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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**

ELIZABETH TIJERO and YANIRA TIJERO,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

IMPERIAL BEACH COMMUNITY CLINIC and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00042973-CU-OE-CTL

*Assigned to the Hon. John S. Meyer
Dept. C-64*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Civil Penalties Under the Private Attorneys
General Act

1 Plaintiffs ELIZABETH TIJERO and YANIRA TIJERO (“Plaintiffs”), individually and on
2 behalf of all others similarly situated, and on behalf of the State of California under the Private
3 Attorneys General Act, bring this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
4 COMPLAINT against Defendants IMPERIAL BEACH COMMUNITY CLINIC dba IMPERIAL
5 BEACH HEALTH CENTER and NESTOR COMMUNITY HEALTH CENTER and DOES 1
6 through 50, inclusive (collectively “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. Plaintiffs and Class Members worked at Imperial Beach Community Clinic in Imperial
9 Beach, California. During their employment, management required them to attend mandatory clinic
10 wide meetings. They were paid for the time worked, but they were not paid a meal period premium
11 for each mandatory lunch meeting, nor were they provided with a separate timely, duty-free meal
12 period. Through this action, Plaintiffs seek to recover the meal period premiums owed to the Class
13 Members, along with the corresponding penalties.

14 2. Defendants also failed to maintain lawful rest period practices, such that Plaintiffs and
15 Class Members were not authorized to take uninterrupted, duty-free rest periods for every four hours
16 worked (or major portion thereof). This was due to staffing issues and pressures from management.
17 Through this action, Plaintiffs seek to recover the rest period premiums owed, along with the
18 corresponding penalties.

19 **JURISDICTION & VENUE**

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

22 4. The monetary damages and restitution sought by Plaintiffs exceed the minimal
23 jurisdiction limits of the Superior Court.

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

6. Venue is proper in this Court under Code of Civil Procedure section 395 because Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiffs Elizabeth and Yanira Tijero

7. Plaintiff Elizabeth Tijero is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2019 to October 2022. Plaintiff worked as a Patient Service Representative.

8. Plaintiff Yanira Tijero is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2019 to August 2022. Plaintiff worked as Medical Assistant.

9. 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.”])

B. Defendants

10. Defendant Imperial Beach Community Clinic is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. Defendants do business in California as Imperial Beach Health Center and as Nestor Community Health Center.

12. 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 to Plaintiffs, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiffs and are responsible in some manner for the acts and omissions alleged herein. Plaintiffs may seek leave to amend this Complaint to reflect their true names and capacities once ascertained.

13. Plaintiffs are informed, believe, and allege that all 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 Plaintiffs and

1 other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as
2 employees under California law.

3 14. Plaintiffs are informed, believe, and allege that at least some of the Defendants have
4 common ownership, common management, interrelationship of operations, and centralized control
5 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
6 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
7 558.1, and 1197.1

8 15. Plaintiffs are informed, believe, and allege that each defendant acted in all respects
9 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
10 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such
11 that the acts and omissions of each defendant may be legally attributable to all others.

12 **CLASS ALLEGATIONS**

13 16. Plaintiffs bring this action individually and on behalf of the following class pursuant to
14 Code of Civil Procedure section 382:

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

19 17. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the
20 class certification stage, according to proof.

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

23 a. Numerosity: Although the precise membership of the entire class is unknown
24 to Plaintiffs at this time, Plaintiffs estimate the class to exceed 50 individuals.
25 The class members are so numerous that joinder of all class members is
26 impracticable. The identity of class members is readily ascertainable by
27 inspection of Defendants' employment records.

- 1 b. Typicality: Plaintiffs' claims are typical of the claims of the other class
2 members. Plaintiffs and class members were subject to the same policies and
3 practices of Defendants, which resulted in losses to Plaintiff and Class
4 Members. Proof of common unlawful business practices, which Plaintiffs
5 experienced and is representative of, will establish the right of the class to
6 recover on the causes of action alleged herein.
- 7 c. Adequacy: Plaintiffs are adequate class representatives. Plaintiffs will take all
8 necessary steps to adequately and fairly represent and protect the interests of
9 the class. Plaintiffs have no interest antagonistic to other class members.
10 Plaintiffs are represented by attorneys who have substantial experience
11 prosecuting, defending, resolving, and litigating wage and hour class,
12 collective, and representative actions in California state and federal courts.
- 13 d. Superiority: A class action is superior to other means for adjudicating this
14 dispute. Individual joinder is impractical. Class treatment will allow for
15 common issues to be resolved in a single forum, simultaneously, and without
16 duplication of effort and expense.
- 17 e. Public Policy Considerations: Certification of this lawsuit as a class action
18 advances the State of California's strong public interest in ensuring its
19 approximately millions of employed residents are properly paid the wages they
20 earned for the hours they worked. Class actions provide a mechanism for
21 enforcement of labor laws and allow for vindication of employee rights by
22 unnamed class members.

