

VENTURA  
SUPERIOR COURT  
FILED

OCT 05 2023

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Executive Officer and Clerk

BY: \_\_\_\_\_ Deputy

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10 individually, and on behalf of the Proposed Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF VENTURA**

13 CYNTHIA GILBERT, an individual, on  
14 behalf of herself and all others similarly  
15 situated,

16 **Plaintiffs,**

17 vs.

18 **OPTION CARE ENTERPRISES, INC., a**  
19 **Delaware corporation; and DOES 1 through**  
20 **20, inclusive,**

21 **Defendants.**

CASE NO.: 2023-CU-OE-012240

**FIRST AMENDED CLASS-ACTION  
COMPLAINT FOR:**

1. Failure to Pay Wages Owed;
2. Violation of Labor Code §§ 226(a) (Non-Compliant Wage Statements);
3. Violation of Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
4. Violation of Labor Code § 226.7 (Unpaid Rest Break Premiums);
5. Violation of Labor Code § 226.7 (Unpaid Meal Break Premiums);
6. Failure to Pay Reporting Time Pay; and
7. Violation of The Unfair Competition Law Business & Professions Code §17200, et seq.
8. For Civil Penalties Under the Private Attorney Generals Act of 2004 (Labor Code § 2699 et seq.)

22 Plaintiff, CYNTHIA GILBERT (“Plaintiff”), individually and on behalf of all other members  
23 of the public similarly situated, alleges as follows:

24 **INTRODUCTION**

25 1. This is a class action brought pursuant to California Code of Civil Procedure §382 on  
26 behalf of a group of non-exempt employees of Option Care Enterprises, Inc. (“Defendant” or  
27  
28

1 “Employer”) who are currently employed or have been employed by the Defendant within California  
2 during the past four years.

3 2. Defendant OPTION CARE ENTERPRISES, INC. is a Delaware company doing  
4 business in California in the home health care sector, employing nurses and other professionals to  
5 render infusion and other medical services to residents and citizens of the State of California,  
6 throughout the State. Defendant advertises on its website that “[w]e specialize in infusion treatments  
7 for a broad range of acute and chronic conditions with access to the most innovative therapies and  
8 drugs available.” (*See, e.g.*, <https://optioncarehealth.com/about>).

9 3. On information and belief, and according to its website, Defendant also maintains 27  
10 physical locations throughout California, which it characterizes as “infusion suites” within the State.  
11 Defendant employs registered nurses, such as Plaintiff GILBERT, throughout the state, and often  
12 requires them to work “on-call” at various times during each work period.

13 4. Employees also are expected to travel significant distances in service and obedience  
14 to the employer, and to provide “coverage” for large geographic areas where patients may be  
15 located. Employees maintain a company cell phone, which they must utilize to answer calls and also  
16 for app-based work messaging systems. As such, the Employees are effectively “tethered” through  
17 technological means to the job.

18 5. In addition, and as detailed more fully below, Defendants have provided wage  
19 deduction statements to their employees within California that do not comply with the strict  
20 requirements of *Labor Code* section 226(a).

21 6. As a direct result of Defendants’ intentional conduct, Defendants have denied their  
22 employees a number of wage and hour protections provided by the California Labor Code and  
23 California Industrial Welfare Commission (“IWC”) Wage Orders, including wage statement  
24 violations and reimbursement of work-related expenses.

25 7. Defendants’ conduct and policies constitute an intentional and willful practice. As a  
26 result of Defendants’ conduct, Plaintiff and the class members have been deprived of legally  
27 compliant wages, wage statements and business expense reimbursements, and related interest,  
28

1 penalties, and attorneys' fees. Plaintiff, on behalf of herself and all other similarly-situated persons,  
2 seeks all available remedies as set forth below resulting from Defendants' conduct.

3 **JURISDICTION AND VENUE**

4 8. This class action is within the court's jurisdiction under, *inter alia*, California Labor  
5 Code §§ 226, 512, 1194, 1197, 2802, IWC Wage Order 5-2001 or 15-2001 (or as applicable) and the  
6 California Unfair Competition law (the "UCL"), Business and Professions Code § 17200, et seq.

7 9. Plaintiff is a citizen of California because her domicile is in California. Plaintiff  
8 performed services on behalf of Defendants within Ventura County, California, during the past five  
9 (5)years. Plaintiff rendered services to patients within Ventura County, during this same period.

10 10. On information and belief, Defendant OPTION CARE ENTERPRISES, INC. is a  
11 Delaware corporation with its corporate office located in Illinois, and its California operations  
12 conducted out of 27 infusion suite locations throughout California, including in Ventura, California.  
13 Plaintiff alleges further that at all relevant times Defendant and DOES 1 through 20 have been a  
14 major health care employer throughout the State of California, including multiple counties  
15 throughout the State such as Ventura County. Defendants' in-state activities are substantial,  
16 continuous and systematic, and gave rise to the liabilities sued upon herein.

17 11. Plaintiff and many of her co-workers performed work on behalf of Defendants within  
18 Ventura County, California, during the past four years. This court has jurisdiction over Defendants  
19 because they conduct substantial business operations in Ventura County, committed the violations  
20 set forth in this complaint in Ventura County, California and have intentionally availed themselves  
21 of the laws and markets of California through the operation of their business in California as well as  
22 the County.

23 12. The monetary damages and restitution sought by Plaintiff and the class members  
24 exceed the minimal jurisdiction limits of the Superior Court and will be established according to  
25 proof at trial. Based upon information and investigation as of the filing date of this complaint,  
26 Plaintiff alleges that the amount in controversy for herself and each class member, including claims  
27 for monetary damages, restitution, penalties, injunctive relief, and pro rata share of attorney's fees, is  
28 less than seventy-five thousand dollars (\$75,000) and that the aggregate amount in controversy for

1 the proposed class action, including monetary damages, restitution, penalties, injunctive relief, and  
2 attorney’s fees, is less than five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff  
3 reserves the right to seek a larger amount based on new and different information and resulting from  
4 discovery and investigation.

5 **THE PARTIES**

6 13. Plaintiff GILBERT was, and is, a victim of Defendants’ policies and/or practices  
7 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to  
8 her by California Labor Code §§ 201, 202, 219, 226, 226.7, 510, 512, 1194, 1197, 1197.1, and/or  
9 1198; California Business and Professions Code § 17200, *et seq.*, and the IWC Wage Orders.  
10 Plaintiff is a resident of Ventura County, California, and has worked for Defendant performing home  
11 healthcare services throughout southern California, including Ventura County, within the past 4  
12 years.

13 14. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,  
14 Defendant OPTION CARE ENTERPRISES, INC. is a Delaware corporation and has at least 27  
15 locations that it operates within California. Defendant has actively solicited and provided business  
16 from and to citizens of the State of California during the past four years.

17 15. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,  
18 Does 1 through 20, were the owner(s), director(s), officer(s), or managing agent(s) acting on behalf  
19 of employer OPTION CARE ENTERPRISES, INC., and who, in said respective capacities and  
20 positions, are liable for the claims alleged herein pursuant to Labor Code § 558.1 in that they were  
21 and are an “other person” acting on behalf of Defendant, who violated, or caused to be violated,  
22 certain Labor Code sections stated herein. Herein, OPTION CARE ENTERPRISES, INC and Does  
23 1 through 20 are sometimes referred to as the “Defendants.”

24 16. Based on information and belief, Defendants had the authority to, directly or  
25 indirectly, or through an agent or other person, employ or exercise control over Plaintiff and the  
26 putative class members’ wages, hours, and working conditions.

27 17. Based on information and belief, Defendants had knowledge of the wage-and-hour  
28 violations alleged herein and each Defendant had the power to prevent the violations from occurring.

1 Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants could  
2 have but failed to prevent the violations from occurring.

3 18. At all relevant times, Defendants did, and still do, transact and conduct business  
4 throughout the State of California, including, but not limited to, the County of Ventura and within  
5 the jurisdiction of this Court.

6 **CLASS ALLEGATIONS**

7 19. Plaintiff brings this action on her own behalf, as well as on behalf of all other persons  
8 similarly situated, and thus seeks class certification pursuant to California Code of Civil Procedure  
9 section 382.

