IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-03364-MEH

THERESA EGAN, BRIAN BARKER, and **SABRINA BUDDEN-WRIGHT**, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

FASTAFF, LLC and **U.S. NURSING CORPORATION**,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

Defendants Fastaff, LLC and U.S. Nursing Corporation, by and through undersigned counsel hereby file this Answer to Plaintiffs' Second Amended Class and Collective Action Complaint ("Plaintiffs' Complaint"). Except as expressly admitted herein, Defendants deny each and every allegation contained in Plaintiffs' Complaint, including but not limited to any allegations contained in the preamble, headings, or subheadings. Defendants reserve the right to amend and/or supplement this Answer, including but not limited to defenses and affirmative defenses set forth herein.

NATURE OF THE ACTION

1. Travel nurses serve a valuable role in our nation's healthcare system. Hospitals, clinics, and other healthcare facilities rely on skilled travel employees to fill short-term nursing employment gaps on a temporary basis. To fill these roles, healthcare facilities use intermediary staffing agencies to employ the travelers, negotiate pay rates, and schedule assignments.

Traveling nurses have played an especially critical role since the start of the COVID-19 pandemic, as many facilities experienced severe staffing shortages that required temporary assistance to continue providing quality healthcare.

Answer: Defendants admit that travel nurses serve a valuable role in the nation's healthcare system. Defendants are without knowledge or information sufficient to admit or deny the allegations regarding "hospitals, clinics, and other healthcare facilities," generally, and therefore deny them. Defendants deny the remaining allegations in Paragraph 1.

2. But a troubling practice has emerged. Fastaff is offering contracts to travel nurses with a fixed-term assignment at an agreed-upon pay rate. After the nurse accepts the position and starts the assignment, Fastaff makes a "take-it-or-leave-it" demand to accept less pay or be terminated. Of course, most nurses have no choice but to continue working the assignment at the lower rate because they have no reasonable alternatives for comparable employment: they have already incurred travel expenses, secured short-term housing, and uprooted their lives to accept the assignment.

Answer: Defendants deny the allegations in Paragraph 2.

3. Fastaff is knowingly engaging in these "bait-and-switch" practices to maintain the significant profit margins it had become accustomed to during the COVID-19 pandemic. This lawsuit seeks recovery for the pay losses Plaintiffs and other travelers experienced as the result of Fastaff's predatory business practices, which Fastaff blame on the facilities it staffs.

Answer: Defendants deny the allegations in Paragraph 3.

4. Additionally, Fastaff is underpaying its travel employees for overtime hours worked. By law, employers must pay their employees one-and-a-half times their "regular rate"

for all hours worked over forty in a workweek. But in determining this "regular rate," Fastaff has only included its employees' direct hourly cash wage among other items and has excluded, in violation of the law, other parts of its employees' compensation packages, thereby resulting in an artificially low rate of pay for overtime hours worked.

Answer: Paragraph 4 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4.

JURISDICTION, VENUE, AND PARTIES

5. Plaintiff Theresa Egan is a citizen of California who accepted a travel assignment from Fastaff to work at a healthcare facility located in California. Her written Consent to Join this case was previously filed at ECF 37-1 and is incorporated herein.

Answer: Defendants admit that Ms. Egan accepted an assignment at a healthcare facility in California. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 5 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 5 speaks for itself.

6. Plaintiff Brian Barker is a citizen of Ohio who accepted a travel assignment from Fastaff to work at a healthcare facility located in Massachusetts. His written Consent to Join this case was previously filed at ECF 37-2 and is incorporated herein.

Answer: Defendants admit that Mr. Barker accepted an assignment at a healthcare facility in Massachusetts. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 6 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 6 speaks for itself.

7. Plaintiff Sabrina Budden-Wright is a citizen of Texas who accepted a travel assignment from Fastaff to work at a healthcare facility located in Oklahoma. Her written Consent to Join this case was previously filed at ECF 37-3 and is incorporated herein.

Answer: Defendants admit that Ms. Wright accepted an assignment at a healthcare facility in Oklahoma. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 7 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 7 speaks for itself.

8. Plaintiff Brittany Scalia is a citizen of New Jersey who accepted a travel assignment from Fastaff to work at a healthcare facility located in New Jersey. Her written Consent to Join this case was previously filed at ECF 37-4 and is incorporated herein.

Answer: Defendants admit that Ms. Scalia accepted an assignment at a healthcare facility in New Jersey. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 8 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 8 speaks for itself.

9. Plaintiff Alison Rideout is a citizen of Minnesota who accepted a travel assignment from Fastaff to work at a healthcare facility located in Idaho. Her written Consent to Join this case was previously filed at ECF 37-5 and is incorporated herein.

Answer: Defendants admit that Ms. Rideout accepted an assignment at a healthcare facility in Idaho. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 9 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 9 speaks for itself.

10. Plaintiff Jennifer Maslowsky is a citizen of Michigan who accepted a travel assignment from Fastaff to work at healthcare facilities located in Michigan and Oregon. Her written Consent to Join this case was previously filed at ECF 37-6 and is incorporated herein.

Answer: Defendants admit that Ms. Maslowsky accepted an assignment at healthcare facilities in Michigan and Oregon. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 10 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 10 speaks for itself.

11. Plaintiff Taylor Berdoll is a citizen of Texas who accepted a travel assignment from Fastaff to work at a healthcare facility located in New York. Her written Consent to Join this case is attached and incorporated as **Exhibit 1**.

Answer: Defendants admit that Ms. Berdoll accepted an assignment at a healthcare facility in New York. Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 11 and therefore deny those allegations. Defendants state that the document referenced in Paragraph 11 speaks for itself.

12. Fastaff, LLC is a Colorado limited liability company with its headquarters or principal place of business located at 5700 S. Quebec St., Suite 300, Greenwood Village, CO, 80111.

Answer: Defendants admit the allegation in Paragraph 12.

13. U.S. Nursing Corporation is a Colorado corporation with its headquarters or principal place of business located at 5700 S. Quebec St., Suite 300, Greenwood Village, CO, 80111.

Answer: Defendants admit the allegation in Paragraph 13.

14. Fastaff and U.S. Nursing are not truly separate and distinct entities, but are "two brands" of one organization. Fastaff and U.S. Nursing are joint employers and/or are integrated to such a degree that they are a single employer in that they both exercised control over Plaintiffs' and other punitive class members' wages, hours, and working conditions, and they shared management, offices, human resources, payroll functions, and had common ownership and/or financial control. Alternatively, to the extent the Court finds that Fastaff and U.S. Nursing are not joint employers, Plaintiffs assert that Fastaff and U.S. Nursing lack true independence from one another and they are a legal alter ego of one another. Thus, it is proper to treat Fastaff and U.S. Nursing as one company for the purposes of this case.

Answer: Paragraph 14 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 14.

15. This Court has subject matter jurisdiction over this lawsuit under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a proposed class action in which: (1) there are at least 100 class members; (2) the combined claims of class members exceed $5,000,000.00, exclusive of interest, attorneys' fees, and costs; and (3) Fastaff/U.S. Nursing and at least one class member are citizens of different states.

Answer: Paragraph 15 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 15.

16. This Court has personal jurisdiction over Fastaff and U.S. Nursing as to all claims asserted by Plaintiffs herein because Fastaff and U.S. Nursing are "at home" in Colorado and therefore subject to general jurisdiction in this forum.

Answer: Defendants admit that this Court has personal jurisdiction over Defendants.

17. This Court also has subject matter jurisdiction over the Fair Labor Standards Act ("FLSA") claims of Plaintiffs and all others similarly situated pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331, and over all related state law claims pursuant to 28 U.S.C. § 1367.

Answer: Paragraph 17 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 17.

18. Venue is proper in this District under 28 U.S.C. § 1391(b) because this is the District in which Fastaff and U.S. Nursing resides and a substantial part of the conduct at issue in this case occurred in this District.

Answer: Defendants do not contest this venue.

STATEMENT OF FACTS

A. Fastaff and U.S. Nursing Jointly Employed Plaintiffs.

19. Fastaff and U.S. Nursing jointly employed Plaintiffs and other similarly situated travel nurses within the meaning of the FLSA and state law.

Answer: Paragraph 19 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 19.

20. There is no meaningful distinction between Fastaff and U.S. Nursing with respect to Plaintiffs' employment. For example, Fastaff and U.S. Nursing refer to themselves as separate "brands" of the same company. The two companies share a corporate headquarters in

Greenwood Village, Colorado[1]. They also share a President and CEO, Bart Valdez. The prior President and CEO now sits on the Board of Directors of the two companies.[2]

Answer: Defendants admit that Fastaff and U.S. Nursing are headquartered at the same location; that Bart Valdez is the President and CEO of Fastaff and U.S. Nursing; and that a prior President and CEO of US Nursing is on the Board of Directors of the companies. Defendants state that web pages cited in Paragraph 20 speak for themselves. The remaining allegations in Paragraph 20 assert legal conclusions to which no response is a required. To the extent a response is required, Defendants deny the allegations in Paragraph 20.

21. The companies perform the same work in the same industry. Both have provided staffing solutions for three decades. According to Mr. Valdez, "Fastaff has been a premier provider of Rapid Response℠ travel nurse staffing, and U.S. Nursing has been the industry leader in comprehensive job action consulting and staffing solutions."[3]

Answer: Defendants admit that both Fastaff and US Nursing have provided staffing solutions for three decades. Defendants state that the web page cited at Paragraph 21 speaks for itself. Defendants deny the remaining allegations in Paragraph 21.

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[1] https://www.fastaff.com/article/fastaff-and-us-nursing-announce-new-president-and-ceo-bart-valdez

[2] *Id.*

[3] https://www.prnewswire.com/news-releases/cornell-capital-and-trilantic-north-america-toacquire-fastaff-and-us-nursing-301234805.html .

22. Both Fastaff and U.S. Nursing were acquired by Cornell Capital and Trilantic North America in early 2021.[4]

Answer: Defendants admit that Fastaff and U.S. Nursing were acquired by Cornell Capital and Trilantic North America in early 2021. Defendants state that the web page cited at Paragraph 22 speaks for itself. To the extent an additional response is required, Defendants deny the allegations in Paragraph 22.

23. The companies hold themselves out as sharing infrastructure and technology. "Together, Fastaff and U.S. Nursing partner with many of the nation's largest and most prestigious healthcare facilities, as well as small community hospitals, using a scalable, centralized infrastructure and shared technology."[5]

Answer: Defendants state that the web page cited at Paragraph 23 speaks for itself. Defendants deny the remaining allegations in Paragraph 23.

24. Fastaff and U.S. Nursing govern their employment of travel nurses and other health care professionals with a form Assignment Agreement Letters ("AAL"). For example, Plaintiffs Egan, Barker and Wright all received such AALs. These contracts often reference both Fastaff and U.S. Nursing and treat these supposedly separate companies as synonymous trade names.

Answer: Defendants admit that nurses who accept travel assignments with Fastaff sign Assignment Agreement Letters ("AAL"). Defendants admit that Plaintiffs received at least one

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[4] *Id.*

[5] *Id.* (emphasis added).

AAL. Defendants deny the remaining allegations in Paragraph 24.

25. Plaintiffs also received both a Fastaff Employee Handbook for Travelers and a U.S. Nursing Employee Handbook. The handbooks both include a "Key Contact Information" list which provides contact information for a service department, emergency contact, housing and travel department, human resources, worker's compensation, and employee injury counselor—all of which are the same phone numbers in each handbook. The online employee portal for both Fastaff and U.S. Nursing directs employees to myportal.fastaff.com.

Answer: Defendants admit that the Plaintiffs received copies of the Employee Handbook. To the extent Paragraph 25 purports to cite or quote language from the Employee Handbook, Defendants state that the Employee Handbook speaks for itself. Defendants deny the remaining allegations in Paragraph 25.

26. Plaintiffs would also receive paystubs from Fastaff, U.S. Nursing, or both depending on the week or pay period.

Answer: Defendants deny the allegation in Paragraph 26.

27. Each Plaintiff was an acknowledged employee of Fastaff, but it is clear that U.S. Nursing (to the extent it is a separate corporate entity) jointly employed Plaintiffs. Both companies had the power to hire and fire Plaintiffs. Both companies supervised and controlled the working conditions and conditions of employment for Plaintiffs, including scheduling. Both companies determined the rate and method of pay for Plaintiffs. Both companies maintained employment records for Plaintiffs.

Answer: Paragraph 27 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 27.

28. Alternatively, Plaintiffs assert that the two companies are alter egos of one another.

Answer: Paragraph 28 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 28.

29. Fastaff and U.S. Nursing are referred to throughout collectively, as "Fastaff."

Answer: Defendants admit that Plaintiffs refer to Defendants collectively as "Fastaff" in their Amended Complaint.