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

1 **GENERAL ALLEGATIONS**

2 20. Defendants failed to provide compliant first and second meal periods to Plaintiffs and
3 Class Members. Plaintiffs and Class Members experienced missed, late, short and interrupted meal
4 periods due to scheduling, mandatory meetings, work-related obligations, and staffing issues. When
5 Plaintiffs and other Class Members experienced missed, late, short and interrupted meal periods,
6 Defendants failed to pay meal period premiums as required by Labor Code section 226.7.

7 21. Additionally, Defendants had an unlawful policy and practice of holding mandatory
8 lunch meetings during Plaintiffs' and other employees' shifts without providing an opportunity for a
9 duty-free meal period that complies with California law. As a result, Plaintiffs and other aggrieved
10 employees were unable to take compliant uninterrupted, duty-free meal periods on those days.

11 22. Furthermore, Defendants failed to provide all rest periods to which employees were
12 entitled and failed to pay rest period premiums to Plaintiffs and other aggrieved employees. Due to a
13 heavy workload, staffing issues, and pressures from Defendants, Plaintiffs and other Class Members
14 were very rarely, if at all, authorized or permitted to take all their rest periods. Defendants maintain a
15 policy and practice of not paying rest period premiums to employees who were unable to take rest
16 periods.

17 23. As a result of the foregoing practices, Defendants failed to pay all wages owed each
18 payday and upon separation of employment, resulting in statutory penalties and inaccurate wage
19 statements that fail to correctly state the gross and net wages earned, as well as all hourly rates in effect
20 and the number of hours worked at each rate.

21 **FIRST CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

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

24 24. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

3 26. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiffs and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
5 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
6 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
7 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
8 sections of the applicable orders).

9 27. Further, Defendants willfully failed in their affirmative obligation to consistently pay
10 Plaintiffs and Class Members one additional hour of pay at the respective regular rate of compensation
11 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
12 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
13 applicable orders).

14 28. Plaintiffs and Class Members are entitled to recover to the full amount of the meal
15 period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and
16 costs to the extent permitted by law.

17 **SECOND CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7**

20 29. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

21 30. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

26 31. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiffs and Class Members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

1 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
2 applicable orders).

3 32. Plaintiffs and Class Members are entitled to recover to the full amount of the rest period
4 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
5 the extent permitted by law.

6 **THIRD CAUSE OF ACTION**

7 **UNTIMELY PAYMENT OF WAGES**

8 **Violation of Labor Code §§ 204 *et seq.***

9 33. Plaintiffs incorporates all outside paragraphs of this Complaint as if set forth herein.

10 34. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
12 period, and which further provide a private right of action for an employer’s failure to comply with
13 this obligation.

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

20 36. Plaintiffs and Class Members are entitled to recover the full amount of the unpaid
21 wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure
22 to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations
23 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under
24 provided in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted
25 by law.

1 **FOURTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **Violation of Labor Code § 226**

4 37. Plaintiffs incorporates all outside paragraphs of this Complaint as if set forth herein.

5 38. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
6 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
7 pay period, and which further provide a private right of action for an employer's failure to comply
8 with this obligation.

9 39. Defendants knowingly and intentionally failed in their affirmative obligation provide
10 accurate itemized wage statements to Plaintiffs and Class Members resulting in injury to Plaintiffs and
11 Class Members. Specifically, the wage statements issued to Plaintiffs and Class Members did not
12 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9),
13 including net and gross wages earned and all hourly rates in effect along with the corresponding
14 number of hours worked at each hourly rate.

15 40. Defendants' unlawful acts and omissions deprived Plaintiffs and Class Members of
16 accurate itemized wage statements, causing confusion and concealing wage and premium
17 underpayments.

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

23 **FIFTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

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

26 42. Plaintiffs incorporates all outside paragraphs of this Complaint as if set forth herein.