10 20. All claims alleged herein arise under California law for which Plaintiff seeks relief  
11 and remedies authorized by California law.

12 21. Plaintiff's proposed class consists of and is defined as follows: **All individuals who**  
13 **worked for Defendants in California as non-exempt employees at any time during the period**  
14 **of four years prior to the filing of this Complaint through the date of certification.** As discovery  
15 proceeds, Plaintiff reserves the right to amend this class definition as the facts dictate. The ultimate  
16 definition of the class will be defined by the Court in a subsequent motion for class certification.

17 22. Members of the Class are referred to in this Complaint as "class members" or "putative  
18 class members. Together, the Plaintiff and the putative class members are sometimes referred to as the  
19 "Plaintiffs" herein.

20 23. As set forth above, Plaintiff reserves the right to redefine the class and to add  
21 subclasses as appropriate based on further discovery and specific theories of liability (and to the extent  
22 that there are different classifications of non-exempt workers who are subject to differing treatment by  
23 Defendant based on their classification or job title; *e.g.*, such as "infusion nurse").

24 24. There are common questions of law and fact as to class members that predominate over  
25 questions affecting only individual members, including, but not limited to:

26 (a) Whether Defendants required Plaintiff and the putative class members to engage  
27 in hours work (whether suffered or permitted) for which they were not paid, including but not limited  
28 to regular hours, or hours over eight (8) per day, over twelve (12) per day, and/or over forty (40) hours

1 per week, and/or failed to pay legally mandated overtime compensation to Plaintiff and the putative  
2 class members;

3 (b) Whether Defendants deprived Plaintiff and class members of minimum wage,  
4 overtime wages, doubletime wages, and reporting-time wages;

5 (c) Whether Defendants deprived Plaintiff and class members of meal periods or  
6 required Plaintiff and class members to work or remain subject to “control” (*i.e.*, via technological  
7 “tethering”) during meal periods without compensation;

8 (d) Whether Defendants deprived Plaintiff and class members of rest periods or  
9 required Plaintiff and class members to work or remain subject to “control” (*i.e.*, via technological  
10 “tethering”) during rest periods without compensation;

11 (e) Whether Defendants complied with wage statement reporting as required by  
12 California Labor Code section 226(a);

13 (f) Whether Defendants failed to timely pay wages due to Plaintiff and class  
14 members during their employment;

15 (g) Whether Defendants failed to timely pay wages due to putative class members  
16 upon their discharge;

17 (h) Whether Defendants’ failure to pay wages, without abatement or reduction, in  
18 accordance with the Labor Code, was willful or reckless;

19 (i) Whether Defendants failed to pay reporting time wages as required by law;

20 (j) Whether Defendants engaged in unfair business practices in violation of  
21 California Business & Professions Code sections 17200, et seq.; and,

22 (k) The appropriate amount of damages, restitution, or monetary penalties  
23 resulting from Defendants’ violations of California law.

24 25. There is a well-defined community of interest in the litigation and the class is readily  
25 ascertainable:

26 (a) Numerosity: The class members are so numerous that joinder of all members  
27 would be unfeasible and impractical. The class members are unknown to Plaintiff at this time;

1 however, the class is estimated to be over one hundred (100) and the identity of such members is  
2 readily ascertainable by inspection of Defendants' employment records.

3 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the  
4 interests of each class member with whom she has a well-defined community of interest, and  
5 Plaintiff's claims (or defenses, if any) are typical of the class members as demonstrated herein.

6 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the  
7 interests of each class member with whom she has a well-defined community of interest and  
8 typicality of claims. Plaintiff acknowledges that she has an obligation to make known to the Court  
9 any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed  
10 class counsel, are versed in the rules governing class action discovery, certification, and settlement.  
11 Plaintiff has incurred and through the duration of this action, and will continue to incur costs and  
12 attorneys' fees that have been, are and will continue to be necessarily expended for the prosecution  
13 of this action for the benefit of the class members.

14 (d) Superiority: The nature of this action makes the use of the class action method  
15 of adjudication superior to other methods. A class action will achieve economies of time, effort,  
16 expense and use of the Court staff as compared to separate lawsuits, and will avoid inconsistent  
17 outcomes because the same issues can be adjudicated in the same manner and at the same time for all  
18 class members.

19 (e) Public Policy Considerations: Employers in California violate Labor laws  
20 every day. Current employees are often afraid to assert their rights out of fear of reprisal. Former  
21 employees are fearful of bringing actions because they fear that former employers might adversely  
22 impact future employment through negative references. Class actions provide the class members  
23 who are not named in the complaint with the anonymity that allows for vindication of employment  
24 rights while maintaining privacy.

25 **GENERAL ALLEGATIONS**

26 26. Defendant OPTION CARE ENTERPRISES, INC. is a Delaware company doing  
27 business in California in the home health care sector, employing nurses and other professionals to  
28

1 render infusion and other medical services to residents and citizens of the State of California,  
2 throughout the State.

3 27. The indispensable backbone of Defendants’ business operations is the collective of  
4 health care workers that Defendants’ employ, who provide medical services to patients within  
5 California. As part of the operations of the business, employees like Plaintiff GILBERT travel  
6 extensively to assist patients, work long hours, and are regularly required to engage in restrictive  
7 perons of “on call” availability for the company.

8 28. Defendants exercise pervasive and systematic control over the scheduling of  
9 employees like the Plaintiff, including the timing and sequence of patient visits, effectively  
10 determining the workers’ shifts, working hours, and working conditions. For example, Defendants  
11 often require employees like Plaintiff to remain “on call” and available to monitor dispatch  
12 communications, with the ability to respond if needed within a mere 15 minutes. During these  
13 periods of being “on call” — which are mandatory and scheduled by the Employer — employees  
14 like Plaintiff are either not paid at all, or are paid at a rate well below the statutory minimum wage  
15 rate.

16 29. Plaintiff and other similarly-situated employees also have been required to utilize and  
17 remain available for contact by a company-issued phone, and via a company-managed messaging  
18 system. At all times, Plaintiff and other similarly-situated employees remain “tethered” to the  
19 employer in this fashion.

20 30. Plaintiff and other similarly-situated employees also have been required to sometimes  
21 work in excess of 12 hours in a single workday, but without being provided a second meal period as  
22 required by California law.

23 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and class members were experiencing the foregoing employment  
25 practices, and that Plaintiff and class members were entitled to receive complete and accurate wage  
26 statements in accordance with California Labor Code section 226(a).

27 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
28 should have known that Plaintiff and class members were entitled to receive timely wages (whether



1 minimum, regular, overtime, or double-time) during their employment, payment for all compensable  
2 time and meal premiums, and compliant wage statements, all during the employment.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Pay Wages Owed**

5 **(Against All Defendants)**

6 33. Plaintiff refers to the preceding paragraphs above and incorporate the same by  
7 reference as though fully set forth at length herein.

8 34. Plaintiff and the Putative Class are employees who have worked for Defendants in  
9 California within the four (4) years preceding the filing of this action. Plaintiff and the Putative Class  
10 worked as non-exempt employees for Defendants.

11 35. As a result of the employment relationship and practices, it is alleged that during the  
12 employment with Defendants, Plaintiffs were not compensated for all hours worked. On information  
13 and belief, this has included unpaid “on call” hours and administrative task hours related to the  
14 employer’s requirements that Plaintiffs must monitor and respond to work-related communications for  
15 assigned 8-hour and 24-hour on-call periods.

16 36. At at all relevant times, Plaintiff and the putative class members were employees of  
17 Defendants covered by Labor Code §§ 510 and 1198, and the IWC Wage Orders.

18 37. California Labor Code § 1198 makes it illegal to employ an employee under  
19 conditions of labor that are prohibited by the applicable wage order. California Labor Code section  
20 1198 provides that the “... standard conditions of labor fixed by the commission shall be the ...  
21 standard conditions of labor for employees. The employment of any employee... under conditions of  
22 labor prohibited by the order is unlawful.”

23 38. California Labor Code §1198 and IWC Wage Orders provide that it is unlawful to  
24 employ persons without compensating them at a rate of pay either time -and-one-half or two times  
25 that person’s regular rate of pay, depending on the number of overtime hours worked by the person  
26 on a daily or weekly basis.