B. Fastaff's Bait-and-Switch Tactics and Improper Pay Rate Reductions

30. Fastaff holds itself out as one of the premier travel nursing agencies in the country. On its website, Fastaff represents that "[o]ver the last 30+ years, Fastaff has grown to become a premier staffing partner, providing urgent and crucial temporary nurses to hospitals in need while offering our travel nurses the highest pay in the industry."[6] It claims that the company "strive[s] to maintain unrivaled opportunities, so our nurses are the first to succeed in their career."[7] Fastaff further represents that it takes "great care to ensure that our travel nurses enjoy the freedom to work when they want, where they want, while maintaining the lifestyle they want, in addition to enjoying the excitement of travel nursing and the challenge of new experiences."[8] Unfortunately these statements are inconsistent with Fastaff's actions, which are geared towards maximizing its profits no matter the impact on its own employees.

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[6] https://www.fastaff.com/about-fastaff-travel-nursing-0.

[7] *Id.*

[8] *Id.*

Answer: Defendants state that the web page cited at Paragraph 30 speaks for itself. Defendants deny the remaining allegation in Paragraph 30.

31. To fill temporary positions, healthcare facilities in need of temporary employment offer staffing agencies like Fastaff a "bill rate" which is a total amount they are willing to pay the staffing agency for every hour worked by a traveling nurse. The staffing agency then deducts costs, overhead, and profit margin from the bill rate and advertises the hourly rate it is willing to pay a traveling nurse to accept the facility assignment.

Answer: Defendants deny the allegations in Paragraph 31.

32. Fastaff competes with other staffing agencies to contract with healthcare facilities to staff open positions. To win contracts and fill these roles, Fastaff advertises attractive pay packages for assignments across the country intended to entice registered nurses to sign on as an employee of Fastaff and accept a fixed-term assignment: "Our unique and flexible model offers shorter assignments (anywhere from 4 to 13 weeks) with guaranteed hours — another way we care for our team. This flexibility allows our travel nurses to choose how long they want to work, without sacrificing their financial security. Our team of dedicated professionals works with our nurses every step of the way. From finding the perfect assignment match to arranging travel and housing, troubleshooting, and responding to individual requests and needs, our team is dedicated to ensuring our travel nurses are satisfied with every Fastaff experience."[9] In addition, "Fastaff

[9] *Id.*

offers our travel nurses a highly competitive benefits package that includes medical, dental, vision and 401(k) options," among other benefits.[10]

Answer: Defendants state that the web page cited at Paragraph 32 speaks for itself. Defendants deny the remaining allegations in Paragraph 32.

33. Fastaff knows that to accept these assignments, many nurses must give up their current employment, move to the location of the facility (oftentimes out-of-state, like many of the Plaintiffs here), secure short-term housing, and incur other travel and housing related costs at their own expense.

Answer: Defendants deny the allegations in Paragraph 33.

34. Fastaff also knows that the process of signing on as a Fastaff employee and accepting a new travel assignment can take weeks or months of preparation. Among other things, it may require filling out forms, securing licensing, passing a physical, getting vaccinations, taking drug tests, satisfying continuing education requirements, and completing training modules.

Answer: Defendants deny the allegations in Paragraph 34

35. Fastaff uses form employment agreements for its traveling employees that include the following material terms: the facility name and address, the start and end date for the assignment, the traveler's hourly pay rate, including on-call and charge adjustments, scheduled hours per week, and the traveler's daily housing stipends.

Answer: Defendants admit that travel nurses sign AALs, which include certain terms of

[10] *Id.*

their at-will employment. To the extent Plaintiffs signed AALs, those AALs speak for themselves. Defendants deny the remaining allegations in Paragraph 35.

36. But Fastaff knows that its agreements are premised on false promises and that it does not intend to pay its travel employees the hourly rate Fastaff agreed to pay. Fastaff bets on the fact that after a nurse has spent weeks or months procuring an assignment—and taking all the steps necessary to accept that assignment, such as procuring housing, moving, and leaving a current employment—it will not be economically feasible for them to walk away from the assignment after Fastaff unilaterally cuts their pay.

Answer: Defendants deny the allegations in Paragraph 36.

37. Time and again Fastaff employees report a similar story: after an employee is committed to an assignment—for example the employee has completed pre-job training or already moved across the country and started the assignment—a Fastaff recruiter notifies the employee that it is adjusting rates, asserting that the facility (*i.e.*, Fastaff's client), not Fastaff, unexpectedly adjusted its rates due to "census" changes or staffing needs, which in turn require Fastaff to decrease the employee's pay and/or hours.

Answer: Defendants deny the allegations in Paragraph 37.

38. It is likely that hundreds or thousands of Fastaff employees have received this type of notification or ones like it. In every instance, Fastaff blames the rate decrease on the *facility* supposedly changing its bill rate (*i.e.*, the amount Fastaff is being paid hourly for the employee's work) in response to a lower census or staffing needs.

Answer: Defendants deny the allegations in Paragraph 38.

39. Even if a facility did change the bill rate, however, nothing in Fastaff's contract permits it to pass along those decreases onto their unsuspecting employees. After all, *Fastaff and the employee* agreed upon a set rate of pay that was not in any way dependent on the actions of a third party or Fastaff making a pre-determined margin.

Answer: Paragraph 39 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 39.

40. In instances where Fastaff's employees refuse to sign a "revised" employment agreement decreasing their pay, Fastaff simply proceeds with unilateral pay reductions or forces them on employees.

Answer: Defendants deny the allegations in Paragraph 40.

41. Fastaff's pervasive fraud also enables it to compete effectively—albeit unfairly—in the healthcare staffing marketplace. For example, when Fastaff competes with other staffing agencies to fill a travel position, it advertises higher pay packages that are more likely to entice travel employees, knowing that it does not intend to pay that amount after the employees begin the assignment.

Answer: Defendants deny the allegations in Paragraph 41.

42. Nurses employed by Fastaff across the country report feeling demoralized and taken advantage of by the company's fraudulent pay practices but fear blacklisting and potential retaliation if they do not complete their assignment.

Answer: Defendants deny the allegations in Paragraph 42.

Plaintiff Theresa Egan

43. On or before December 3, 2020, Fastaff made an employment offer to Plaintiff Egan which included a fixed-term travel assignment to Daly City, California.

Answer: Defendants admit that Fastaff offered Plaintiff Egan an assignment in Daly City, California on or before December 3, 2020. Defendants deny the characterization of the offer as "fixed-term." As the District Court correctly found in its Order on Defendants' Partial Motion to Dismiss (ECF 95), Plaintiffs were at-will employees. To the extent an additional response is required, Defendants deny the allegations in Paragraph 43.

44. Fastaff's employment agreement offered her a position as an emergency room nurse at Seton Medical Center in Daly City, California from December 14, 2020 to March 6, 2021, with the following compensation package: a base hourly pay rate of $85 with a minimum of 48 scheduled hours per week; an overtime hourly pay rate of $127.50; an hourly call-back rate of $127.50; an hourly on-call rate of $15; and a daily housing stipend of $180.

Answer: Defendants state that Plaintiff Egan's AAL speaks for itself. To the extent an additional response is required, Defendants deny the allegations in Paragraph 44.

45. To comply with her duties under the agreement, Theresa Egan incurred expenses traveling away from her home in San Diego, California to Daly City, California, secured short-term living arrangements, and forwent other employment opportunities.

Answer: Paragraph 45 asserts a legal conclusion to which no response is required. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph 45. To the extent a response is required, Defendants deny the allegations in Paragraph 45.

46. In reliance on the foregoing material terms, Plaintiff Egan accepted Fastaff's offer of employment by executing Fastaff's form AAL on December 3, 2020.

Answer: Defendants admit that Plaintiff Egan executed an AAL on or around December 3, 2020. Paragraph 46 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 46.

47. During her original assignment, on or before February 15, 2021, Fastaff offered Plaintiff Egan a contract extension for her position as an emergency room nurse at Seton Medical Center in Daly City, California from March 7, 2021, until June 5, 2021, with the exact same compensation package as her December 2020 agreement.

Answer: Defendants deny that the assignment referenced in Paragraph 47 was a "contract extension." Defendants admit that Defendants offered Plaintiff Egan an assignment in Daly City, California, estimated to begin on March 7, 2021 and end on June 5, 2021. To the extent Paragraph 47 references a particular AAL, Defendants state that the AAL speaks for itself. To the extent an additional response is required, Defendants deny the allegations in Paragraph 47.

48. In reliance on the foregoing material terms, Plaintiff Egan accepted Fastaff's offer to extend her employment by executing Fastaff's form AAL on February 15, 2021 and forewent other employment opportunities. On information and belief, at the time it made the representations in the contract to Plaintiff Egan, Fastaff knew that it had a pattern of reducing its travel employees' pay once they had already begun or prepared to begin an assignment, but withheld this information from her.

Answer: Paragraph 48 asserts legal conclusions to which no responses are required. Defendants deny that the assignment reference in Paragraph 48 constituted an extension of Plaintiff

Egan's prior assignment. Defendants deny the remaining allegations in Paragraph 48.

49. On March 4, 2021, three days before her extension was set to go into effect, Fastaff made Theresa Egan a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Fastaff demanded that she accept an 18% reduction of her base hourly pay rate from $85 to $70 and corresponding cuts in her overtime and call-back hourly pay rates from $127.50 to $105 to complete the previously agreed-upon assignment.

Answer: Defendants admit that Plaintiff Egan was informed that, if she elected to accept a revised assignment, her rate of pay would be $70 per hour. Defendants deny the remaining allegations in Paragraph 49.

50. Fastaff blamed the pay reduction on the facility. Fastaff told Plaintiff Egan that Fastaff had no say in the rate reduction. Having already committed to the extension weeks prior, Plaintiff Egan had no reasonable alternative but to accept the rate cut just days before her new contract was to begin.

Answer: Defendants deny the allegations in Paragraph 50.

51. After Plaintiff Egan agreed to continue working and signed the AAL on March 4, 2021, Fastaff nevertheless canceled her contract with no notice on March 8, 2021, leaving her without a job.

Answer: Defendants admit that Plaintiff Egan accepted the revised assignment and agreed to work at the agreed-upon rate of $70 per hour. Defendants admit that Plaintiff Egan's assignment was terminated prior to March 7, 2021. Defendants deny that the contract was cancelled "with no notice." Defendants are without knowledge sufficient to admit or deny the remaining allegations in Paragraph 51 and therefore deny those allegations.

52. On March 24, 2021, Fastaff offered to bring Plaintiff Egan back at the same reduced rate from March 30, 2021, to May 29, 2021. After moving back home following the cancelation, Plaintiff Egan accepted the offer to return to Seton Medical Center since she had already taken the necessary steps to ensure compliance with her obligations at that location, and she was unable to find comparable employment in such a short period of time. Theresa Egan had no real choice but to return to work the reduced-rate assignment.

Answer: Defendants admit that Plaintiff Egan accepted an assignment at Seton Medical Center for an assignment estimated to begin on March 30, 2021 and end on May 29, 2021. Defendants admit that Plaintiff Egan knew her hourly rate would be $70 per hour before accepting this assignment. Defendants admit that Plaintiff Egan knew her hourly rate would be $70 per hour before traveling to the assignment. Defendants deny the remaining allegations in Paragraph 52.

53. Plaintiff Egan completed her assignment in accordance with her duties. As a result, she suffered monetary losses. At a minimum, the difference between the value of the original agreement and the unilateral pay reduction was more than $10,000.

Answer: Defendants admit that Plaintiff Egan completed an assignment from March 30, 2021 until May 29, 2021. Defendants deny the remaining allegations in Paragraph 53.

Plaintiff Brian Barker

54. On or before March 14, 2022, Fastaff made an employment offer to Plaintiff Brian Barker which included a fixed-term travel assignment in Worcester, Massachusetts.

Answer: Defendants admit that Defendants offered Plaintiff Barker an assignment in Worcester, Massachusetts. Defendants deny the characterization of the offer as "fixed-term." As the District Court correctly found in its Order on Defendants' Partial Motion to Dismiss (ECF 95),

Plaintiffs were at-will employees. Defendants deny the remaining allegations in Paragraph 54.

55. The employment agreement offered him a position as a surgical tech at USN Crisis St. Vincent Hospital in Worcester, Massachusetts from March 21, 2022, until June 18, 2022, with the following compensation package: a base hourly pay rate of $75 with a minimum of 48 scheduled hours per week; an overtime hourly pay rate of $112.50; an hourly call-back rate of $112.50; and an hourly on-call rate of $14.25; and a daily housing stipend of $125. On information and belief, at the time it made the representations in the contract to Plaintiff Barker, Fastaff knew that it had a pattern of reducing its travel employees' pay once they had already begun or prepared to begin an assignment, but withheld this information from him.

Answer: Defendants admit that Mr. Barker was offered a position as a surgical tech at St. Vincent Hospital in Worcester, Massachusetts. Defendants state that Plaintiff Barker's AAL speaks for itself. Defendants deny the remaining allegations in Paragraph 55.