27 43. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
28 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of

1 employment, and which further provide a private right of action to recover statutory waiting time
2 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
3 wages.

4 44. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
5 wages earned and unpaid to Plaintiffs and members of the Waiting Time Class immediately upon
6 termination of employment or within 72 hours thereafter for employees who did not provide at least
7 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
8 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

9 45. Plaintiffs and the Waiting Time Class are entitled to recover to a waiting time penalty
10 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
11 by law.

12 **SIXTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

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

15 46. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

25 49. Plaintiffs are a victim of Defendants' unfair and/or unlawful conduct alleged in this
26 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
27 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
28 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

1 50. Plaintiffs and Class Members are entitled to injunctive relief against Defendants,
2 restitution, and other equitable relief to return all funds over which Plaintiffs and Class Members have
3 an ownership interest and to prevent future damage and the public interest under Business and
4 Professions Code § 17200 *et seq.* Plaintiffs and Class Members are further entitled to recover interest,
5 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
6 § 1021.5.

7 **SEVENTH CAUSE OF ACTION**

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

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

10 **(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)**

11 51. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

12 52. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of
13 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
14 codified as Labor Code section 2698 *et seq.*:

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

18 53. Plaintiffs reserve the right to amend, supplement, or add to this description of the
19 aggrieved employees according to proof.

20 54. The State of California, via the Labor and Workforce Development Agency
21 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
22 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff
23 files suit is always the real party in interest."])

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

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

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

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

14 59. On or about October 20, 2022, Plaintiffs paid the requisite PAGA filing fee and
15 provided written notice (by online electronic filing with the LWDA and by certified mail to
16 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
17 the alleged violations.

18 60. A true and correct copy of Plaintiffs’ written PAGA notice, entitled “Notice of Labor
19 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
20 forth herein (the “PAGA notice”).

21 61. To date, neither Plaintiffs nor Plaintiffs’ counsel has received a response to Plaintiff’s
22 written PAGA notice from the LWDA.

23 62. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither
24 Plaintiffs nor Plaintiffs’ counsel have received written notice by certified mail from any defendant
25 providing a description of any actions taken to cure the alleged violations.

26 63. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these
27 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
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1 the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all
2 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

3 64. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
4 Complaint, Defendants committed the following violations and are liable for all corresponding civil
5 penalties:

- 6 a. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
7 1198; IWC Wage Orders.
- 8 b. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
9 1198; IWC Wage Orders.
- 10 c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
11 §§ 204, 204b, 210.
- 12 d. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
13 Labor Code §§ 201, 202, 203, 256.
- 14 e. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 15 f. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
16 Wage Orders.

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

21 **PRAYER**

22 Plaintiffs pray for judgment as follows:

- 23 a. For certification of this action as a class action;
- 24 b. For appointment of Plaintiffs as the class representatives;
- 25 c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;
- 26 d. For division of Class Members into appropriate classes and/or subclasses according to
27 proof;
- 28 e. For recovery of damages in amount according to proof;

- 1 f. For all recoverable pre- and post-judgment interest;
- 2 g. For recovery of all civil and statutory penalties and liquidated damages;
- 3 h. For disgorgement of all amounts wrongfully obtained;
- 4 i. For this action to be maintained as a representative action under the PAGA;
- 5 j. For Plaintiffs and Plaintiffs' counsel to be provided with all enforcement capability as
- 6 if the action were brought by the State of California or the California Division of Labor
- 7 Enforcement;
- 8 k. For recovery of all civil penalties and other recoverable amounts, including attorneys'
- 9 fees under § 2699, under the PAGA;
- 10 l. For restitution and injunctive relief;
- 11 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 12 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
- 13 1194, 2699, and Code of Civil Procedure section 1021.5; and
- 14 n. For such other relief the Court deems just and proper.

15
16 Dated: January 3, 2022

Ferraro Vega Employment Lawyers, Inc.

17 

18 _____
Nicholas J. Ferraro
19 *Attorneys for Plaintiffs*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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October 20, 2022

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

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

Imperial Beach Community Clinic
1016 Outer Rd
San Diego, CA 92154

- *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 **Elizabeth Tijero and Yanira Tijero** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

IMPERIAL BEACH COMMUNITY CLINIC
dba IMPERIAL BEACH HEALTH CENTER and
NESTOR COMMUNITY HEALTH CENTER

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 Plaintiffs. 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, Plaintiffs intend to commence a civil action against Defendant 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.