27 39. The IWC Wage Orders provide that Defendants are and were required to pay Plaintiff  
28 and the putative class members employed by Defendants, and working more than eight (8) hours in a  
day or more than forty (40) hours in a week, at a rate of time-and-one-half regular rate of pay for all

1 hours worked in excess of eight (8) hours in a day or forty (40) hours in a week, and two (2) times  
2 the regular rate of pay for all hours in excess of twelve (12) hours in a day.

3 40. California Labor Code § 510 codifies the right to overtime compensation at one and  
4 one half times the regular rate for hours worked in in excess of eight (8) hours in a day or forty (40)  
5 hours in a week, and two (2) times the regular rate of pay for all hours in excess of twelve (12) hours  
6 in a day or in excess of eight (8) hours on the seventh consecutive day.

7 41. At all relevant times, Plaintiff and the putative class members worked in excess of  
8 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours  
9 in a week. Because Defendants required the employees to remain “on call” and perform  
10 administrative work for either no pay at all, or at rates far below the statutory minimum rate, during  
11 the relevant time period Defendants willfully failed to pay Plaintiff and the class members overtime  
12 compensation as required by California law and, therefore, violated California Labor Code sections  
13 510 and 1198, as well as the IWC Wage Orders.

14 42. Pursuant to California Labor Code §1194, Plaintiff and the class members are entitled  
15 to recover their unpaid overtime compensation, together with interest, costs and attorneys’ fees.

16 43. Within the four (4) years preceding this action, Plaintiff and the putative class therefore  
17 worked compensable hours (whether minimum, regular, overtime and/or double-time) for which each  
18 was not fully paid. During the same periods of employment, Plaintiff and the putative class were not  
19 provided with all lawful meal periods as required by law, as alleged herein.

20 44. The wrongful acts of Defendants, as alleged herein, therefore include, but are not  
21 limited to, intentionally denying Plaintiffs minimum, regular, overtime wages, and/or double-time  
22 wages, and premium wages.

23 45. Labor Code § 200 defines “wages” as including all amounts for labor performed by  
24 employees of every description, whether the amount is fixed or ascertained by the standard of time,  
25 task, piece, commission basis, or other method of calculation.

26 46. Plaintiffs have been available and ready to receive wages owed to them, including  
27 overtime wages. Defendants’ failure to pay Plaintiffs’ wages due and owing, as indicated in prior  
28 paragraphs, was willful; as Defendants have knowingly refused to pay the amounts due and owing  
Plaintiffs.



1 provide Plaintiff and the class members with accurate wage statements, but intentionally provided  
2 'wage statements' that Defendants knew were not accurate or compliant.

3 53. As a result of Defendants' conduct, Plaintiff and the class members have suffered  
4 injury. The absence of accurate and complete information on their wage statements has prevented  
5 timely challenges to Defendants' unlawful pay practices, required discovery and mathematical  
6 computations to determine the amount of wages owed and number of hours actually worked, caused  
7 difficulty and expense in attempting to reconstruct time and pay records, and led to the submission of  
8 inaccurate information about wages and deductions to state and federal government agencies.

9 54. Pursuant to Labor Code § 226(e), Plaintiff and the class members are each entitled to  
10 recover fifty dollars (\$50) for the initial pay period during the Penalty Period in which a violation of  
11 Labor Code § 226 occurred and one hundred dollars (\$100) for each violation of Labor Code § 226  
12 in a subsequent pay period during the Penalty Period, not to exceed an aggregate penalty of four  
13 thousand dollars (\$4,000) per employee.

14 55. Pursuant to Labor Code § 226(h), Plaintiff and the class members are entitled to bring  
15 an action for injunctive relief to ensure Defendants' compliance with Labor Code § 226(a).  
16 Injunctive relief is warranted because Defendants continue to provide currently employed class  
17 members with inaccurate, deficient, non-compliant 'wage statements' in violation of Labor Code §  
18 226(a) and currently employed class members have no adequate legal remedy for the continuing  
19 injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is  
20 the only remedy available for ensuring Defendants' compliance with Labor Code § 226(a).

21 56. Pursuant to Labor Code § 226(e), Plaintiff and the class members are entitled to  
22 recover the full amount of penalties due under Labor Code § 226(e), reasonable attorney's fees and  
23 costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 1194, 1197 and 1197.1- Unpaid Minimum Wages**  
26 **(Against all Defendants)**

27 57. Plaintiff incorporates all preceding and subsequent paragraphs as though fully set forth  
28 herein.



1           64.     Subdivision 12(A) of the IWC Wage Orders provides in pertinent part that:

2           Every employer shall authorize and permit all employees to take rest periods, which  
3           insofar as practicable shall be in the middle of each work period. The authorized rest  
4           period time shall be based on the total hours worked daily at the rate of ten (10)  
5           minutes net rest time per four (4) hours or major fraction thereof. However, a rest  
6           period need not be authorized for employees whose total daily work time is less than  
7           three and one-half (3½) hours. Authorized rest period time shall be counted as hours  
8           worked for which there shall be no deduction from wages.

9           65.     At all relevant times herein, Defendants failed to authorize and permit Plaintiff and the  
10           class members to take compliant paid rest periods. For instance, Plaintiff was required to remain  
11           tethered to the work-provided communication device during her purported meal and rest “breaks.”  
12           She was expected to keep the phone and messaging system on her person and answer it at all times.  
13           As a matter of law, this does not constitute a lawful break. *See Augustus v. ABM Security Services,*  
14           *Inc.* (2016) 2 Cal.5th 257, 273 , as modified on denial of reh'g (Mar. 15, 2017).

15           66.     Labor Code § 226.7(c) provides that:

16           If an employer fails to provide an employee a meal or rest or recovery period in  
17           accordance with a state law, including, but not limited to, an applicable statute or  
18           applicable regulation, standard, or order of the Industrial Welfare Commission . . . the  
19           employer shall pay the employee one additional hour of pay at the employee’s regular  
20           rate of compensation for each workday that the meal or rest or recovery period is not  
21           provided.

22           67.     Similarly, Subdivision 12(B) of the IWC Wage Orders provides that:

23           If an employer fails to provide a rest period in accordance with the applicable  
24           provisions of this order, the employer shall pay the employee one (1) hour of pay at the  
25           employee’s regular rate of compensation for each workday that the rest period is not  
26           provided.

27           68.     Defendants violated Labor Code § 226.7 and the IWC Wage Orders by failing to  
28           compensate Plaintiff and the putative class members with one hour of pay at their regular rate of  
29           compensation for each work day that a compliant rest period was not provided.

30           69.     As a result of Defendants’ unlawful conduct, Plaintiff and the class members have  
31           suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed  
32           for unprovided rest periods at the lawful rate of pay.



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

3 77. Defendants violated Labor Code §226.7 and the IWC Wage Orders by failing to  
4 compensate Plaintiff and the class members for meal periods at the rate of one hour of pay at their  
5 regular rate of compensation for each work day that the meal periods were not provided.

6 78. Plaintiff and the class members did not voluntarily or willfully waive their meal  
7 periods.

8 79. As a result of Defendants' unlawful conduct, Plaintiff and the class members have  
9 suffered damages in an amount, subject to proof, to the extent they were not paid additional premium  
10 wages at the lawful rate of pay for days when all required meal periods were not provided.

11 80. Pursuant to Labor Code § 218, Plaintiff and the class members are entitled to recover  
12 the full amount of their unpaid additional wages for missed meal periods. Pursuant to Labor Code §  
13 218.5, Plaintiff and the class members are entitled to recover their reasonable attorney's fees and  
14 costs of suit. Pursuant to Labor Code § 218.6 and/or Civil Code § 3287(a), Plaintiff and the class  
15 members are entitled to recover prejudgment interest on the additional wages owed for denied meal  
16 periods at the lawful rate of pay.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Pay Reporting Time Pay**

19 **(Against All Defendants)**

20 81. Plaintiff realleges and incorporates herein by reference each allegation in the preceding  
21 and subsequent paragraphs.