56. In reliance on the foregoing material terms, he accepted Fastaff's offer of employment by executing Fastaff's form employment agreement on or before March 14, 2022. To comply with his duties under the agreement, he traveled away from his home to Worcester, Massachusetts, secured short-term living arrangements, and forwent other employment opportunities.

Answer: Defendants admit that Mr. Barker accepted an assignment by signing an AAL on or before March 14, 2022. Defendants deny the remaining allegations in Paragraph 56.

57. On March 21, 2022, the first day of his agreed-upon 13-week assignment, Fastaff made Brian Barker a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Fastaff demanded that he accept a more than 13% reduction of his base hourly pay

rate, from $75 to $65 and corresponding cuts in his overtime and call-back hourly pay rates from $112.50 to $97.50 to complete the previously agreed-upon assignment.

Answer: Defendants admit that Plaintiff Barker was informed that, if he elected to accept a revised agreement, his rate of pay would be $65 per hour. Defendants deny the remaining allegations in Paragraph 57.

58. Fastaff informed Plaintiff Barker by email blaming the facility:

> Hello Brian,
> The Travel Nursing market has been ever-changing since the start of the global pandemic. St. Vincent is currently experiencing a decrease in COVID-19 patients, and the overall demand for crisis travel assignments is decreasing nationwide.
> U.S. Nursing strives to offer the highest pay rates in the industry based on current market demands, and pay rates are adjusted to be competitive. Due to the current census decrease at St. Vincent, the pay rate for your current (or upcoming) travel assignment will be decreased, effective Sunday, April 3, 2022.
>
> ***
>
> An updated Assignment Agreement Letter (AAL) is attached to this email showing the pay rate change effective 4/3/2022. An electronic version of this AAL will be emailed to you via RightSignature to sign electronically. A signed AAL must be completed by Saturday, 3/26/2022. If you do not sign the AAL by 3/26/2022, U.S. Nursing will assume that your assignment will end on Saturday, 4/2/2022.
>
> U.S. Nursing remains committed to bringing you a highly competitive pay package based on the fluctuations within the industry. While we believe this is still a highly competitive pay package, we realize that as a highly qualified healthcare professional you have many options for employment. Should you choose not to accept this pay rate and end your contract early, there will be no penalty, and we look forward to working with you in the future.

Answer: Defendants admit that they informed Mr. Barker of the changed rate of pay prior to the change. Defendants deny that the purported communication cited in Paragraph 58 represents a complete and accurate representation of the alleged communication. Defendants deny the

remaining allegations in Paragraph 58.

59. This notification surprised Plaintiff Barker not only because it was inconsistent with his 20-plus years of travel-nursing experience, but also because his first day showed that the facility was experiencing "increasing surgical volume" (unrelated to COVID), which he conveyed to Fastaff by email a few days later:

> When I first received Monday's email it coincided with my hectic first day of my contract. I had penned a reply to the email but waited to send it until now. I wanted to know if US Nursing or Fastaff would better explain the situation, because the reason stated in the email smells[.] The operating room staff are seeing a steady increase in surgical case volumes and the operating room management was ecstatic at reaching a pre-Covid number of surgical cases for the first time in 2 years (55 surgical cases in one day). The increasing surgical volume does not seem to validate [] Monday's email. The hours worked by surgical techs reflects this as well. This is very disconcerting that this was even entertained as a good idea. How do you expect your employees to not be very upset by this? How do you expect to have an honorable and upstanding reputation for honoring your contractually agreed upon terms ever again after doing something as underhanded as this? Why would anyone ever take a contract with you ever again if you're simply going to advertise one pay rate for a contract and slash it after the nurses and healthcare professionals have agreed to your terms? How am I and others like me supposed to ever trust that you'll honor an agreement or contract ever again if you go through with this very unprofessional clear breach of multiple contracts?

Answer: Defendants admit that Mr. Barker sent an email acknowledging his proposed changed rate of pay after receiving notice of the change. Defendants deny that the communication cited in Paragraph 59 represents a complete representation of the alleged communication. Defendants deny the remaining allegations in Paragraph 59.

60. Having already spent substantial time and money securing the assignment and taking the steps necessary to ensure compliance with his obligations under the agreement, and unable to find comparable employment in such a short period of time, Plaintiff Barker had no real choice but to continue working the assignment at the lower rate. Plaintiff Barker never

would have moved across the country and accepted the assignment had he known Fastaff would disregard the parties' agreement and unilaterally cut his pay.

Answer: Defendants admit that Mr. Barker agreed to and did continue working at the lower rate. Defendants deny the remaining allegations in Paragraph 60.

61. Plaintiff Barker completed his assignment in accordance with his duties. As a result, he suffered monetary losses. At a minimum, the difference between the value of the original agreement and the unilateral pay reductions was more than $7,000.

Answer: Defendants admit that Plaintiff Barker completed an assignment. Defendants deny the remaining allegations in Paragraph 61.

Plaintiff Taylor Berdoll

62. On or before April 26, 2020, Fastaff made an employment offer to Plaintiff Berdoll which included a fixed-term travel assignment to New York.

Answer: Defendants admit that Fastaff offered Plaintiff Berdoll an assignment in New York. Defendants deny the characterization of the offer as "fixed-term." As the District Court correctly found in its Order on Defendants' Partial Motion to Dismiss (ECF 95), Plaintiffs were at-will employees. To the extent an additional response is required, Defendants deny the allegation in Paragraph 62.

63. Fastaff's employment agreement offered her a position as a nurse at a healthcare facility in New York from approximately April 26, 2020 to July 26, 2020, with the following compensation package: a base hourly pay rate of $81 with a minimum of 48 scheduled hours per week; an overtime hourly pay rate of $121.50; and a weekly housing stipend of $1,050.

Answer: Defendants admit that Ms. Berdoll signed an AAL on or before April 26, 2020.

Defendants deny the remaining allegations in Paragraph 63.

64. To comply with her duties under the agreement, she incurred expenses traveling away from her home in Texas to New York, secured short-term living arrangements, and forwent other employment opportunities.

Answer: Paragraph 64 asserts a legal conclusion to which no response is required. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph 64. To the extent a response is required, Defendants deny the allegations in Paragraph 64.

65. In reliance on the foregoing material terms, she accepted Fastaff's offer of employment by executing Fastaff's form AAL on or before April 26, 2020.

Answer: Defendants admit that Plaintiff Berdoll executed an AAL on or before April 26, 2020. Defendants deny the remaining allegations in Paragraph 65.

66. Midway through her 13-week assignment, Fastaff made her a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Fastaff demanded that she accept a 25% reduction of her base hourly pay rate, from $81 to $61 and a corresponding cut in her overtime rate to complete the previously agreed-upon assignment.

Answer: Defendants admit that Ms. Berdoll was informed that, if she elected to accept a revised agreement, her rate of pay would be $61 per hour. Defendants deny the remaining allegations in Paragraph 66.

67. Having already spent substantial time and money securing the assignment and taking the steps necessary to ensure compliance with her obligations under the agreement, and unable to find comparable employment in such a short period of time, Plaintiff Berdoll had no real choice but to continue working the assignment at the lower rate.

Answer: Defendants admit that Ms. Berdoll agreed to and did continue working at the lower rate. Defendants deny the remaining allegations in Paragraph 67.

68. Then, again, approximately one week later, Fastaff made another a "take-it-or-leave-it" demand to accept less pay or be terminated. Specifically, Fastaff demanded that she accept another cut to her base hourly pay rate, from $61 to $55 and a corresponding cut in her overtime rate, down to $82.50, to complete the previously agreed-upon assignment.

Answer: Defendants deny the allegation in Paragraph 68.

69. Again, Plaintiff Berdoll had no real choice but to continue working the assignment at the lower rate.

Answer: Defendants deny the allegation in Paragraph 69.

70. Plaintiff Berdoll completed her assignment in accordance with her duties. As a result, she suffered monetary losses. At a minimum, the difference between the value of the original agreement and the unilateral pay reductions was more than $5,000.

Answer: Defendants deny the allegations in paragraph 70.

71. As set forth above, Plaintiffs Egan, Berdoll, and Barker, relied on the material terms of their agreements including: the fixed assignment term, the payment package, and the guaranteed hours or days in accepting their offers; they believed the assignment was worth foregoing other employment, relocating, and incurring the associated professional and personal costs of accepting the travel assignment. In addition, Plaintiffs relied on the fact the foregoing material terms could not be changed without additional consideration and the reasonable expectation that Fastaff would act in good faith and fair dealing and honor its promises or

representations. Plaintiffs would not have accepted the agreement had they known that Fastaff would violate the terms and spirit of the agreement.

Answer: Defendants deny the allegations in Paragraph 71.

72. There is no legal justification for Fastaff's conduct. Even if Fastaff's client no longer needed as much staff or decided to reduce the bill rate, for example, nothing in the terms of the form agreement authorizes Fastaff to unilaterally adjust pay rates to account for new circumstances, whether foreseeable or not.

Answer: Defendants deny the allegations in Paragraph 72.

73. The "revised" agreements that Plaintiffs and other similarly situated employees were coerced to sign are not enforceable because an effective contract modification or accord requires the exchange of new consideration. As alleged herein, there was no exchange of new consideration because Plaintiffs were compelled to undertake the same obligations for less pay. Consequently, Fastaff cannot relieve itself of its contractual obligations under one contract by coercing acceptance of a second contract with less favorable terms.

Answer: Defendants deny the allegations in Paragraph 73.

C. Fastaff's Miscalculation of Its Employees' Regular Rate of Pay and Resulting Failure to Lawfully Pay Overtime.

74. By law, employers must pay their employees one-and-half times their "regular rate" for all overtime hours (*i.e.*, hours over 40 in a single workweek) worked. In addition to the bait and- switch tactics discussed above, the reduced overtime rate that Fastaff paid Plaintiffs failed to compensate them at 1.5 times their regular rate of pay in violation of the FLSA and state overtime statutes.

Answer: Paragraph 74 asserts a legal conclusion to which no response is required. To the

extent a response is required, Defendants deny the allegations in Paragraph 74.

75. As a general matter, an employee's "regular rate" is "deemed to include all remuneration for employment paid to, or on behalf of, the employee," but excludes, *inter alia*, "reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment." 29 U.S.C. § 207(e).

Answer: Paragraph 75 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph75.

76. In calculating the overtime rate paid to its employees, Fastaff wrongfully excluded from their regular rate stipends and allowances paid to its employees, including a "On Call" pay, "Call Back" pay, and "Housing Stipend," even though these payments functioned as a form of compensation as part of its' employees' pay package. For instance:

a. Prior to her rate reduction, Plaintiff Theresa Egan was paid overtime at a rate of $127.50 per hour, or 1.5 times her base hourly pay rate of $85. Similarly, after her pay was reduced, she was still paid overtime at a rate of 1.5 times her new base hourly rate. Her Daily Housing Stipend of $180 was never included in the calculation of her regular rate in violation of federal and California law;

b. Prior to his rate reduction, Plaintiff Brian Barker was paid overtime at a rate of $112.50 per hour, or 1.5 times a regular rate of $75. Similarly, after his pay was reduced, he was still paid overtime at a rate of 1.5 times his new base hourly rate ($64 base rate and $97.50 OT rate). His Daily Housing Stipend of $125 was never included in the calculation of his regular rate in violation of federal law;

c. Plaintiff Sabrina Budden-Wright was paid overtime at a rate of $127.50 per hour, or 1.5 times her base hourly pay rate of $85. Her Daily Lodging Stipend of $96 was never included in the calculation of her regular rate in violation of federal and state law;

d. Plaintiff Alison Rideout was paid overtime at a rate of $120 per hour, or 1.5 times her base hourly pay rate of $80. Her Daily Lodging Stipend of $95 was never included in the calculation of her regular rate in violation of federal and state law;

e. Plaintiff Jennifer Maslowsky was paid overtime at a rate of $108 per hour, or 1.5 times her base hourly pay rate of $72. Her Daily Lodging Stipend of $96 was never included in the calculation of her regular rate in violation of federal and state law;

f. Plaintiff Brittany Scalia was paid overtime at a rate of $187.50 per hour, or 1.5 times her base hourly pay rate of $125. Her Daily Lodging Stipend of $99 was never included in the calculation of her regular rate in violation of federal and state law.

g. Plaintiff Taylor Berdoll was paid overtime at a rate of $121.50 per hour, or 1.5 times her base hourly pay rate of $81. Similarly, after her pay was reduced, she was still paid overtime at a rate of 1.5 times her new base hourly rate. Her Weekly Housing Stipend of $1,050 was never included in the calculation of her regular rate in violation of federal and New York law;

Answer: Paragraph 76 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 76.