Through this notice, Plaintiffs request that Defendant 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. Plaintiffs 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 a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendant is notified that any attempt to resolve this case be conducted in coordination with Plaintiffs' counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendant employed Plaintiff Elizabeth Tijero during the PAGA Period in the position of Patient Service Representative from about October 2019 to October 2022. Defendant employed Plaintiff Yanira Tijero during the PAGA Period in the position of Medical Assistant from about June 2019 to August 2022. During their employment Plaintiffs 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, Plaintiffs inform the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiffs and the following individuals:

All current and former non-exempt employees who worked for Defendant 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”).

Plaintiffs reserve the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiffs seek all recoverable civil penalties for Defendant’s 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 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.

Defendant failed to provide compliant first and second meal periods to Plaintiffs and the aggrieved employees. Plaintiffs and other aggrieved employees experienced missed, late, short and interrupted meal periods due to scheduling, mandatory meetings, work-related obligations, and staffing issues. When Plaintiffs and other aggrieved employees experienced missed, late, short and interrupted meal periods, Defendant failed to pay meal period premiums as required by Labor Code section 226.7.

Additionally, Defendant had an unlawful policy and practice of holding mandatory lunch meetings during Plaintiffs' and other employees' shifts without providing an opportunity for a duty-free meal period. As a result, Plaintiffs and other aggrieved employees were unable to take true uninterrupted, duty-free meal periods. Below is an example of how it Defendant's policy was implemented by supervisors.

Email from Supervisor Asking Employees to Clock Out for a Lunch Meeting

Good Afternoon,

As we transitioned to Paylocity this system does not automatically deduct lunch meal. Please make sure you are clocking out for at least a 30min lunch break. If there is a lunch meeting employees must still clock out minimum 30 minutes for lunch.

Thanks,
Jessica Cabrera
Medical Assistant Supervisor
Imperial Beach Community Clinic

Email from Supervisor Asking Employees Explaining Lunch Meeting Policy

From: [Jessica Cabrera](#)
Sent: Tuesday, June 14, 2022 1:04 PM
To: **Redacted**
Redacted
Cc: [Jean Paul Cintron](#); [Juan Estrada](#); [Veronica Gomez](#)
Subject: RE: clocking out for lunch time

Clock out so it shows you took a meal break, HR will add lunch pay "paid lunch meeting".

On the days when employees were required to attend mandatory meetings, Plaintiffs and the aggrieved employees were deprived of a duty-free meal period. Defendant failed to allow Plaintiffs and the aggrieved employees to take a duty-free meal period before or after the mandatory lunch meeting. Plaintiffs' records show that Defendant, on occasion would add paid time called "Lunch Meeting" to the Plaintiffs' and other aggrieved employees' time records. When Defendant did add lunch pay, Defendant still failed to provide Plaintiffs and other aggrieved employees with meal period premiums as required by Labor Code section 226.7. The lunch pay that Defendant occasionally added to employees' wage statements compensated employees for time worked by attending the mandatory lunch meeting (*i.e.*, hours worked).

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

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

Defendant violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiffs 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 failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiffs and other aggrieved employees. Due to a heavy workload, staffing issues, and pressures from Defendant, Plaintiffs and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant has a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

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

Defendant violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiffs 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 Defendant failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b

(for weekly employees, as applicable). Defendant 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 explained above, Defendant underpaid Plaintiffs and other aggrieved employees' minimum, regular, overtime, and premium pay. Defendant is separately liable for not paying the full amount owed to Plaintiffs and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendant 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.

Defendant 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. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant violated Labor Code sections 201, 202, and 203. Because Defendant failed to pay meal and rest period premiums at the lawful rates [and wages?], Defendant failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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

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

Defendant 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.

Defendant 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. Defendant 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), Defendant failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the wage statement.

Plaintiffs 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 Plaintiffs 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, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Defendant violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiffs 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, Defendant failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

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

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all Defendant and its 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 Plaintiffs and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendant’s 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.

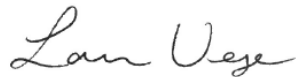
If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiffs 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 Plaintiffs' counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Lauren N. Vega

Cc Plaintiff Elizabeth Tijero
Plaintiff Yanira Tijero
Nicholas J. Ferraro, Esq.