22 82. Relevant to this action, the language of the IWC Wage Order(s), at §5(A), relates that  
23 each workday an employee is required to report to work and does report, but is not put to work or is  
24 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for  
25 half the usual or scheduled day's work, but in no event less than two (2) hours, nor more than four (4)  
26 hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

27 83. Section 5(B) relates, "If an employee is required to report for work a second time in  
28 any one workday and is furnished less than two hours of work on the second reporting, said employee



1 shall be paid for two hours at the employee’s regular rate of pay, which shall not be less than the  
2 minimum wage.” In *Ward v. Tilly’s*, the Court of Appeal held that, for purposes of triggering  
3 reporting time pay obligations to a worker, the “an employee need not necessarily physically appear at  
4 the workplace to ‘report for work.’ Instead, ‘report[ing] for work’ within the meaning of the wage  
5 order is best understood as presenting oneself as ordered.” *Ward v. Tilly’s, Inc.*, 31 Cal. App. 5th  
6 1167, 1185 (2019).

7 84. Thus, in this matter Plaintiff and the putative class are owed reporting time wages in the  
8 circumstances when she/class members were contacted telephonically (or via text/SMS/app-based  
9 messaging) to work, by the Defendants, but were presented with less than two (2) hours of working  
10 time or less than one half of their usual shift. During the statutory period, these events did occur but  
11 the Plaintiff and the putative class were not paid the proper reporting-time payments.

12 85. Plaintiff and the putative class seek unpaid reporting-time damages and wages pursuant  
13 to both California law.

14 86. Labor Code § 218.6 states, “[I]n any action brought for the nonpayment of wages, the  
15 court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision  
16 (b) of § 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable  
17 as provided in Part 1 (commencing with § 200) of Division 2.”

18 87. Pursuant to Labor Code §218.5, Plaintiff requests the Court to award Plaintiff’s  
19 reasonable attorney’s fees and costs incurred in this action. Plaintiff also requests all unpaid wages,  
20 liquidated damages, waiting-time penalties and interest.

21 88. Pursuant to California Labor Code § 203, Plaintiff alleges that Defendants have  
22 willfully failed to pay without abatement or reduction, in accordance with Labor Code §§ 201 and 202,  
23 all of the wages of the Plaintiff. Defendants are aware that they owe the wages claimed, yet they have  
24 willfully failed to make payment. Should the facts herein warrant, Plaintiff will seek available  
25 penalties pursuant to Labor Code § 203.

26 89. Plaintiff and the putative class have been available and ready to receive the wages owed  
27 to each Defendants’ failure to pay Plaintiff and the class wages due and owing them as indicated in  
28

1 prior paragraphs, was willful; Defendants have knowingly refused to pay any portion of the amount  
2 due and owing Plaintiff.

3 90. Pursuant to Labor Code §§ 218.5 and 1194, Plaintiff requests an award of Plaintiff's  
4 reasonable attorneys' fees and costs incurred in this action. Plaintiff also requests all unpaid wages,  
5 waiting time penalties (where available), and interest.

6 **SEVENTH CAUSE OF ACTION**

7 **Violation of The Unfair Competition Law Business & Professions Code §17200, *et seq.***

8 **(Against All Defendants)**

9 91. Plaintiff realleges and incorporates herein by reference each allegation in the preceding  
10 and subsequent paragraphs.

11 92. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et*  
12 *seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair  
13 business practices with the meaning of Bus. & Prof. Code §17200, *et seq.*

14 93. Defendants are alleged to have conducted the unlawful activities set forth  
15 hereinabove, including but not limited: failing to provide legally-compliant wage statements; failing  
16 to compensate Plaintiffs for all hours worked including on-call and off-the clock time; and failing to  
17 provide all required meal and rest periods, including second meal periods.

18 94. Defendants' activities also constitute unfair practices in violation of Bus. & Prof.  
19 Code §§ 17200, *et seq.*, because Defendants' practices violate the above noted laws, and/or violate  
20 an established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous, and  
21 substantially injurious to Plaintiff and the class members.

22 95. The identified violations of the Labor Code, IWC Wage Orders, regulations, laws,  
23 and public policy constitute business practices because they were done repeatedly over time and in a  
24 systematic manner to the detriment of Plaintiff and the class members.

25 96. Because of Defendants' violations of the Labor Code, IWC Wage Orders, regulations,  
26 laws, and public policy, Plaintiff and the class members have suffered injury-in-fact and have lost  
27 money or property because of Defendants' practices. This injury-in-fact and loss of money or  
28 property consists of the lost wages and other restitutionary remedies provided by the Labor Code,

1 regulations, IWC Wage Orders, laws and public policy as detailed in this Complaint and other  
2 resulting harms. Plaintiff and the class members are entitled to restitution, an injunction, declaratory,  
3 and other equitable relief against such unlawful practices to prevent future damage for which there is  
4 no adequate remedy at law.

5 97. As a direct and proximate result of the unfair business practices of Defendants,  
6 Plaintiff and the class members are entitled to equitable and injunctive relief, including full  
7 restitution of all wages which have been unlawfully lost as a result of the business acts and practices  
8 described herein and enjoining Defendants to cease and desist from engaging in the practices  
9 described herein for the maximum time permitted pursuant to Bus. & Prof. Code §17208, including  
10 any tolling.

11 98. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and  
12 alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, they will  
13 continue to violate the noted laws.

14 99. Plaintiff and the class members are also entitled to and hereby claim attorneys' fees  
15 and costs, pursuant to the private attorney general theory doctrine (Code of Civil Procedure  
16 §1021.5), and any other applicable provision for attorney fees and costs, based upon the violation of  
17 the underlying public policies.

18 **EIGHTH CAUSE OF ACTION**

19 **For Civil Penalties Under the Private Attorneys General Act of 2004,**

20 **Labor Code § 2699 et seq.**

21 **(Against All Defendants on Behalf of Plaintiff and the Class)**

22 100. Plaintiff realleges and incorporates herein by reference each allegation in the  
23 preceding and subsequent paragraphs.

24 101. Plaintiff brings this cause of action against Defendants in her capacity as a private  
25 attorney general (proxy or agent of the State of California), on behalf of herself and all other  
26 aggrieved employees, to recover civil penalties under the Private Attorneys General Act of 2004,  
27 which is codified in Labor Code § 2699 et seq. (herein "PAGA"), for Defendants' violations of the  
28 Labor Code enumerated herein.

1           102. Plaintiff is informed, believes, and thereon alleges that at all times pertinent hereto  
2 Plaintiff and members of the Class were “aggrieved employees” of Defendants, as that phrase is  
3 statutorily defined pursuant to Labor Code §2699(c); in particular, Plaintiff and members of the  
4 Class were employed by the alleged violators (i.e., Defendants), and against whom one or more of  
5 the alleged violations was committed.

6           103. Plaintiff has complied with all procedural requirements of the PAGA. In particular,  
7 on July 31, 2023, Plaintiff, on behalf of herself and all those similarly situated gave written notice by  
8 E-Filing and certified mail to the California Labor and Workforce Development Agency and  
9 Defendants of the specific provisions of the *Labor Code* alleged to have been violated by  
10 Defendants, including the facts and theories to support the alleged violations (referred to herein as  
11 the “Notice”).

12           104. A true and correct copy of the Plaintiff’s Notice to the California Labor and  
13 Workforce Development Agency and Defendants is attached hereto as **Exhibit “A”** and incorporated  
14 herein by this reference.

15           105. Plaintiff is informed, believes, and thereon alleges that she is statutorily authorized to  
16 commence a civil action against Defendants pursuant to the PAGA, including Labor Code §§2698,  
17 2699, 2699.3 and 2699.5, as the California Labor and Workforce Development Agency has not  
18 notified the employer and Plaintiff that it intends to investigate or otherwise take any action with  
19 respect to the alleged violations, and at least sixty-five (65) calendar days from the Notice postmark  
20 has elapsed.

21           106. Plaintiff is informed, believes, and thereon alleges that at all times pertinent hereto,  
22 Labor Code §2699.3(a)(2)(C) provided, “Notwithstanding any other provision of law, a plaintiff may  
23 as a matter of right amend an existing complaint to add a cause of action arising under this part at  
24 any time within 60 days of the time periods specified in this part.”