77. Each Plaintiff worked more than 40 hours in, at least, one workweek, or more than 8 hours in a single workday, during their contracts with Fastaff during which these forms of compensation were not included in their regular rate of pay in violation of federal and applicable state law.

Answer: Paragraph 77 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 77.

78. For example, during the workweek of April 11 through April 17, 2021, Plaintiff Theresa Egan worked 52.5 hours for Fastaff in California. During that workweek she worked 12.5 hours of overtime under both federal and California law. Fastaff paid her $105 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Egan $1,260 (nominally) for lodging. This “stipend” payment is actually wages that must be included in Plaintiff Egan’s

regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Egan's regular rate of pay was $94 per hour during that workweek. As a result, Fastaff was required under federal and California law to pay Plaintiff Egan $141 per hour of overtime for a total of $2,256 that workweek for overtime. But Fastaff only paid her overtime of $1,680 during that workweek, meaning she was underpaid by, at least, $576. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Egan, at least, $1,152. This pattern repeated itself throughout the course of Plaintiff Egan's employment with Fastaff where the company consistently failed to include all her compensation in her regular rate of pay, meaning she was routinely underpaid for hours over 40 in a workweek or eight or 12 hours in a single workday.

Answer: To the extent Paragraph 78 refers to payment records, those records speak for themselves. Paragraph 78 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 78.

79. As another example, during the workweek of July 10 through July 16, 2022, Plaintiff Brian Barker worked 48.02 hours for Fastaff in Massachusetts. During that workweek he worked 8.02 hours of overtime under federal law. Fastaff paid him $211.50 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Barker $865.27 (nominally) for lodging. This "stipend" payment is actually wages that must be included in Plaintiff Barker's regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Barker's regular rate of pay was $153.02 per hour during that workweek. As a result, Fastaff was required under federal law to pay Plaintiff Barker $229.53 per hour of overtime for a total of $1,840.82 that workweek for overtime. But Fastaff only paid him overtime of $1,696.31 during that workweek, meaning he

was underpaid by, at least, $144.51. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Barker, at least, $289.02. This pattern repeated itself throughout the course of Plaintiff Barker's employment with Fastaff where the company consistently failed to include all his compensation in his regular rate of pay meaning he was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 79 refers to payment records, those records speak for themselves. Paragraph 79 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 79.

80. As another example, during the workweek of October 3 through October 9, 2021, Plaintiff Sabrina Budden-Wright worked 48 hours for Fastaff in Oklahoma. During that workweek she worked 8 hours of overtime under both federal and Oklahoma law. Fastaff paid her $127.50 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Budden-Wright $672 (nominally) for lodging. This "stipend" payment is actually wages that must be included in Plaintiff Budden-Wright's regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Budden-Wright's regular rate of pay was $99 per hour during that workweek. As a result, Fastaff was required under federal and Oklahoma law to pay Plaintiff Budden-Wright $148.50 per hour of overtime for a total of $1,188 that workweek for overtime. But Fastaff only paid her overtime of $1,020 during that workweek meaning she was underpaid by, at least, $168. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Budden-Wright, at least, $336. This pattern repeated itself throughout the course of Plaintiff Budden-Wright's employment with Fastaff

where the company consistently failed to include all her compensation in her regular rate of pay meaning she was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 80 refers to payment records, those records speak for themselves. Paragraph 80 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 80.

81. As another example, during the workweek of May 9 through May 15, 2021, Plaintiff Alison Rideout worked 48.25 hours for Fastaff in Idaho. During that workweek she worked 8.25 hours of overtime under both federal and Idaho law. Fastaff paid her $120 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Rideout $665 (nominally) for lodging. This "stipend" payment is actually wages that must be included in Plaintiff Rideout's regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Rideout's regular rate of pay was $93.78 per hour during that workweek. As a result, Fastaff was required under federal and Idaho law to pay Plaintiff Rideout $140.67 per hour of overtime for a total of $1,160.56 that workweek for overtime. But Fastaff only paid her overtime of $990 during that workweek meaning she was underpaid by, at least, $170.56. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Rideout, at least, $341.11. This pattern repeated itself throughout the course of Plaintiff Rideout's employment with Fastaff where the company consistently failed to include all her compensation in her regular rate of pay meaning she was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 81 refers to payment records, those records speak for themselves. Paragraph 81 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 81.

82. As another example, during the workweek of September 25 to October 1, 2022, Plaintiff Jennifer Maslowsky worked 48 hours for Fastaff in Oregon. During that workweek she worked 8 hours of overtime under both federal and Oregon law. Fastaff paid her $108 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Maslowsky $672 (nominally) for lodging. This "stipend" payment is actually wages that must be included in Plaintiff Maslowsky's regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Maslowsky's regular rate of pay was $86 per hour during that workweek. As a result, Fastaff was required under federal and Oregon law to pay Plaintiff Maslowsky $129 per hour of overtime for a total of $1,032 that workweek for overtime. But Fastaff only paid her overtime of $864 during that workweek meaning she was underpaid by, at least, $168. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Maslowsky, at least, $336. This pattern repeated itself throughout the course of Plaintiff Maslowsky's employment with Fastaff in Oregon and Michigan, where the company consistently failed to include all her compensation in her regular rate of pay meaning she was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 82 refers to payment records, those records speak for themselves. Paragraph 82 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 82.

83. As another example, during the workweek of April 3 to April 9, 2022, Plaintiff Brittany Scalia worked 49.71 hours for Fastaff in New Jersey. During that workweek she worked 9.71 hours of overtime under both federal and New Jersey law. Fastaff paid her $187.50 per hour for those hours of overtime. However, Fastaff also paid Plaintiff Scalia $693 (nominally) for

lodging. This "stipend" payment is actually wages that must be included in Plaintiff Scalia's regular rate of pay for overtime hours. Factoring in that payment, Plaintiff Scalia's regular rate of pay was $138.94 per hour during that workweek. As a result, Fastaff was required under federal and New Jersey law to pay Plaintiff Scalia $208.41 per hour of overtime for a total of $2,023.67 that workweek for overtime. But Fastaff only paid her overtime of $1,758.75 during that workweek meaning she was underpaid by, at least, $264.92. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Scalia, at least, $529.84. This pattern repeated itself throughout the course of Plaintiff Scalia's employment with Fastaff where the company consistently failed to include all her compensation in her regular rate of pay meaning she was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 83 refers to payment records, those records speak for themselves. Paragraph 83 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 83.

84. As another example, during the workweek of December 13 to 19, 2020, Plaintiff Taylor Berdoll worked 50 hours for Fastaff in New York. During that workweek she worked 10 hours of overtime under both federal and New York law. Fastaff paid her $105 per hour for those hours of overtime. However, Fastaff also paid her $630 (nominally) for lodging. This "stipend" payment is actually wages that must be included in her regular rate of pay for overtime hours. Factoring in that payment, the regular rate of pay was $82.60 per hour during that workweek. As a result, Fastaff was required under federal and New York law to pay Plaintiff Berdoll $123.90 per hour of overtime for a total of $1,239 that workweek for overtime. But Fastaff only paid her

overtime of $1,050 during that workweek meaning she was underpaid by, at least, $189. This sum is also subject to liquidation under federal and state law meaning that, for this single workweek, Fastaff owes Plaintiff Berdoll, at least, $378. This pattern repeated itself throughout the course of Plaintiff Berdoll's employment with Fastaff where the company consistently failed to include all her compensation in her regular rate of pay meaning she was routinely underpaid for hours over 40 in a workweek.

Answer: To the extent Paragraph 84 refers to payment records, those records speak for themselves. Paragraph 84 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 84.

85. Fastaff's exclusion of the various pay rates, stipends, and allowances paid to its employees, including the "On Call" pay, "Call Back" pay, and "Housing Stipend" from said employees' "regular rate" in calculating overtime was wrongful and in violation of the law, in that:

a. Said payments functioned as compensation for the employees' hours of employment;

b. Said payments were tied to the number of hours or shifts worked (*i.e.*, the amount of work performed for the company),rather than the amount of expenses actually incurred;

c. Said payments varied with the number of hours worked per week, such that if an employee missed one or more shifts, said payments would be reduced a corresponding amount;

d. Said payments did not vary with the amount of expenses an employee actually incurred, nor were they calculated to approximate actual expenses. Employees were not required to document expenses, nor provide any attestation that he or she actually incurred a particular amount of expenses in a given period. This is in contrast to Fastaff's policy of reimbursing relocation expenses for travel to (and, in some instances, from) the assignment where Fastaff required the nurses to submit evidence of the actual amount of expenses incurred; and

e. Said payments were unilaterally reduced or changed by Fastaff unrelated to actual expenses incurred, for example, as part of reductions in overall compensation made by Fastaff in the middle of assignments. This shows that Fastaff treated these stipends as wages that Fastaff believed it could adjust unilaterally and in its sole discretion.

Answer: Paragraph 85 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 85.

86. Fastaff classified this form of compensation as expense reimbursement to avoid paying payroll taxes on these wages and to avoid paying materially increased overtime rates, particularly given that many travel nurses are guaranteed more than 40 hours per week.

Answer: Defendants deny the allegations in Paragraph 86.

87. As a result of Fastaff's failure to properly calculate its employees' regular rates, Plaintiffs and other similarly situated employees were not paid for all overtime worked in accordance with the law.

Answer: Paragraph 87 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 87.

88. At all times material herein, Plaintiffs and other similarly situated employees have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq*.

Answer: Paragraph 88 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 88.

89. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 206(a); 29 U.S.C. § 207(a)(1).

Answer: Paragraph 89 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 89.

90. At all relevant times, Fastaff has been an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1), and, upon information and belief, has an annual gross volume of sales made or business done of not less than $500,000.

Answer: Paragraph 90 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 90.

91. During all relevant times to this action, Fastaff acted as the "employer" of Plaintiffs and other similarly situated employees within the meaning of the FLSA. 29 U.S.C. § 203(d).

Answer:. The Second Amended Complaint refers to both Fastaff and U.S. Nursing collectively as "Fastaff," and it is therefore not possible to determine which entity Plaintiffs allege employed one or more Plaintiffs. The Second Amended Complaint likewise does not identify what the "relevant" time period is for this action. Defendants deny the allegations in Paragraph 91.

92. During all times relevant to this action, Plaintiffs and other similarly situated employees were Fastaff's "employees" within the meaning of the FLSA. 29 U.S.C. § 203(e).

Answer: The Second Amended Complaint refers to both Fastaff and U.S. Nursing collectively as "Fastaff," and it is therefore not possible to determine which entity Plaintiffs allege employed one or more Plaintiffs. The Second Amended Complaint likewise does not identify what the "relevant" time period is for this action. Defendants deny the allegations in Paragraph 92.

93. Pursuant to the FLSA, employees are also entitled to be compensated at a rate of not less than one and one-half times the regular rate at which such employees are employed for all work performed in excess of 40 hours in a workweek. 29 U.S.C. § 207(a).

Answer: Paragraph 93 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 93.

94. Although the FLSA contains some exceptions (or exemptions) from the overtime requirements, none of those exceptions (or exemptions) applies here.

Answer: Paragraph 94 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 94.

95. Plaintiffs and other similarly situated employees are victims of uniform and unlawful compensation policies.

Answer: Defendants deny the allegation in Paragraph 95.

96. Plaintiffs and other similarly situated employees are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because Fastaff acted willfully and knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

Answer: Defendants deny the allegation in Paragraph 96.

97. Fastaff has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result, Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages as described by Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find Fastaff acted in good faith or with

reasonable grounds in failing to pay overtime compensation, Plaintiffs and other similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

Answer: Defendants deny the allegation in Paragraph 97.

98. As a result of these violations of the FLSA's overtime pay provisions, compensation has been unlawfully withheld by Fastaff from Plaintiffs and other similarly situated employees. Accordingly, pursuant to 29 U.S.C. § 216(b), Fastaff is liable for the unpaid minimum wages and overtime premium pay along with an additional amount as liquidated damages, prejudgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

Answer: Defendants deny the allegation in Paragraph 98.

CLASS ACTION ALLEGATIONS

99. Class Definitions: Plaintiffs bring this action individually and on behalf of other similarly situated individuals. Pursuant to Federal Rules of Civil Procedure 23(b)(3), 23(b)(2), and/or 23(c)(4), Plaintiffs seek certification of the foregoing classes and subclasses, defined as follows:

> The Class: All persons who entered into an agreement with Fastaff and whose total compensation was reduced before the end of the agreed upon term.
>
> The State Specific Classes: All persons who entered into an agreement with Fastaff to work at a facility or location in California, New York, New Jersey, Oklahoma, and Oregon: who (a) had their total compensation reduced before the end of the agreed upon term; and/or (b) worked more than 40 hours in a workweek or 8 hours in a single workday and whose regular rate of pay did not include the "On Call" pay, "Call Back" pay, or "Housing Stipend" (or their equivalents by any other name).
>
> The California § 970 Class: All persons who entered into an agreement with Fastaff who traveled into, out of, or within California for purposes of that

> assignment and had their total compensation reduced before the end of the agreed upon term.
>
> The California UCL Class: All persons who entered into an agreement with Fastaff to work at a facility or location in California who had their total compensation reduced before the end of the agreed upon term.

