE DEPT. CLOCK NUMBER 070 89G 002867 NURSE0 2 000043	Earnings Statement
HEALTHCARE STAFFING PROFESSIONAL INC 6914 CANBY AVE; SUITE 109 RESEDA CA 91335	Period Beginning: 08/04/2024 Period Ending: 08/10/2024 Pay Date: 08/16/2024
CESAR PEREZ	
Social Security Number: XXX-XX-9099	

Earnings	rate	hours	this period	year to date	Important Notes
Other Earnings	25.0000	24.00	600.00		ER PHONE NUMBER : 866-975-3968
Regular				16,926.50	
Overtime				12,037.88	BASIS OF PAY: HOURLY
DBL TIME				249.00	
ORIENTATION				48.90	
Reporting Pay				100.00	
Sick				2,276.25	
Gross Pay			\$600.00	32,811.97	

CO. 89G	FILE 002867	DEPT. NURSE0	CLOCK NUMBER 070 1 000042	Earnings Statement	
HEALTHCARE STAFFING PROFESSIONAL INC				Period Beginning:	08/04/2024
6914 CANBY AVE; SUITE 109				Period Ending:	08/10/2024
RESEDA CA 91335				Pay Date:	08/16/2024
				CESAR PEREZ	
Social Security Number: XXX-XX-9099					

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period
Regular	25.0000	16.00	400.00	16,926.50	Totl Hrs Worked	27.73
Overtime	37.5000	8.00	300.00	12,037.88	Important Notes	
DBL TIME	50.0000	3.73	186.50	249.00	ER PHONE NUMBER : 866-975-3968	
ORIENTATION				48.90	BASIS OF PAY: HOURLY	
Reporting Pay				100.00		
Sick				2,276.25		
Gross Pay			\$886.50	32,211.97		

Extract from Plaintiff's wage statements for pay period 08/04/2024 to 08/10/2024 showing that he earned \$600 in "Other Earnings" in the same pay period he earned overtime wages.

During this pay period, Plaintiff earned \$600 in "Other Earnings." However, Defendant failed to properly include the additional pay in Plaintiff's overtime rate, as the 8.00 overtime hours were paid at 1.5x Plaintiff's base rate of \$25, rather than 1.5x his regular rate of pay. Additionally, the 3.73 double time hours were paid at 2x Plaintiff's base rate of \$25, rather than 2x his regular rate of pay. Defendant committed the same "regular rate of pay" violation against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof. This resulted in the underpayment of wages to employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Upon information and belief, Defendant failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions, and/or other forms of remuneration, as required by section 246. Instead, Defendants paid sick leave to Plaintiff and the aggrieved employees at their base hourly rate, resulting in inaccurate sick leave accrual.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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, Plaintiffs and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to understaffing and the demands of the job. Specifically, in the Emergency Psychiatric Unit (“EPU”) Department, Plaintiff and the aggrieved employees were required to be with patients one-on-one. Plaintiff and the aggrieved employees were unable to leave patients unattended due to concern about the patient’s safety and well-being. Defendant had a policy and practice of requiring Plaintiff and the aggrieved employees to stay with the patient at all times until someone was available to cover. However, due to understaffing and the demands of the job, there was often no one to cover until long after the fifth hour of work. Plaintiff and the aggrieved employees often started their shift at 7:00 p.m. and were unable to take their meal period until around 3:00 a.m. As a result, Plaintiff and the aggrieved employees suffered from non-compliant meal periods.

Second, Plaintiff and the aggrieved employees often experienced missed second meal periods, when working over 10 hours due to the demands of the job. For example, Plaintiff and the aggrieved employees often worked 16-hour shifts but were required to stay with their patients at all times. This prevented Plaintiff and the aggrieved employees from being able to take their second meal period when working more than 10 hours in a day.

To the extent Defendants paid any meal period premium, the premiums were not paid at the regular rate of compensation because the premium did not factor in commissions, bonuses, or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

Defendant had an unlawful policy and practice of failing to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As stated above in the "Unpaid Meal Period Premium" section, Plaintiff and the aggrieved employees were required to be with the patient at all times. Plaintiff and the aggrieved employees worked with high-risk patients that required constant monitoring. For example, sometimes patients would not sleep the entire 12-hour shift and would start walking around, consistently knocking things over. When this occurred, Plaintiff and the aggrieved employees would be required to monitor the patients and walk with them anywhere they went. Plaintiff and the aggrieved employees were also required to provide food for the patients at set times and would have to monitor their eating to ensure their safety and well-being. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods.

When Defendant did not provide compliant rest periods, Defendant failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. To the extent Defendants ever paid a rest period premium, Defendant violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in bonuses, commissions, and other forms of remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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 as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

First, Plaintiff and the aggrieved employees were required to drive to the mandatory Crisis Prevention Intervention (“CPI”) training in their personal vehicles as required by Defendant but were not reimbursed for this mileage as required by California law.

Second, Defendant required Plaintiff and other aggrieved employees to use their personal cell phones for work-related duties and purposes but did not reimburse them. For example, Plaintiff and the aggrieved employees were required to use their personal cell phones to coordinate scheduling and communicate with the scheduler. Further, Plaintiff and the aggrieved employees were required to log all their hours worked on the application “Elevate” on their personal cell phones. However, Defendant failed to reimburse Plaintiff and the aggrieved employees for these expenses.

Third, Plaintiff and the aggrieved employees paid for CPR training as required by Defendant. Plaintiff paid approximately \$115 for this required training but Defendant failed to reimburse them for this.

Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

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(k)(1).

- 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.

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- 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,

A handwritten signature in black ink, appearing to read "Mariela Romo". The signature is fluid and cursive, with a large initial "M" and a distinct "R" at the end.

Mariela Romo

Cc Plaintiff Cesar Perez

Healthcare Staffing Professionals, Inc. Human Resources
Christopher Navarijo
cristophern@hsp-inc.com

jkl