25           107. The Wage Orders (*e.g.*, Nos. 5-2001 and 15-2001), provide that “Every employer  
26 shall pay to each employee, on the established payday for the period, not less than the applicable  
27 minimum wage for all hours worked in the payroll period, whether the remuneration is measured by  
28 time, piece, commission, or otherwise.” “Hours worked” is defined in subdivision 2 of the wage

1 orders as “the time during which an employee is subject to the control of an employer, and includes  
2 all the time the employee is suffered or permitted to work, whether or not required to do so.” (*See*,  
3 *e.g.*, Cal.Code Regs., tit. 8, § 11090, subd. (2)(K).) Thus, the obligation to pay minimum wages  
4 attaches to each and every separate hour worked during the payroll period.

5 108. Labor Code § 1194(a) provides that notwithstanding any agreement to work for a  
6 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
7 compensation applicable to the employee is entitled to receive in a civil action the unpaid balance of  
8 the full amount of this minimum wage or overtime compensation, including interest thereon,  
9 reasonable attorney’s fees, and costs of suit. To the extent that Defendants will argue that the  
10 employees agreed to work reporting time or split shift time for no additional compensation, and  
11 failed to pay such wages to Plaintiff, Defendants will have violated Labor Code § 1194(a).

12 109. Labor Code § 1197 requires that employers may not pay less than the mandated  
13 minimum wage. The Company violated § 1197 by not paying Plaintiffs and their similarly-situated  
14 coworkers at least the minimum wage for all hours worked. The civil penalty for violations of § 1197  
15 is enumerated in Labor Code § 1197.1. Plaintiff intends to seek said penalties against the Company  
16 on behalf of herself and all other similarly-situated employees for violations of § 1197.

17 110. Labor Code § 1198 provides that the maximum hours of work and the standard  
18 conditions of labor fixed by the commission shall be the maximum hours of work and the standard  
19 conditions of labor for employees. The employment of any employee for longer hours than those  
20 fixed by the order or under conditions of labor prohibited by the order is unlawful. To the extent the  
21 Defendants made Plaintiffs work beyond the maximum hours of work and standard conditions fixed  
22 by the Labor Commission, and failed to remit lawful payment for those hours, Defendants will have  
23 violated Labor Code § 1198.

24 111. California Labor Code §510 codifies the right to overtime compensation at one and  
25 one half times the regular rate for hours worked in in excess of eight (8) hours in a day or forty (40)  
26 hours in a week, and two (2) times the regular rate of pay for all hours in excess of twelve (12) hours  
27 in a day or in excess of eight (8) hours on the seventh consecutive day.

28

1           112. With respect to rest break violations, §226.7 of the Labor Code provides that  
2 employers cannot require employees to work during paid rest breaks mandated by an order of the  
3 Industrial Welfare Commission. The IWC, in turn, has mandated in Section 12(a) of the Wage  
4 Orders, including Wage Order 9-2001, that every employer shall authorize and permit all employees  
5 to take paid rest periods at the rate of ten minutes per four hours worked in the middle of each work  
6 period. Defendants knowingly and intentionally failed to authorize and permit Plaintiff and the class  
7 to take said paid rest periods in compliance with applicable law.

8           113. Both Labor Code §226.7 and IWC Wage Orders require that if an employer fails to  
9 provide an employee a rest period in accordance with state law or order of the IWC, the employer  
10 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for  
11 each workday that the rest period is not provided. Labor Code §226.7(c) states: “If an employer fails  
12 to provide an employee a meal or rest or recovery period in accordance with state law, including, but  
13 not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial  
14 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of  
15 Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at  
16 the employee’s regular rate of compensation for each workday that the meal or rest or recovery  
17 period is not provided.” This “regular rate” of compensation is not limited to Plaintiff’s base rate of  
18 compensation. *Alvarado v. Dart Container Corp. of Cal.*, (2018) 4 Cal.5th 542, 554, 562. Defendant  
19 failed to provide Plaintiff and the class the additional hour of pay at their regular rate of pay.  
20 Because Defendants failed to provide Labor Code § 226.2 compliant rest break payments,  
21 Defendants have violated Labor Code §226.7.

22           114. With respect to meal break premium violations, Labor Code § 512 requires that an  
23 employer may not employ any employee for a work period of more than five hours per day without  
24 providing the employee with a meal period of not less than 30 minutes and for a work period of more  
25 than 10 hours with a second meal period of not less than 30 minutes. Further, Labor Code § 226.7  
26 mandates that if an employer fails to provide an employee with a compliant meal period, it shall pay  
27 the employee one additional hour of pay at the employee’s regular rate of compensation for each  
28

1 workday that the meal period is not provided. This “regular rate” of compensation is not limited to  
2 Plaintiff’s base rate of compensation. *Alvarado, supra*, 4 Cal.5th 542, 554, 562.

3 115. During Plaintiff’s employment, Defendants knowingly and intentionally failed to  
4 provide compliant meal periods and to compensate Plaintiff and the Class for premium wages owed  
5 for non-compliant meal breaks as set forth in Labor Code §226.7. Specifically, Defendants failed to  
6 pay Plaintiff one additional hour of pay at her “regular rate” of compensation for each workday a  
7 compliant meal break was not provided.

8 116. There is no civil penalty associated with violation of § 226.7, but Plaintiff intends to  
9 pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 2699,  
10 subd. (f).

11 117. Labor Code § 512 provides that no employer shall employ an employee for a work  
12 period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which  
13 the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an  
14 employee for a work period of more than ten (10) hours per day without providing the employee  
15 with a second meal period of not less than thirty (30) minutes in which the employee is relieved of  
16 all of his or her duties. It is alleged herein that Plaintiff and other employees were not provided with  
17 all requisite meal periods as required under the law. As it is alleged that the Company violated Labor  
18 Code § 512, Plaintiff will seek the civil penalties available under Labor Code § 558.

19 118. With respect to Wage Statement violations, Labor Code §226, subdivision (a)  
20 requires a California employer to include very specific information on an employee’s paycheck stub.  
21 The required information includes, among other things, gross wages earned, total hours worked, the  
22 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
23 rate basis, and all applicable hourly rates in effect during the pay period and the corresponding  
24 number of hours worked at each hourly rate by the employee.

25 119. Labor Code §226.3 sets forth civil penalties for violations of section 226, subdivision  
26 (a) as follows:

- 27 (1) Two hundred fifty dollars (\$250) per employee per violation in an initial citation;  
28 (2) One Thousand Dollars (\$1,000) per employee for each violation in a subsequent citation.

1           120. These are penalties Plaintiff intends to seek against Defendants on behalf of herself  
2 and all other similarly situated employees for violation of Labor Code § 226(a).

3           121. Further, Labor Code § 558 provides for a civil penalty against employers who violate  
4 Labor Code provisions of that chapter, such as § 510. The civil penalty provided is:

5                   (1) For any initial violation, fifty dollars (\$50.00) for each underpaid employee for  
6 each pay period for which the employee was underpaid in addition to an amount sufficient to recover  
7 underpaid wages.

8                   (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
9 employee for each pay period for which the employee was underpaid in addition to the amount  
10 sufficient to recover underpaid wages.

11           122. Labor Code § 201 requires immediate payment of all wages owed at the termination  
12 of employment. It is believed that within the last three (3) years, the Company's employees in  
13 California have been terminated and have not received all wages owed at their termination. There is  
14 no civil penalty associated with violation of § 201, but Plaintiff (and/or any later-joined plaintiffs)  
15 intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor  
16 Code § 2699, subd. (f).

17           123. Labor Code § 202 requires payment of all wages owed within 72 hours of the  
18 resignation of an employee, unless the employee gives more than 72-hours notice, in which case  
19 wages are owed at the employee's resignation. It is believed that within the last three (3) years,  
20 Company employees in California have resigned and have not received all regular and premium pay  
21 owed in a timely fashion after their resignation. There is no civil penalty associated with violation of  
22 § 202, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of  
23 themselves and all others similarly-situated under Labor Code § 2699, subd. (f).