Answer: Paragraph 99 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 99. Defendants deny that the identified classes meet the requirements of Rule 23.

100. Excluded from the Class are the Court and its officers, employees, and relatives; Fastaff and its subsidiaries, officers, and directors; and governmental entities.

Answer: Paragraph 100 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 100.

101. Numerosity: the Class consists of members so numerous and geographically dispersed that joinder of all members is impracticable, as Fastaff employs thousands of similarly situated individuals across the United States.

Answer: Paragraph 101 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 101.

102. All members of the Class are ascertainable by reference to objective criteria, as Fastaff has access to addresses and other contact information for Class members that can be used for notice purposes.

Answer: Paragraph 102 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 102.

103. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiffs and the Class, and those questions substantially predominate over any questions that may affect individual members of the Class. Common questions include:

a. Did Fastaff make actionable misrepresentations or omissions?

b. Were Fastaff's promises, representations, or omissions false or misleading?

c. Did Fastaff intend for Plaintiffs and the Class to rely on its promises, representations, or omissions?

d. Should Fastaff have known that such promises or representations would cause justifiable or reasonable reliance?

e. Did Fastaff owe a duty to disclose to Plaintiffs and the Class to not conceal the truth?

f. Did Fastaff's conduct in reducing compensation packages breach the travel assignment agreements?

g. Did Fastaff act in bad faith?

h. Did Fastaff engage in fraudulent concealment?

i. Did Fastaff's conduct violate state wage payment statutes?

j. Did Fastaff fail to include certain forms of non-discretionary compensation in Plaintiffs and class members' regular rate of pay?

k. Did Fastaff's failure to include forms of compensation such as "On Call" pay, "Call Back" pay, and "Housing Stipend" in calculating its employees' regular rates result in said employees not being adequately compensated for overtime work?

Answer: Paragraph 103 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 103.

104. Typicality: Plaintiffs' claims are typical of other members of the Class because all of the claims arise from the same course of conduct by Fastaff, the same fraudulent business practice, and are based on the same legal theories.

Answer: Paragraph 104 asserts a legal conclusion to which no response is required. To the

extent a response is required, Defendants deny the allegations in Paragraph 104.

105. Adequacy of Representation: Plaintiffs are adequate class representatives because their interests do not conflict with the interests of the Class members whom they seek to represent. Plaintiffs have retained counsel with substantial experience in prosecuting complex and class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of Class members and have the financial resources to do so. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

Answer: Paragraph 105 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 105.

106. Superiority of Class Action: Class treatment is superior to individual treatment, as it will permit a large number of similarly situated persons to prosecute their respective class claims in a single forum, simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

Answer: Paragraph 106 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 106.

107. To the extent not all issues or claims, including the amount of damages, can be resolved on a class-wide basis, Plaintiffs invoke Federal Rule of Civil Procedure 23(c)(4), reserving the right to seek certification of a class action with respect to particular issues, and Federal Rule of Civil Procedure 23(c)(5), reserving the right to divide the class into subclasses.

Answer: Paragraph 107 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 107.

COLLECTIVE ACTION ALLEGATIONS

108. Plaintiffs bring their sixth cause of action, the FLSA claim arising out of Fastaff's overtime violations, as an "opt in" collective action pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following collective action class:

> All travel healthcare professionals currently or formerly employed by Fastaff or U.S. Nursing Corporation who (1) worked more than 40 hours in a workweek from February 16, 2020 until the date of the Court's conditional certification order and (2) who received a "Housing Stipend" (or its equivalent by any other name) that was not included in their regular rate of pay during a workweek where they worked more than 40 hours.

Plaintiffs' FLSA claim may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

Answer: Paragraph 108 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 108.

109. Plaintiffs, individually and on behalf of all others similarly situated, seek relief on a collective basis challenging Fastaff's above-described FLSA violations. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from Fastaff's records, and potential opt-in plaintiffs may easily and quickly be notified of the pendency of this action.

Answer: Paragraph 109 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 109.

FIRST CAUSE OF ACTION: PROMISSORY ESTOPPEL[11]

On Behalf of Plaintiffs Egan, Berdoll, and Barker and the Class

[11] Plaintiffs note that this Second Amended Complaint conforms to the Court's Order, ECF 95, which granted in part and denied in part Defendants' Rule 12(b)(6) motion to dismiss, and thus omits those counts set forth in the First Amended Complaint that were dismissed by the Court.

110. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein and assert this claim in the alternative to their breach of contract claims to the extent necessary.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

111. Fastaff made clear and unambiguous promises to Plaintiffs and class members regarding their pay rates that it knew or should have known would induce Plaintiffs and class members to enter into employment agreements with Fastaff and incur certain costs and expenses associated with relocation and housing.

Answer: Defendants deny the allegation in Paragraph 111.

112. Fastaff engaged in a practice of reducing its travelers' pay after they had already entered into a travel contract and did not intend to perform its promises when those promises were made and in fact did not perform them.

Answer: Defendants deny the allegation in Paragraph 112.

113. Plaintiffs and class members reasonably relied on such promises in entering into employment agreements, relocating, and incurring certain expenses, costs, and losses.

Answer: Defendants deny the allegation in Paragraph 113.

114. Fastaff's promises in fact induced Plaintiffs and class members to enter into employment agreements, relocate, and incur certain expenses, costs, and losses. Fastaff knew

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The omission of these counts in no way constitutes a waiver or abandonment of Plaintiffs' right to appeal the dismissal of those claims. *See, e.g., Sylvia v. Wisler*, 875 F.3d 1307, 1323 (10th Cir. 2017).

and intended for Plaintiffs and class members to rely on these promises, and Plaintiffs' reliance on these promises was foreseeable on the part of Fastaff.

Answer: Defendants deny the allegation in Paragraph 114.

115. It would be unjust to allow Fastaff to profit from making such inducing promises and not fulfilling them.

Answer: Defendants deny the allegation in Paragraph 115.

116. This injustice can only be avoided by forcing Fastaff to fulfill these promises.

Answer: Defendants deny the allegation in Paragraph 116.

SECOND CAUSE OF ACTION: UNJUST ENRICHMENT
On Behalf of Plaintiffs Egan, Berdoll, and Barker and the Class

117. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein and assert this claim in the alternative to their breach of contract claims to the extent necessary.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

118. Plaintiffs and class members conferred a benefit upon Fastaff by filling open healthcare positions that permitted Fastaff to profit as an intermediary staffing agency.

Answer: Defendants deny the allegation in Paragraph 118.

119. Fastaff appreciated and had knowledge of the benefit Plaintiffs and class members conferred on it.

Answer: Defendants deny the allegation in Paragraph 119.

120. Fastaff, by making take-it-or-leave-it demands to reduce Plaintiffs' and class members' pay rates or total compensation in the middle of their contractual terms, kept money

that was contractually promised to Plaintiffs and class members and, therefore received, accepted, and retained benefits under such circumstances as to make it inequitable and unjust for Fastaff to retain such benefits without payment of its value.

Answer: Defendants deny the allegation in Paragraph 120.

121. Under the circumstances, Fastaff should in justice and fairness be compelled to give its benefit to Plaintiffs and class members.

Answer: Defendants deny the allegation in Paragraph 121.

THIRD CAUSE OF ACTION: FRAUDULENT INDUCEMENT

On Behalf of Plaintiffs Egan, Berdoll, and Barker and the Class

122. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein and assert this claim in the alternative to their breach of contract claims to the extent necessary.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

123. Fastaff made material representations of fact as true to Plaintiffs and class members about their pay rates and total compensation that were false or misleading.

Answer: Defendants deny the allegation in Paragraph 123.

124. At the time it made such representations, Fastaff knew that its representations were false as it had a practice of reducing its travelers' pay after they had already entered into a travel contract, and it would pay Plaintiffs and class members less than the amounts it promised if it so determined.

Answer: Defendants deny the allegation in Paragraph 124.

125. Fastaff's misrepresentations were made with the purpose to defraud Plaintiffs and class members.

Answer: Defendants deny the allegation in Paragraph 125.

126. At the time it made such representations, Fastaff knew Plaintiffs and class members would reasonably and justifiably rely on its representations in entering into their travel assignment agreements, relocating, and incurring certain expenses, costs, and losses.

Answer: Defendants deny the allegation in Paragraph 126.

127. Fastaff had a duty to disclose that its representations were false or misleading because Fastaff had superior knowledge that was not reasonably available to Plaintiffs and class members, Plaintiffs and class members were entitled to know given the relation of trust and confidence between them, and disclosure was necessary to prevent Plaintiffs and class members from being misled or mistaken.

Answer: Defendants deny the allegation in Paragraph 127.

128. Plaintiffs and class members did not know Fastaff's representations regarding their pay rate were false or misleading and had a right to rely on and reasonably relied on them in entering into travel assignment agreements, relocating, and incurring certain expenses, costs, and losses. As a result of and in reliance upon Fastaff's fraudulent inducement, Plaintiffs and class members sustained damages as described herein.

Answer: Defendants deny the allegation in Paragraph 128.

FOURTH CAUSE OF ACTION: FRAUDULENT CONCEALMENT

On Behalf of Plaintiffs Egan, Berdoll, and Barker and the Class

129. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein and assert this claim in the alternative to their breach of contract claims to the extent necessary.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

130. As their prospective employer, Fastaff owed Plaintiffs and class members a duty to disclose the fact that Fastaff would unilaterally reduce their pay rates or total compensation after they accepted a position that required relocating, and incurring certain expenses, costs, and losses.

Answer: Defendants deny the allegation in Paragraph 130.

131. Fastaff intended to defraud or deceive Plaintiffs and class members and intentionally failed to disclose the fact that Fastaff had a practice of reducing its travelers pay after they had already entered into a travel contract and would unilaterally reduce their pay rates or total compensation after they accepted a position that required relocating and incurring certain expenses, costs, and losses if it chose to do so.

Answer: Defendants deny the allegation in Paragraph 131.

132. Plaintiffs and the class members did not know that Fastaff would unilaterally reduce their pay rates or total compensation after they accepted a position that required relocating and incurring certain expenses, costs, and losses.

Answer: Defendants deny the allegation in Paragraph 132.

133. Plaintiffs and class members justifiably relied on Fastaff's fraudulent concealment by entering into employment agreements, relocating, and incurring certain expenses, costs, and losses. As a result of Fastaff's fraudulent inducement, Plaintiffs and class members sustained damages as described herein, which were substantially caused by Fastaff's concealment.

Answer: Defendants deny the allegation in Paragraph 133.

FIFTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION
On Behalf of Plaintiffs Egan, Berdoll, and Barker and the Class

134. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein and assert this claim in the alternative to their breach of contract claims to the extent necessary.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

135. As their prospective employer, Fastaff owed Plaintiffs and class members a duty of reasonable care to not make false or misleading statements regarding their employment.

Answer: Paragraph 135 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 135.

136. Fastaff knew, should have known, or recklessly disregarded that its representations to Plaintiffs and class members regarding their pay rates and overall compensation reflected in the travel assignment agreements were false or misleading, because it was reasonably foreseeable that Fastaff would make a "take-it-or-leave-it" demand to accept less compensation or be terminated after acceptance of the initial offer because it had a practice of doing so.

Answer: Defendants deny the allegation in Paragraph 136.

137. Fastaff intended for Plaintiffs and class members to act on the false or misleading statements.

Answer: Defendants deny the allegation in Paragraph 137.

138. Fastaff knew or should have known that Plaintiffs and class members would rely on the false or misleading statements.

Answer: Defendants deny the allegation in Paragraph 138.

139. Fastaff breached its duty of reasonable care by making the false or misleading statements of past or existing material facts which it did not have reasonable grounds to believe to be true, and thus failed to act as a reasonably prudent person would have under the same or similar circumstances by not making those statements.

Answer: Defendants deny the allegation in Paragraph 139.

140. Plaintiffs and class members were ignorant of the truth with respect to Fastaff's employment practices, and justifiably relied on Fastaff's negligent misrepresentations by entering into employment agreements, relocating, and incurring certain expenses, costs, and losses.

Answer: Defendants deny the allegation in Paragraph 140.

141. As a result of Fastaff's negligent misrepresentations, Plaintiffs and class members sustained damages as described herein, which were substantially caused by Fastaff's misrepresentations.

Answer: Defendants deny the allegation in Paragraph 141.

SIXTH CAUSE OF ACTION:
UNPAID OVERTIME UNDER THE FLSA
On Behalf of Plaintiffs and the Nationwide FLSA Collective

142. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

143. At all times relevant to this action, Plaintiffs and other similarly situated employees were employed by Fastaff.

Answer: The Amended Complaint refers to both Fastaff and U.S. Nursing collectively as "Fastaff," and it is therefore not possible to determine which entity Plaintiffs allege employed one or more Plaintiffs. Defendants deny the allegations in Paragraph 143.

144. Fastaff violated the FLSA by failing to pay Plaintiffs for all overtime hours worked at one and one-half times the regular rate for all hours worked in excess of forty hours in a workweek.

Answer: Defendants deny the allegation in Paragraph 144.

145. Specifically, the FLSA requires that employees are paid one and one-half times their "regular rate" of pay. The "regular hourly rate of pay of an employee is determined by dividing his or her total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid." 29 C.F.R. § 778.109.

Answer: Paragraph 145 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 145.

146. Fastaff improperly reduced its employees' regular rate when calculating overtime by wrongfully excluding certain forms of compensation, including stipends and allowances.

Answer: Defendants deny the allegation in Paragraph 146.

147. In so doing, Fastaff failed to properly compensate Plaintiffs for overtime worked pursuant to the FLSA.

Answer: Defendants deny the allegation in Paragraph 147.

148. Fastaff is not eligible for any FLSA exemption excusing their failure to pay overtime.

Answer: Paragraph 148 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 148.

149. Plaintiffs are victims of a uniform, company-wide compensation policy.

Answer: Defendants deny the allegation in Paragraph 149.

150. Plaintiffs are entitled to damages equal to the mandated overtime premium pay within the three years preceding their joining this action, plus periods of equitable tolling, because Fastaff acted willfully and knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

Answer: Defendants deny the allegations in Paragraph 150. Defendants deny that any Plaintiffs are entitled to any damages.

151. Fastaff has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b). Alternatively, should the Court find Fastaff did act

with good faith and reasonable grounds in failing to pay overtime pay, Plaintiffs are entitled to an award of prejudgment interest at the applicable legal rate.

Answer: Defendants deny the allegation in Paragraph 151.

SEVENTH CAUSE OF ACTION:
VIOLATION OF CALIFORNIA LABOR CODE § 970
On Behalf of Plaintiff Egan and the California § 970 Class

152. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

153. California Labor Code § 970 prohibits employers from influencing or persuading an employee to relocate from one place to another for work, by means of knowingly false misrepresentations regarding, among other things, the kind, character, or existence of such work; the length of time such work will last; or the compensation therefor. Cal. Lab. Code § 970.

Answer: Paragraph 153 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 153.

154. Fastaff made representations to Plaintiff and members of the Class concerning the kind or character of the work, the length of time the work would last, or the compensation therefor.

Answer: Defendant deny the allegations in Paragraph 154.

155. Fastaff's representations were false, for the reasons alleged herein.

Answer: Defendants deny the allegation in Paragraph 155.

156. Fastaff knew when the representations were made that they were false.

Answer: Defendants deny the allegation in Paragraph 156.

157. Fastaff intended that Plaintiffs would rely on its false representations.

Answer: Defendants deny the allegation in Paragraph 157.

158. Plaintiffs reasonably relied on Fastaff's false representations and relocated, or continued to relocate, for the purpose of working for Fastaff.

Answer: Defendants deny the allegation in Paragraph 158.

159. As a result of Fastaff's misrepresentations, Plaintiffs were harmed, and their reliance on the Fastaff's representations was a substantial factor in causing such harm.

Answer: Defendants deny the allegation in Paragraph 159.

160. Plaintiffs seek all relief permitted by law, including the award of mandatory double damages under Cal. Lab. Code § 972.

Answer: Defendants deny the allegation in Paragraph 160. Defendants deny that Plaintiffs are entitled to any damages.

EIGHTH CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE § 17200

On Behalf of Plaintiff Egan and the California UCL Class

161. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

162. The California Unfair Competition Law prohibits "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200, *et seq*. Fastaff has engaged

in business acts and practices that, as alleged above, constitute unfair competition in violation of Business and Professions Code section 17200.

Answer: Paragraph 162 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 162.

Unlawful

163. Fastaff's unlawful conduct under the Unfair Competition Law includes, but is not limited to, violating California Labor Code § 970, violating California Labor Code § 510, and the other statutes and regulations alleged herein.

Answer: Defendants deny the allegation in Paragraph 163.

Unfair

164. Fastaff's bait and switch business practices, as alleged herein, violate the "unfair" prong of the Unfair Competition Law because they resulted in Plaintiffs and members of the Class being misled and denied pay for wages they earned and were promised pursuant to their binding employment agreements. Further, said business practices offend established public policy and are immoral, unethical, and unscrupulous or substantially injurious to employees.

Answer: To the extent Paragraph 164 alleges that Defendants breached the Plaintiffs' employment agreements, the Court's Order dismissing Plaintiffs' claim for Breach of Contract is dispositive of this issue. Defendants deny the remaining allegations in Paragraph 164.

165. Fastaff's unlawful withholding of overtime wages, as alleged herein, violates the "unfair" prong of the Unfair Competition Law because these wages are the property of Plaintiff Egan and other members of the Class.

Answer: Defendants deny the allegation in Paragraph 165.

166. Any reasons, justifications, or motives that Fastaff may offer for the practices described herein are outweighed by the gravity of harm to the victims. The injuries suffered by Plaintiffs and the Class are substantial and are not outweighed by any countervailing benefits to consumers or competition.

Answer: Defendants deny the allegation in Paragraph 166.

Fraudulent

167. Fastaff's conduct, as described herein, is fraudulent because it is likely to deceive members of the public.

Answer: Defendants deny the allegation in Paragraph 167.

168. Fastaff's bait-and-switch tactics were indeed calculated to deceive—and in fact did deceive—Plaintiffs and members of the Class into accepting travel nursing assignments at a promised rate of pay, only to have that promised rate reduced after they had undertaken obligations under the agreement.

Answer: Defendants deny the allegation in Paragraph 168.

169. Plaintiffs and members of the Class have standing to pursue this cause of action because they suffered injury in fact and lost money in which they had an ownership interest as a result of Fastaff's misconduct described herein.

Answer: Defendants deny the allegation in Paragraph 169.

170. Plaintiffs and members of the Class seek all monetary and non-monetary relief allowed by law, including an order for payment, as restitution, of unlawfully withheld over time wages and wages promised but unpaid due to Fastaff's unfair, unlawful, and fraudulent business

practices; declaratory relief; reasonable attorneys' fees and costs under California Code of Civil Procedure § 1021.5; injunctive relief; and other appropriate equitable relief.

Answer: Defendants deny the allegations in Paragraph 170. Defendants deny that Plaintiffs are entitled to any damages.

171. Furthermore, Plaintiffs and the Class seek restitutionary disgorgement from Fastaff and public injunctive relief prohibiting Fastaff from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

Answer: Defendants deny the allegations in Paragraph 171. Defendants deny that Plaintiffs are entitled to any damages.

NINTH CAUSE OF ACTION: FAILURE TO PAY OVERTIME PREMIUM VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194
On Behalf of Plaintiff Egan and the State Specific Class of California

172. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

173. IWC Wage Order No. 4-2001 applies to Plaintiffs and Class members' employment with Fastaff, and no exemptions apply.

Answer: Paragraph 173 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 173.

174. California Labor Code § 1198 provides that it is unlawful to employ persons for longer than the hours set by the IWC without just compensation.

Answer: Paragraph 174 asserts a legal conclusion to which no response is required. To the

extent a response is required, Defendants deny the allegation in Paragraph 174.

175. As alleged herein, Plaintiffs and the Class worked in excess of 8 and 12 hours in a single day, in excess of 40 hours in a week and also worked in excess of 8 and 12 hours on the seventh day of work.

Answer: Defendants are without knowledge sufficient to admit or deny the allegation in Paragraph 175 and therefore denies the allegation.

176. As alleged herein, Plaintiffs and the Class members regularly worked time for which they were owed overtime or double time as provided by California law; however, Fastaff paid Plaintiffs and the Class members based on an unlawful regular rate of pay. The regular rate of pay did not include weekly wages that Fastaff referred to as "stipends."

Answer: Defendants deny the allegation in Paragraph 176.

177. California Labor Code § 510 codifies the right to overtime compensation at one-and- one-half the regular rate of pay for hours worked in excess of 8 hours in one day, 40 hours in one week, or for the first 8 hours worked on the seventh day of work, and to overtime compensation at twice the regular rate of pay for hours worked in excess of 12 hours in a day or in excess of 8 hours in a day on the seventh day of work.

Answer: Paragraph 177 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 177.

178. Fastaff failed to pay overtime compensation due to its failure to correctly calculate the regular rate of pay.

Answer: Defendants deny the allegation in Paragraph 178.

179. Fastaff violated California law, in relevant part, by failing to compensate Plaintiffs and Class members for overtime wages as required by California Labor Code §§ 510, 1194; 8 C.C.R. § 11040; and IWC Wage Order 4-2001.

Answer: Defendants deny the allegation in Paragraph 179.

180. Fastaff violated California law, in relevant part, by willfully failing to compensate Plaintiffs and the Class for overtime hours as required by law. Fastaff has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law. Fastaff's unlawful conduct was willful because, among other reasons described herein, Fastaff knew or should have known that it was not correctly calculating the regular rate of pay or overtime wages of Plaintiffs and Class members. *See, e.g., Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir.), *cert. denied*, 211 L. Ed. 2d 400, 142 S. Ct. 710 (2021).

Answer: Defendants deny the allegation in Paragraph 180.

181. As a result of Fastaff's violation of the California Labor Code and applicable Wage Orders, Plaintiffs and the Class have been damaged.

Answer: Defendants deny the allegation in Paragraph 181.

182. For at least the three years preceding the filing of the Class Action Complaint, Plaintiffs and the Class are entitled to recover unpaid overtime wages in amounts to be proved at trial, plus interest, attorneys' fees, and costs pursuant to California Labor Code § 218.5, 1194.

Answer: Defendants deny the allegation in Paragraph 182. Defendants deny that Plaintiffs are entitled to any damages.

183. Plaintiffs are also entitled to penalties available pursuant to California Labor Code § 558.

Answer: Defendants deny the allegation in Paragraph 183. Defendants deny that Plaintiffs are entitled to any damages.

184. Plaintiffs and the Class request all relief permitted by law.

Answer: Defendants deny the allegation in Paragraph 184. Defendants deny that Plaintiffs are entitled to any damages.

TENTH CAUSE OF ACTION: ENFORCEMENT OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004
By Plaintiff Egan on Behalf of the State of California.

185. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

186. Under Labor Code § 2699(a), any provision of the Labor Code "that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in 2699.3."

Answer: Paragraph 186 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 186.

187. Plaintiff Egan brings this PAGA action in her representative capacity on behalf of the State of California and on behalf of all of Fastaff's current and former non-exempt employees who were employed in California, or who traveled from within California to any

place outside of California for employment with Fastaff, and who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698, et seq. ("Aggrieved Employees") between August 22, 2021 and present ("PAGA Period").

Answer: Paragraph 187 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 187. Defendants deny that Ms. Egan has Article III standing to bring her claim in this Court.

188. At all relevant times, Plaintiff Egan and Aggrieved Employees are aggrieved employees within the meaning of Labor Code § 2699(c) because they were employed by Fastaff and suffered one or more of the alleged Labor Code violations committed by Fastaff.

Answer: Defendants deny the allegation in Paragraph 188.

189. This action involves allegations of violations of provisions of the Labor Code that provide for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency ("LWDA").

Answer: Paragraph 189 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 189.

190. Pursuant to California Labor Code §§ 2699.3, on December 28, 2022, Plaintiff Egan provided written notice by online submission to the LWDA and by certified mail to Fastaff of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, and the LWDA did not provide notice to Plaintiff Egan that it intends to investigate the alleged violations.

Answer: Defendants are without knowledge sufficient to admit or deny the allegation in Paragraph 190 and therefore deny the allegation.

191. Plaintiff Egan is an "aggrieved employee" within the meaning of California Labor Code § 2699(c) and a proper representative to bring a civil action as a representative of the State of California and on behalf of herself and other current and former employees of Fastaff in California pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff Egan was employed by Fastaff and the alleged violations of the California Labor Code were committed against Plaintiff Egan and other aggrieved employees of Fastaff during the relevant period.

Answer: Defendants deny the allegation in Paragraph 191.