24           124. Labor Code § 203 establishes a statutory penalty for willful violations of Labor Code  
25 §§ 201 or 202. There has been a willful violation of Labor Code § 201 and 202 because the Company  
26 cannot hide behind its ignorance of the California's wage and hour laws. Further evidence of the  
27 Employer's willful disregard for Labor Code §§ 201 and 202 is likely to be adduced at trial. Plaintiff  
28



1 (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of herself and all others  
2 similarly-situated under Labor Code § 256.

3 125. Labor Code § 204 makes wages due no less frequently than twice a month for non-  
4 exempt employees for work performed each pay period. The Company has violated § 204 with  
5 respect to Plaintiffs' and their similarly-situated coworkers by not paying them all wages due for  
6 work performed each pay period. Plaintiff intends to pursue civil penalties on behalf of herself and  
7 all other similarly-situated under Labor Code § 210.

8 126. Labor Code § 210 establishes a civil penalty for violations of Labor Code § 204.  
9 Every person who fails to pay the wages of each employee as provided in § 204 shall be subject to a  
10 civil penalty as follows:

11 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each  
12 employee; and

13 (2) For each subsequent violation, or any willful or intentional violation, two hundred  
14 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully  
15 withheld.

16 127. As it is alleged that Defendants violated Labor Code § 204, Plaintiff will, on behalf of  
17 the Putative Class, seek the civil penalties available under Labor Code § 210.

18 128. Labor Code § 219 provides that an employer may not circumvent by way of private  
19 agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that the  
20 Company will argue that these employees were subject to any "agreement" to work off the clock,  
21 without proper first or second meals, or without pay, or be on call without pay or for less than the  
22 minimum wage, the Company will have violated Labor Code § 219. There is no civil penalty  
23 associated with violation of § 219, but Plaintiff intends to pursue civil penalties on behalf of herself  
24 and all others similarly-situated under Labor Code § 2699, subd. (f).

25 129. The IWC Wage Orders also provide for a civil penalty to be assessed against an  
26 employer who violates their provisions. Section 20 thereof states, in relevant part:

1 (A) In addition to any other civil penalties provided by law, any employer or any other  
2 person acting on behalf of the employer who violates, or causes to be violated, the provisions of this  
3 order, shall be subject to the civil penalty of:

4 (1) Initial Violation — \$50.00 for each underpaid employee for each pay period  
5 during which the employee was underpaid in addition to the amount which is sufficient to recover  
6 unpaid wages.

7 (2) Subsequent Violations — \$100.00 for each underpaid employee for  
8 each pay period during which the employee was underpaid in addition to an amount which is  
9 sufficient to recover unpaid wages.

10 130. Labor Code § 1194.2(a) provides for liquidated damages for payment of a wage less  
11 than the minimum wage fixed by an order of the commission or by statute. § 1194.2(a) entitles the  
12 employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and  
13 interest thereon. Plaintiff alleges that Defendants may have violated § 1194.2(a) by failing to pay the  
14 required overtime amounts to the Putative Class.

15 131. Labor Code § 1194.3 provides for the recovery of attorney’s fees and costs incurred  
16 to enforce a court judgment pursuant to unpaid wages pursuant to Labor Code § 1194. Plaintiff  
17 alleges that Defendants violated § 1194 by failing to pay overtime at the correct hourly rates, and  
18 that Plaintiffs are therefore entitled to recover attorney’s fees.

19 132. Lastly, Labor Code § 2699 provides for a civil penalty for the violation of Labor Code  
20 sections that lack a civil penalty of their own. This civil penalty states, “If, at the time of the alleged  
21 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100)  
22 for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)  
23 for each aggrieved employee per pay period for each subsequent violation.”

24 133. Plaintiff seeks these penalties against Defendants for violation of any civil-penalty-  
25 less Labor Code sections. Plaintiff will also seek, on behalf of herself and all other similarly-situated  
26 individuals, this additional civil penalty against Defendants for the violation of the IWC Wage  
27 Order(s), § 3(A) and 4, as well as any additional violation of the applicable Wage Order(s).

28



- 1 M. For any other appropriate declaratory relief; and  
2 N. For all such other and further relief that the Court may deem just and proper.

3  
4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, individually, and on behalf of the class members, hereby demands a jury trial.

6  
7 Date: October 5, 2023

8 **PALAY HEFELFINGER, APC**

9  
10 By: 

11 DANIEL J. PALAY

12 BRIAN D. HEFELFINGER

13 Attorneys of Record for Plaintiff  
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# EXHIBIT A



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WRITER'S E-MAIL: [DJP@CALEMPLOYMENTCOUNSEL.COM](mailto:DJP@CALEMPLOYMENTCOUNSEL.COM)

July 31, 2023

Labor and Workforce Development Agency  
Department of Industrial Relations  
Accounting Unit  
455 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

VIA WEB PORTAL AT:  
<https://dir.tfaforms.net/>

John C. Rademacher, CEO  
Option Care Enterprises, Inc.  
3000 Lakeside Drive, Suite 300N  
Bannockburn, IL 60015

VIA CERTIFIED MAIL

Re: *Gilbert, et al. v. Option Care Enterprises, Inc.* – Notice of Labor Code Private  
Attorneys General Act Claims and Intent to Pursue Civil Action

To Whom It May Concern:

This office represents Cynthia Gilbert (“Plaintiff”) in her claims for violations of California wage-and-hour statutes and regulations by Option Care Enterprises, Inc. (herein, “Option Care” or the “Employer”). Ms. Gilbert intends to file a civil lawsuit on behalf of herself and all other similarly-situated individuals against Option Care to recover wages and statutory penalties under California statutes and regulations. This Notice Letter shall also serve to provide notice for any other aggrieved employee subsequently named in the civil action through amendment (*i.e.*, any later-joined co-plaintiffs).

Additionally, our client(s) intend to seek recovery of all available civil penalties under the Private Attorneys General Act (“PAGA”). This correspondence is being sent, pursuant to the provisions of California Labor Code § 2699.3, in order to allow Plaintiff, on behalf of herself and all other similarly-situated individuals, to collect the civil penalties associated with the violations of the following statutes and regulations in her civil lawsuit against Option Care.

## BACKGROUND

These are the facts as we presently understand them, as matters pertain to Plaintiff and the putative and/or representative class of workers Plaintiff intends to represent – *i.e.*: ***All current and former employees of Employer who have worked in California as a non-exempt employee the statutory period preceding the date of this letter or the initiation of litigation, whichever date is sooner (herein, the “Putative Class”).***

Pursuant to its own website, Option Care is a Delaware company doing business in California in the home health care sector, employing nurses and other professionals to render infusion and other medical services to residents and citizens of the State of California, throughout the State. Defendant advertises on its website that “[w]e specialize in infusion treatments for a broad range of acute and chronic conditions with access to the most innovative therapies and drugs available.” (See, e.g., <https://optioncarehealth.com/about>).

On information and belief, and according to its website, Defendant also maintains 27 physical locations throughout California, which it characterizes as “infusion suites” within the State. Defendant employs registered nurses, such as Plaintiff, throughout the state, and often requires them to work “on-call” at various times during each work period.

Plaintiff has worked for the Company as an infusion nurse, traveling to and providing health care services to the customers of Employer, exclusively in Southern California. During her employment, Plaintiff has not paid for all regular, overtime, and double-time hours worked, was not provided compliant rest breaks, or meal periods. Further, she was required to work “on call” shifts and perform administrative tasks “off the clock” for the Company. Defendant also failed to provide Plaintiff with accurate itemized wage statements as required by law.

Plaintiff and those similarly-situated are expected to travel significant distances in service and obedience to the Employer, and to provide “coverage” for large geographic areas where patients may be located. Employees like Plaintiff maintain a company cell phone, which they must utilize to answer calls and also for app-based work messaging systems. As such, the Employees are effectively “tethered” through technological means to the job.

Plaintiff and those similarly-situated are required to work “on-call” shifts, for both 8-hour and also 24-hour coverage periods. However, despite the employer’s requirements that Plaintiff must monitor and respond to work-related communications for the assigned 8-hour and 24-hour “on-call” shifts, during these periods (which are mandatory and scheduled by the Employer) employees like Plaintiff are either not paid at all, or are paid at a rate well below the statutory minimum wage rate.

July 31, 23  
Page 3 of 12

Moreover, despite requiring Plaintiff to telephonically report ready to work, Plaintiff has not been paid mandatory reporting time pay minimums in accordance with California law and regulations.

### THE LAW

The actions of the Employer, described above, violate California law in a number of ways.

#### **A. Failure to Pay Minimum, Regular, and Overtime Wages.**

California's Wage Orders provide, in relevant part, that "Every employer shall pay to each employee, on the established payday for the period, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." (*E.g.* Wage Order 15-2001, at § (4)(B)). "Hours worked" is defined in subdivision 2(H) of the wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (*Id.*, at § (2)(H)). Thus, the obligation to pay minimum wages attaches to each and every separate hour worked during the payroll period. California Labor Code section 1194 further codifies the minimum wage obligations of employers.

Under the California Labor Code, Plaintiff will be entitled to recover her reasonable attorneys' fees and costs against the Company. Cal. Labor Code §§ 218.5, 2699(g). Statutory interest also is accruing on all of the unpaid wages at the rate of ten percent (10%) per year. Cal. Labor Code § 218.6.

#### **B. Meal and Rest Break Violations.**

Section 226.7 of the Labor Code provides that employers cannot require employees to work during breaks mandated by an order of the Industrial Welfare Commission. The IWC, in turn, has mandated in Section 12(A) of the Wage Orders, that every employer shall authorize and permit all employees to take rest periods at the rate of ten minutes per four hours worked in the middle of each work period. All such rest periods must be separately compensated.

During Plaintiff's employment, Option Care knowingly and intentionally failed to remit payment for rest periods as mandated by the IWC Wage Order(s).

Both Labor Code Section 226.7 and the IWC Wage Orders require that if an employer fails to provide an employee a rest period in accordance with a state law or order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Section 226.7's "regular rate" of compensation is not limited to Plaintiff's base rate of compensation, but includes other



July 31, 23  
Page 4 of 12

forms of qualifying compensation, such as their piece-rate pay. *Alvarado v. Dart Container Corp.*, 4 Cal. 5th 542, 554 (2018).

During Plaintiff's employment, Defendants failed to provide Plaintiff the additional hour of pay at her regular rate of pay as required under Labor Code §§ 226.7 and 512. Under the California Labor Code, Plaintiff will be entitled to recover her reasonable attorney's fees and costs against the Company. Cal. Labor Code §§ 218.5, 2699(g). Statutory interest also is accruing on all of the unpaid wages at the rate of ten percent (10%) per year. Cal. Labor Code § 218.6.

Section 512 of the Labor Code similarly requires that an employer may not employ any employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, and for a work period of more than 10 hours without a *second* meal period of not less than 30 minutes.

Section 226.7 of the Labor Code mandates that if an employer fails to provide an employee with a compliant meal period, it shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

During Plaintiff's employment, Defendants knowingly and intentionally failed to provide compliant meal periods. Further, Defendants failed to pay Plaintiff one additional hour of pay at her "regular rate" of compensation for each workday a compliant meal break was not provided.

### **C. Wage Statement Violations.**

Labor Code section 226, subdivision (a), requires a California employer to include very specific information on an employee's paycheck stub. The required information includes, among other things, accurate figures for the gross wages earned, total hours worked, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Defendants thus have violated Labor Code § 226 by failing to accurately report gross and net wages earned and total hours worked by the Plaintiff. Because of the inaccurate wage statements, Plaintiff has been harmed because her wages owed and hours worked were not properly indicated, and Plaintiff could not promptly and easily determine from the wage statement alone the correct amount of wages owed during each pay period.

July 31, 23  
Page 5 of 12

#### **D. Failure to Pay Reporting Time.**

Relevant to this action, the language of the IWC Wage Order(s), at §5(A), relates that each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event less than two (2) hours, nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage. Section 5(B) relates, "If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage."

In *Ward v. Tilly's*, the Court of Appeal held that, for purposes of triggering reporting time pay obligations to a worker, the "an employee need not necessarily physically appear at the workplace to 'report for work.' Instead, 'report[ing] for work' within the meaning of the wage order is best understood as presenting oneself as ordered." *Ward v. Tilly's, Inc.*, 31 Cal. App. 5th 1167, 1185 (2019).

In this matter Plaintiff and the putative class are owed reporting time wages in the circumstances when she/class members were contacted telephonically (or via text/SMS/app-based messaging) to work, by the Defendants, but were presented with less than two (2) hours of working time or less than one half of their usual shift. During the statutory period, these events did occur but the Plaintiff and the putative class were not paid the proper reporting-time payments.

#### **E. Other Statutory Violations.**

Option Care has not those employees who have left its employment all wages due, as required pursuant to Labor Code §§ 201 and 202. Consequently, Option Care owes them statutory penalties pursuant to Labor Code § 203. Plaintiff believes that there have been more than 100 employees in California who were subjected to the same illegal actions.

Plaintiff will seek wages and statutory penalties against Option Care for these violations. Penalties sought arise from any and all claims for (i) alleged violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 219, 510, 512, 558, 1194, and 1198, including but not limited to, (i) failure to pay employees all minimum, regular and/or overtime wages due based on all hours worked, including off-the-clock and on-call work; (ii) alleged violations of California Labor Code § 226, including, but not limited to, failure to provide accurate wage statements; (iii) alleged violations of California Labor Code §§ 201-203, including, but not limited to, failure to pay final wages timely, or pay penalties of untimely final wages; (iv) failure to pay all meal and rest period premiums owed, and at the proper rate; (v) alleged violation of California Business and

July 31, 23  
Page 6 of 12

Professions Code § 17200 *et seq.* based on underlying violations of the California Labor Code as identified herein at (i) through (iv), and (vi) alleged violations of California Labor Code § 2698 *et seq.* based on derivative violations of the Labor Code, including but not limited to Labor Code §§ 201, 202, 203, 204, 219, 226, , 226.7, 510, 512, 558, 1194, 1194.2, 1194.3, 1197.1 and 1198; and the IWC Wage Orders.

## PAGA CIVIL PENALTIES

### 1. Statutory and Regulatory Violations

Labor Code § 1194 provides that, notwithstanding any agreement to work for a lesser wage, “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code § 510 requires employers to pay nonexempt workers overtime premium wages when they work more than eight hours in one day or over forty hours in one week, and for the first eight hours worked on the seventh straight day of work in a single workweek. This statute also requires employers to pay nonexempt workers double-time premium wages when they work more than 12 hours in one workday and for all hours worked in excess of eight on the seventh straight day of work in one workweek.

In this matter, it is alleged that Option Care intentionally denied the Putative Class wages that should have been paid and violated California *Labor Code* §§ 1194, 510, and the applicable IWC Wage Order(s), all as set forth above. This includes off-the-clock work, as well as on-call shifts. To the extent that reporting time pay is owed, at the regular or overtime rate, that also is sought from Option Care.

Labor Code § 201 requires immediate payment of all wages owed at the termination of employment. It is believed that within the last year, Option Care employees in California have been terminated and have not received their overtime or double-time wages owed at their termination.

Labor Code § 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72 hours’ notice, in which case wages are owed at the employee’s resignation. It is believed that within the last year, Option Care employees in California have resigned and have not received their overtime or double-time wages owed in a timely fashion as required by Labor Code § 202.

July 31, 23  
Page 7 of 12

Labor Code § 204 sets timetables for when wages are due each pay period. In effect, most wages earned during a pay period must be paid at the conclusion of that pay period or the conclusion of the next pay period (in the case of wages earned for labor in excess of the normal work period). Here, wages were owed each pay period in which individuals worked compensable hours, and yet Option Care did not timely pay them the earned wages in the correct amounts.

Labor Code § 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that Option Care has promulgated wage-and-hour policies that do not comply with California law, or that Option Care will argue that Plaintiff and Putative Class members agreed to work off-the-clock or on-call for no pay, or at less than the minimum wage, Option Care will have violated Labor Code § 219.

Labor Code § 226, subdivision (a) requires employers to put specific, accurate information on their employees' paycheck stubs. This information includes *inter alia* the actual number of hours worked and the applicable and lawful rates of pay. Option Care failed to include necessary information on Plaintiff's paycheck stubs by failing to pay the correct total amounts of wages or indicate the total hours worked, and it is believed that the violation of Labor Code § 226, subdivision (a) extends to all other Putative Class members.