192. Under Cal. Lab. Code §§ 2698-2699.5, Plaintiff Egan, as a representative of the State of California, seeks to recover civil penalties, including but not limited to penalties under §§ 203, 210, 558, 972, 1197.1, and 2699 for Fastaff's violation of the following California Labor Code sections:

a. Unlawful solicitation of employees by misrepresentation in violation of California Labor Code § 970;

b. Unlawful failure to pay overtime in violation of California Labor Code §§ 510 and 1194;

c. Unlawful failure to make timely payment of all wages due in violation of California Labor Code §§ 201, 202, and/or 204;

d. Unlawful failure to indemnify employees for expenses and losses in violation of California Labor Code § 2802;

e. Unlawful failure to indemnify employees for want of ordinary care in violation of California Labor Code § 2800; and

f. Unlawful failure to furnish accurate wage statements in violation of California Labor Code §§ 226, 1174, and 1175.

Answer: Paragraph 192 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 192. Defendants further

respond that the Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35.

193. Cal. Lab. Code § 2699(f)(2) provides a general penalty "[f]or all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions" of "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."

Answer: Paragraph 193 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 193.

194. Cal. Lab. Code § 972 provides automatic double damages for § 970 violations: "any person, or agent or officer thereof who violates any provision of Section 970 is liable to the party aggrieved, in a civil action, for double damages resulting from such misrepresentations."

Answer: Paragraph 194 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 194.

195. Cal. Lab. Code § 203 provides, for violations of §§ 201-202, "the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

Answer: Paragraph 195 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 195. Defendants further respond that the Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35.

196. Cal. Lab. Code § 210(a)(1)-(2) provides for § 204 violations, that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee . . . shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee[; and] (2) [f]or 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."

Answer: Paragraph 196 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 196. Defendants further respond that the Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35.

197. Cal. Lab. Code § 225.5 provides for § 223 violations, that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this atrial, every person who unlawfully withholds wages due any employee in violation of Section [] 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee. (b) 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."

Answer: Paragraph 197 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 197.

198. Cal. Lab. Code § 558(a)(1)-(3) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages[;] (2) [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[; and] (3) [w]ages recovered pursuant to this section shall be paid to the affected employee." See also Cal. Lab. Code § 558(d) ("The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.").

Answer: Paragraph 198 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 198.

199. Cal. Lab. Code § 2802(d) provides that "[i]n addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates reimbursement obligations for an amount determined to be due to an employee under this section."

Answer: Paragraph 199 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 199.

200. For such violations, non-payment of wages, Plaintiffs are entitled to prejudgment interest as well. Cal. Lab. Code § 218.6 (providing that "[i]n any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from

the date that the wages were due and payable"); Cal. Civ. Code § 3289(b) (provides that "the obligation shall bear interest at a rate of 10 percent per annum after a breach.").

Answer: Paragraph 200 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 200.

201. Plaintiff Egan has complied with, and will continue to comply with, the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

Answer: Paragraph 201 asserts a legal conclusion to which no response is required. Defendants are without knowledge sufficient to admit or deny the allegation in Paragraph 201 and therefore denies the allegation. To the extent a response is required, Defendants deny the allegation in Paragraph 201.

202. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid all wages due in a timely fashion for their work. And under Labor Code § 201 (discharge or lay-off) and/or § 202 (resignation), Aggrieved Employees who are former Fastaff employees are entitled to timely payment of all wages earned and unpaid, immediately upon the conclusion of their contracts (discharge), termination of their contracts (lay-off), or within 72 hours of notice (resignation).

Answer: Defendants need not respond to the allegation in Paragraph 202 because Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35. To the extent a response is required, Defendants deny the allegation in Paragraph 202.

203. Fastaff's failure to pay Aggrieved Employees the contracted-for wages for each hour worked, and proper overtime compensation of 1.5 or 2 times the correctly-calculated regular rate for every hour worked, means that Fastaff also fails to make timely payment of the wages earned on regular paydays, in violation of Labor Code § 204, and fails to make timely payment of the wages earned when Aggrieved Employees stop working for Fastaff due to discharge, layoff or resignation, in violation of Labor Code §§ 201 and 202.

Answer: Defendants need not respond to the allegation in Paragraph 203 because Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35. To the extent a response is required, Defendants deny the allegation in Paragraph 203.

204. Fastaff willfully refused to pay Aggrieved Employees all wages earned and unpaid at the time of their termination/resignation or within 72 hours thereafter in violation of its obligations under Labor Code §§ 201 and 202 and continues to refuse to pay Aggrieved Employees all wages earned, including overtime compensation.

Answer: Defendants need not respond to the allegation in Paragraph 204 because Court dismissed Ms. Egan's claims pursuant to California Labor Code §§ 201, 202, and 204 in its January 31, 2024 Order. ECF 95 at pp. 34-35. To the extent a response is required, Defendants deny the allegation in Paragraph 204.

205. California Labor Code § 226 requires employers to provide employees, on each payday, itemized statements showing, among other things: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Answer: Paragraph 205 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 205.

206. Fastaff's failure to pay Aggrieved Employees the contracted-for wages for each hour worked, and the proper overtime rate for each hour worked, means that Fastaff violated Labor Code § 226 by failing to provide proper itemized statements; in particular, the itemized statements failed to set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Answer: Defendants deny the allegation in Paragraph 206.

207. In committing such violations, Fastaff has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law. Fastaff's unlawful conduct was willful because, among other reasons described herein, Fastaff purposefully and knowingly reduced the contracted-for rate of pay after inducing Aggrieved Employees to travel to or within California as a travel nurse for Fastaff and purposefully and knowingly underpaid overtime. Fastaff's compensation system clearly violates the California Labor Code such that any belief by Fastaff that wages were not owed to Aggrieved Employees would be objectively unreasonable and in bad faith. Despite the ability to make such payment, Fastaff maintained customs, policies, practices, procedures, and routines incompatible with the requirements of the Labor Code.

Answer: Defendants deny the allegation in Paragraph 207.

208. Fastaff violated Labor Code §§ 1174 and 1175 by knowingly, intentionally, willfully, and unlawfully failing to provide Aggrieved Employees with timely and accurate wage statements in violation of Labor Code § 226.

Answer: Defendants deny the allegation in Paragraph 208.

209. Plaintiff Egan and Aggrieved Employees are entitled to an award of costs and reasonable attorney's fees under PAGA and additional relief as described herein and permitted by law.

Answer: Defendants deny the allegation in Paragraph 209.

ELEVENTH CAUSE OF ACTION:
VIOLATION OF N.J. STAT. ANN. SECTION 34:11-4.2 ET SEQ.
On Behalf of Plaintiff Scalia and the State Specific Class of New Jersey

210. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

211. Under N.J. Stat. Ann. § 34:11-4.2, "every employer shall pay the full amount of wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn. An employer may establish regular paydays less frequently than semimonthly for bona fide executive, supervisory and other

special classifications of employees provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule."

Answer: Paragraph 211 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 211.

212. Under N.J. Stat. Ann. § 34:11-4.4, "Whenever an employer discharges an employee, or when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, or whenever an employee quits, resigns, or leaves employment for any reason, the employer shall pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment (whether temporary or permanent) took place, as established in accordance with section 2 of this act;[] or in the case of employees compensated in part or in full by an incentive system, a reasonable approximation of all wages due, until the exact amounts due can be computed; provided, however, that when any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages. Such payment may be made either through the regular pay channels or by mail if requested by the employee."

Answer: Paragraph 212 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 212.

213. Under N.J. Stat. Ann. § 34:11-4.10, "If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the employee may recover in a civil action the full amount of any wages

due, or any wages lost because of any retaliatory action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c. 173 (C.34:11-4.9) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment."

Answer: Paragraph 213 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 213.

214. As alleged herein, Fastaff failed to pay Plaintiffs and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Defendants deny the allegation in Paragraph 214. Defendants further respond that the Court's January 31, 2024 Order states that this claim is dismissed "to the extent [it] allege[s] a breach of contract or a breach of the implied covenant of good faith and fair dealing." ECF 95 at p. 36.

215. Fastaff is thus liable for the wages due, liquidated damages, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 215.

TWELFTH CAUSE OF ACTION:
VIOLATION OF N.J. STAT. ANN. SECTION 34:11-56 ET SEQ.
On Behalf of Plaintiff Scalia and the State Specific Class of New Jersey

216. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

217. Under N.J. Stat. Ann. § 34:11-56a4, "An employer shall also pay each employee not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week . . . ."

Answer: Paragraph 217 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 217.

218. Under N.J. Stat. Ann. § 34:11-56a25, "If any employee is paid by an employer less than the minimum fair wage to which the employee is entitled under the provisions of P.L.1966, c. 113 (C.34:11-56a et seq.) . . . , the employee may recover in a civil action the full amount of that minimum wage less any amount actually paid to him or her by the employer , or any wages lost due to the retaliatory action, and an additional amount equal to not more than 200 percent of the amount of the unpaid minimum wages or wages lost due to retaliatory action as liquidated damages, plus costs and reasonable attorney's fees as determined by the court . . . ."

Answer: Paragraph 218 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 218.

219. As alleged herein, Fastaff failed to pay Plaintiffs and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Defendants deny the allegation in Paragraph 219. Defendants further respond that the Court's January 31, 2024 Order states that this claim is dismissed "to the extent [it] allege[s] a breach of contract or a breach of the implied covenant of good faith and fair dealing." ECF 95 at p. 36.

220. Fastaff is thus liable for the wages due, liquidated damages, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 220.

THIRTEENTH CAUSE OF ACTION:
VIOLATION OF OKLA. STAT. ANN. TIT. 40 SECTION 165.2 ET SEQ.
On Behalf of Plaintiff Budden-Wright and the State Specific Class of Oklahoma

221. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

222. Under Okla. Stat. Ann. tit. 40, § 165.2, "Every employer in this state shall pay all wages due their employees, other than exempt employees and employees of nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi), at least twice each calendar month on regular paydays designated in advance by the employer. State, county and municipal employees, exempt employees, school district employees, technology center school district employees and employees of nonprivate foundations qualified pursuant to

26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi) shall be paid a minimum of once each calendar month. The amount due such employees shall be paid in lawful money of the United States including payment by electronic means, and the employee shall not be deemed to have waived any right or rights mentioned in this section because of any contract to the contrary. Each employer in this state, in its discretion, may pay all wages due to an employee by deposit on the payday at a financial institution of the employee's choice or, if the employee does not consent or designate a financial institution, to a payroll card account. With each payment of wages earned by such employee, the employer shall issue to such employee a brief itemized statement of any and all deductions therefrom. An interval of not more than eleven (11) days may elapse between the end of the pay period worked and the regular payday designated by the employer. The employer shall be allowed three (3) days after such payday in which to comply with this section."

Answer: Paragraph 222 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 222.

223. Under Okla. Stat. Ann. tit. 40, § 165.3, "Whenever an employee's employment terminates, the employer shall pay the employee's wages in full, less offsets and less any amount over which a bona fide disagreement exists, as defined by Section 165.1 of this title, at the next regular designated payday established for the pay period in which the work was performed either through the regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee." In addition, "If an employer fails to pay an employee wages as required under subsection A of this section, such employer shall be additionally liable

to the employee for liquidated damages in the amount of two percent (2%) of the unpaid wages for each day upon which such failure shall continue after the day the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement; or in an amount equal to the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition."

Answer: Paragraph 223 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 223.

224. Under Okla. Stat. Ann. tit. 40, § 165.9, "Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated for such wages. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages." In addition, "The court in any action brought under this section may, in addition to any judgment awarded to the plaintiff or plaintiffs, defendant or defendants, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees."

Answer: Paragraph 224 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 224.

225. As alleged herein, Fastaff failed to pay Plaintiffs and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Paragraph 225 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 225.

226. Fastaff is thus liable for the wages due, penalties, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 226.

FOURTEENTH CAUSE OF ACTION: VIOLATION OF OR. REV. STAT. ANN. SECTION 652.120 ET SEQ.

On Behalf of Plaintiff Maslowsky and the State Specific Class of Oregon

227. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

228. Under Or. Rev. Stat. Ann. § 652.120, "Every employer shall establish and maintain a regular payday, at which date the employer shall pay all employees the wages due and owing to them. . . . When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages: (a) If the unpaid amount is less than five percent of the employee's gross wages due on the regular payday, the employer shall pay the employee the unpaid amount no later than the next regular payday; or (b) If the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the

employer shall pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays."

Answer: Paragraph 228 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 228.

229. Under Or. Rev. Stat. Ann. § 652.140, "When an employer discharges an employee or when employment is terminated by mutual agreement, all wages earned and unpaid at the time of the discharge or termination become due and payable not later than the end of the first business day after the discharge or termination."

Answer: Paragraph 229 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 229.

230. Under Or. Rev. Stat. Ann. § 652.150, "if an employer willfully fails to pay any wages or compensation of any employee whose employment ceases, as provided in ORS 652.140 and 652.145, then, as a penalty for the nonpayment, the wages or compensation of the employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced."

Answer: Paragraph 230 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 230.