Labor Code § 226.7, sub§ (a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." In the case at bar, Plaintiff and the putative class were deprived of compliant meal and rest periods, as discussed above.

Labor Code section 512 provides that no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer's duty with respect to meal breaks is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). However, Plaintiff and their fellow employees were not actually provided with all duty-free, uninterrupted 30-minute meal periods as the law requires. After all, Plaintiff and the putative class members remained constantly "tethered" by device to their duties. Thus, by not paying Plaintiff and the putative class for their meal periods, and by not providing them, Defendants have violated California law.

Labor Code § 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

July 31, 23  
Page 8 of 12

compensation applicable to the employee is entitled to receive in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. To the extent that Option Care will argue that the employees agreed to work for some alternative fee, and/or failed to pay minimum wages to Plaintiff, Option Care will have violated Labor Code § 1194(a).

Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful. To the extent the Option Care made Plaintiffs work beyond the maximum hours of work and standard conditions fixed by the Labor Commission, and failed to remit lawful payment for those hours, Option Care will have violated Labor Code § 1198.

California law relates that each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event less than two (2) hours, nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage. Section 5(B) of the Wage Order relates, "If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage." In *Ward v. Tilly's*, the Court of Appeal held that, for purposes of triggering reporting time pay obligations to a worker, the "an employee need not necessarily physically appear at the workplace to 'report for work.' Instead, 'report[ing] for work' within the meaning of the wage order is best understood as presenting oneself as ordered." *Ward v. Tilly's, Inc.*, 31 Cal. App. 5th 1167, 1185 (2019). Thus, in this matter Plaintiff and the putative class are owed reporting time wages in the circumstances when she/class members were contacted telephonically (or via text/SMS/app-based messaging) to work, by the Defendants, but were presented with less than two (2) hours of working time or less than one half of their usual shift. During the statutory period, these events did occur but the Plaintiff and the putative class were not paid the proper reporting-time payments.

## 2. Civil Penalties Sought

Labor Code § 201 requires immediate payment of all wages owed at the termination of employment. It is believed that within the last three (3) years, the Company's employees in California have been terminated and have not received all wages owed at their termination. There is no civil penalty associated with violation of § 201, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 2699, subd. (f).

July 31, 23  
Page 9 of 12

Labor Code § 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72-hours notice, in which case wages are owed at the employee's resignation. It is believed that within the last three (3) years, Company employees in California have resigned and have not received all regular and premium pay owed in a timely fashion after their resignation. There is no civil penalty associated with violation of § 202, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of themselves and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 203 establishes a statutory penalty for willful violations of Labor Code §§ 201 or 202. There has been a willful violation of Labor Code § 201 and 202 because the Company cannot hide behind its ignorance of the California's wage and hour laws. Further evidence of the Employer's willful disregard for Labor Code §§ 201 and 202 is likely to be adduced at trial. Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 256.

Labor Code § 204 makes wages due no less frequently than twice a month for non-exempt employees for work performed each pay period. The Company has violated § 204 with respect to Plaintiffs' and their similarly-situated coworkers by not paying them all wages due for work performed each pay period. Plaintiff intends to pursue civil penalties on behalf of herself and all other similarly-situated under Labor Code § 210.

Labor Code § 210 establishes a civil penalty for violations of Labor Code § 204. Every person who fails to pay the wages of each employee as provided in § 204 shall be subject to a civil penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As it is alleged that Option Care violated Labor Code § 204, Plaintiff will, on behalf of the Putative Class, seek the civil penalties available under Labor Code § 210.

Labor Code § 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that the Company will argue that these employees were subject to any "agreement" to work off the clock, without proper first or second meals, or on call without any pay or for less than minimum wages, the Company will have violated Labor Code § 219. There is no civil penalty associated

July 31, 23  
Page 10 of 12

with violation of § 219, but Plaintiff intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 226 subdivision (a), requires a California employer to include very specific information on an employee's paycheck stub. The required information includes the proper number of regular and overtime hours worked and the correct rates of pay. Lab. Code § 226(a). Subdivision (e) sets forth statutory penalties for the violation of § 226(a). Plaintiff intends to bring suit to recover said penalties on behalf of herself and all others similarly-situated.

Labor Code § 226.3 sets forth civil penalties for violation of § 226, subdivision (a). Plaintiff intends to seek said penalties against Defendants on behalf of themselves and all other similarly-situated employees for violation of § 226, subdivision (a).

Labor Code § 226.7, subd. (a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." There is no civil penalty associated with violation of § 226.7, but Plaintiff intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 512 provides that no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. It is alleged herein that Plaintiff and other employees were not provided with all requisite meal periods as required under the law. As it is alleged that the Company violated Labor Code § 512, Plaintiff will seek the civil penalties available under Labor Code § 558.

Labor Code § 1197 requires that employers may not pay less than the mandated minimum wage. The Company violated § 1197 by not paying Plaintiffs and their similarly-situated coworkers at least the minimum wage for all hours worked. The civil penalty for violations of § 1197 is enumerated in Labor Code § 1197.1. Plaintiffs intend to seek said penalties against the Company on behalf of herself and all other similarly-situated employees for violations of § 1197.

The IWC Wage Orders require that an employer properly pay employees reporting time pay, in situations where they are required to "report" to work but are not provided with a sufficient length of shift. Here, in addition to the civil penalties for wages owed, while there is no civil penalty directly associated with violation of the Wage Order sections on reporting time,

July 31, 23

Page 11 of 12

Plaintiff intends to pursue civil penalties on behalf of herself and all others similarly-situated under Labor Code § 2699, subd. (f).

Finally, as noted in the case of *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112 (2012), the PAGA civil penalty under Labor Code § 558 includes, “[f]or each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” See *Thurman v. Bayshore Transit Mgmt., Inc.*, *supra*. Pursuant to § 558, Plaintiffs seek civil penalties equal to the amount of underpaid wages to all aggrieved employees in this matter.

Labor Code § 2699 provides for a civil penalty for the violation of Labor Code §s that lack a civil penalty provision of their own. The civil penalty is as follows: “If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Plaintiffs allege that Option Care has potentially violated the following civil-penalty-less Labor Code §s: 201, 202, and 203.

The IWC Wage Orders also provide for a civil penalty to be assessed against an employer who violates their provisions. Section 20 thereof states, in relevant part:

- (A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:
  - (1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
  - (2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

Plaintiff will seek, on behalf of herself and all other similarly-situated individuals, this additional civil penalty against Option Care for its violation of the IWC Wage Order(s), § 3(A), 4 and 5, as well as any additional violation of said Wage Order(s).

Reservation of right to pursue additional civil penalties or add additional representative plaintiffs: Plaintiffs intend to pursue the aforementioned civil penalties for these specific violations of law. However, should any other civil penalties be available by virtue of the Company’s unlawful practices as enumerated herein, or as discovery reveals, Plaintiffs reserve the right to pursue such additional civil penalties. Moreover, should any subsequently-joined co-



July 31, 23  
Page 12 of 12

plaintiffs be added to the litigation, this Notice Letter shall also serve as notice being given by such co-plaintiffs as well.

### CONCLUSION

Pursuant to California Labor Code § 2699.5, a violation of the above-cited statutes and regulations may form the basis for a PAGA action against Option Care. However, as required by law, aggrieved employees like Ms. Gilbert (and any other later-joined co-plaintiff) must first give the Labor and Workplace Development Agency the opportunity to pursue the offending employer before bringing their own PAGA action to collect civil penalties associated with the violation of the above-cited statutes and regulations.

In addition, pursuant to this letter and the enclosures, Plaintiff is complying with the updated requirements for PAGA claims; specifically, this claim notice letter will also be filed online, with copies sent by certified mail to the employer. Tendered herewith is a filing fee of \$75, as required by the amended statute.

Please let me know if your agency intends to investigate the matter. If not, Ms. Gilbert intends to pursue her PAGA claims in a civil action, pursuant to law.

Very truly yours,

PALAY HEFELFINGER, APC



Daniel J. Palay

DJP:bdh

Enclosure(s):

(1) Filing fee payment