231. Under Or. Rev. Stat. Ann. § 652.200, "In any action for the collection of wages, if it is shown that the wages were not paid for a period of 48 hours, excluding Saturdays, Sundays and holidays, after the wages became due and payable, the court shall, upon entering judgment for the plaintiff, include in the judgment, in addition to the costs and disbursements otherwise prescribed by statute, a reasonable sum for attorney fees at trial and on appeal for prosecuting the

action, unless it appears that the employee has willfully violated the contract of employment or unless the court finds that the plaintiff's attorney unreasonably failed to give written notice of the wage claim to the employer before filing the action."

Answer: Paragraph 231 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 231.

232. As alleged herein, Fastaff failed to pay Plaintiffs and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Defendants deny the allegation in Paragraph 232. Defendants further respond that the Court's January 31, 2024 Order states that this claim is dismissed "to the extent [it] allege[s] a breach of contract or a breach of the implied covenant of good faith and fair dealing." ECF 95 at p. 36.

233. Fastaff is thus liable for the wages due, penalties, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 233.

FIFTEENTH CAUSE OF ACTION: VIOLATION OF NEW YORK WAGE PAYMENT LAWS, N.Y. LAB. LAW § 191, ET SEQ.

On Behalf of Plaintiff Berdoll and the State Specific Class of New York

234. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

235. Under N.Y. Lab. Law § 191, "Every employer shall pay wages" "weekly and not later than seven calendar days after the end of the week in which the wages are earned" or "in

accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer." In addition, § 191 provides that "If employment is terminated, the employer shall pay the wages not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section."

Answer: Paragraph 235 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 235.

236. Under N.Y. Lab. Law § 195, "Every employer shall: 1. (a) provide his or her employees . . . a notice containing the following information: the rate or rates of pay and basis thereof . . . including tip, meal, or lodging allowances," among other things. In addition, "the notice must state the regular hourly rate and overtime rate of pay. . . ." "Every employer shall [also]: . . . 2. Notify his or her employees [] of any changes to the information set forth in subdivision one of this section, at least seven calendar days prior to the time of such changes . . . . 3. Furnish each employee with a statement with every payment of wages, listing the following: . . . rate or rates of pay and basis thereof," among other things. In addition, "Upon the request of an employee, an employer shall furnish an explanation in writing of how such wages were computed."

Answer: Paragraph 236 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 236.

237. Under N.Y. Lab. Law § 197, "Any employer who fails to pay the wages of his employees . . . , as provided in this article, shall forfeit to the people of the state the sum of five

hundred dollars for each such failure, to be recovered by the commissioner in any legal action necessary, including administrative action or a civil action."

Answer: Paragraph 237 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 237.

238. Under N.Y. Lab. Law § 198, "In any action instituted in the courts upon a wage claim by an employee [] in which the employee prevails, the court shall allow such employee to recover the full amount of any underpayment, all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and, unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total amount of the wages found to be due . . . ." In addition, "If any employee is not provided within ten business days of his or her first day of employment a notice as required by subdivision one of section one hundred ninety-five of this article, he or she may recover in a civil action damages of fifty dollars for each work day that the violations occurred or continue to occur, but not to exceed a total of five thousand dollars, together with costs and reasonable attorney's fees. The court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate." Also, "If any employee is not provided a statement or statements as required by subdivision three of section one hundred ninety-five of this article, he or she shall recover in a civil action damages of two hundred fifty dollars for each work day that the violations occurred or continue to occur, but not to exceed a total of five thousand dollars, together with costs and reasonable attorney's fees. The court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems

necessary or appropriate." Finally, "In any civil action by an employee [], the employee [] shall have the right to collect attorney's fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent."

Answer: Paragraph 238 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 238.

239. As alleged herein, Fastaff failed to pay Plaintiff and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages and failed to furnish accurate wage statements also through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Defendants deny the allegation in Paragraph 239.

240. Fastaff is thus liable for the wages due, liquidated damages equal to one hundred percent of the total amount of wages due, penalties, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 240.

SIXTEENTH CAUSE OF ACTION: VIOLATION OF NEW YORK OVERTIME LAWS, N.Y. COMP. CODES R. & REGS. TIT. 12, § 142-3.2, ET SEQ.

On Behalf of Plaintiff Berdoll and the State Specific Class of New York

241. Plaintiffs hereby repeat, reiterate, and incorporate by reference each of the foregoing allegations with the same force and effect as if set forth herein.

Answer: Defendants incorporate their responses to the allegations in the preceding paragraphs.

242. Under N.Y. Comp. Codes R. & Regs. tit. 12, § 142–3.2, "An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 U.S.C. 201 et seq., the Fair Labor Standards Act of 1938, as amended, provided, however that the exemptions set forth in section 13(a)(4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to section 13(a)(4) of such act, overtime at a wage rate of one and one-half times the basic minimum hourly rate."

Answer: Paragraph 242 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation in Paragraph 242.

243. As alleged herein, Fastaff failed to pay Plaintiff and similarly situated employees all wages due through Fastaff's failure to honor the contract and/or to properly pay overtime wages.

Answer: Defendants deny the allegation in Paragraph 243.

244. Fastaff is thus liable for the wages due, liquidated damages under the FLSA, and attorney's fees and costs.

Answer: Defendants deny the allegation in Paragraph 244.

REQUEST FOR RELIEF

Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter judgment in their favor and against Fastaff as follows:

A. That the Court certify this action as a class action, proper and maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure; declare that Plaintiffs are proper class

representatives, and appoint Plaintiffs' counsel as Class Counsel;

B. That the Court award Plaintiffs and the Class or Subclass(es) compensatory, consequential, general, nominal, and statutory (along with any other damages available at law) to the extent permitted by law and in an amount to be determined at trial;

C. That the Court issue notice to all similarly situated employees of Fastaff informing them of their right to file consents to join the FLSA portion of this action;

D. That the Court award Plaintiffs and all similarly situated employees damages for unpaid overtime wages under 29 U.S.C. § 216(b);

E. That the Court award Plaintiffs and all similarly situated employees liquidated damages under 29 U.S.C. § 216(b);

F. That the Court award statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code § 2698 *et seq*.;

G. That the Court award reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;

H. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses as provided by law;

I. That the Court award pre-and post-judgment interest at the maximum legal rate;

J. That the Court disgorge any unjust enrichment or revenue Fastaff gained from its unjust business practices, including the practice of making mid-contract take-it-or-leave- it demands without fair and just compensation; and

K. That the Court grant all such other relief as it deems just and proper.

Answer: Defendants deny that Plaintiffs are entitled to any relief sought in the Complaint or any other relief whatsoever.

AFFIRMATIVE DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), Defendants incorporate these affirmative defenses to the claims in Plaintiffs' Second Amended Complaint, reserve the right to amend and revise these affirmative defenses as the case progresses, and reserve the right to assert additional affirmative defenses that may become available during this action.

FIRST DEFENSE
(Waiver)

Plaintiffs' claims are barred in whole or in part because Plaintiffs waived their causes of action by signing revised agreements and continuing to work after learning of their revised rate of pay.

SECOND DEFENSE
(Ratification)

Plaintiffs' claims are barred in whole or in part because Plaintiffs ratified and consented to their reduced rates of pay by signing revised agreements and/or by continuing to work for Defendants after learning of their reduced rates of pay.

THIRD DEFENSE
(Res Judicata)

Plaintiffs' claims are barred in whole or in part based on the doctrine of res judicata.

FOURTH DEFENSE
(Offset)

Plaintiffs' claims are barred in whole or in part by the doctrine of offset.

FIFTH DEFENSE
(Statute of Limitations)

Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitation.

SIXTH DEFENSE
(Jurisdiction)

Plaintiffs' Eighth Cause of Action is barred because this Court lacks equitable jurisdiction over the claim and Plaintiffs' Tenth Cause of Action is barred because this Court lacks Article III jurisdiction over the claim.

SEVENTH DEFENSE
(Payment and Release)

Plaintiffs' claims are barred in whole or in part because Plaintiffs were paid in full all amounts owed to them in wages or otherwise.

EIGHTH DEFENSE
(Accord and Satisfaction)

Plaintiffs' claims are barred in whole or in part by the doctrine of accord and satisfaction, and because Defendants have fully and/or substantially performed any and all obligations they may have had and all monies owed, if any, to Plaintiffs.

NINTH DEFENSE
(No Punitive Damages)

Plaintiffs are not entitled to recover punitive or exemplary damages because Plaintiffs have failed to plead and cannot establish facts sufficient to support punitive or exemplary damages.

TENTH DEFENSE
(Failure to Mitigate)

Plaintiffs' claims are barred in whole or in part because, if Plaintiffs suffered any compensable damages (an assumption that Defendants deny), Plaintiffs failed to take all reasonable and appropriate steps to mitigate those damages.

ELEVENTH DEFENSE
(Actual/Constructive Knowledge)

Plaintiffs' claims are barred in whole or in part because Defendants lacked actual and constructive knowledge of any underpayment of compensation to Plaintiffs as alleged in the Amended Complaint.

TWELFTH DEFENSE
(No Private Right of Action)

Plaintiffs' claims are barred in whole or in part because the alleged regulation(s) do not provide for a private right of action.

THIRTEENTH DEFENSE
(Failure to State a Claim)

Plaintiffs' claims are barred because Plaintiffs fail to state a plausible claim for relief.

FOURTEENTH DEFENSE
(Payments Properly Excluded from Regular Rate)

Defendants properly excluded certain amounts from the regular rate pursuant to 29 U.S.C. § 207(e), its interpreting regulations, and applicable state law, for one or more of the following reasons: (a) payments were discretionary; (b) any amount paid was not measured by or dependent on hours worked, production or efficiency, or pursuant to any contract; (c) payments were calculated as a percentage of total pay; (d) amounts were not paid for time worked (but for time not worked, e.g., vacation, holiday, paid time off, etc.).

FIFTEENTH DEFENSE
(Failure to Comply with Statutory Pre-Filing Requirements)

Plaintiffs' Tenth Cause of Action is barred, in whole or in part, to the extent Plaintiffs failed to satisfy all pre-filing requirements set forth in California Labor Code Section 2699.3, including, but not limited to, the requirement of providing timely and sufficient notice to the California Labor

and Workforce Development Agency and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

SIXTEENTH DEFENSE
(Not Aggrieved Employee Under PAGA)

Plaintiffs lack standing to bring a PAGA action because Plaintiffs are not "aggrieved employees" under PAGA.

SEVENTEENTH DEFENSE
(Business-Related Expenses Never Requested/Unreasonable)

Plaintiffs' claims for alleged violations of California Labor Code Section 2800 and 2802 are barred to the extent Plaintiffs and other alleged aggrieved employees did not request reimbursement and/or said expenses were not reasonably and necessarily incurred.

EIGHTEENTH DEFENSE
(Not Willful/Good Faith Dispute)

Plaintiffs cannot provide violations of California Labor Code Sections 201-204 because there is a good faith dispute that any wages are due to Plaintiffs or any other alleged aggrieved employees and therefore any failure to pay wages, which Defendants expressly deny, was not willful.

NINETEENTH DEFENSE
(Ongoing Employment)

Plaintiffs' claims for alleged violations of California Labor Code Sections 201-204 fail to state facts sufficient to constitute a claim for waiting time penalties under California Labor Code Section 203 to the extent that any alleged aggrieved employee Plaintiffs seek to represent who is a current employee has not ceased providing services prior to the filing of this action or has continued to provide services for Defendants at the time this action was filed.

TWENTIETH DEFENSE
(Inadvertent Violation)

If Defendants are found to have issued wage statements in violation of Labor Code Section 226, which Defendants deny, such violation was inadvertent, including due to clerical error and/or inadvertent mistake.

TWENTY-FIRST DEFENSE
(Substantial Compliance)

Plaintiffs' claims are barred in whole or in part because Defendants complied with their statutory obligations, if any, and to the extent it is determined that there was non-compliance, Defendants substantially complied with their obligations and are not liable to Plaintiffs, the putative class members, and/or the alleged aggrieved employees.

TWENTY-SECOND DEFENSE
(Good Faith Reliance)

Plaintiffs' claims are barred to the extent Defendants acted in good faith reliance on an administrative regulation, order, ruling and/or interpretation of the Industrial Welfare Commission, the Division of Labor Standards Enforcement, and/or other governmental agency.

TWENTY-THIRD DEFENSE
(Adequate Remedy at Law)

Plaintiffs' claims for injunctive and/or other equitable relief are barred because they have an adequate and complete remedy at law.

TWENTY-FOURTH DEFENSE
(Not Entitled to Jury Trial)

Plaintiffs and/or any of the putative class members and alleged aggrieved employees are not entitled to a jury trial on one or more of Plaintiffs' claims, including Plaintiffs' Eighth Cause of Action and Tenth Cause of Action.

Dated: March 13, 2024

WILLIAMS WEESE PEPPLE & FERGUSON PC

/s/ Bronwyn H. Pepple

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 2024, a true and correct copy of the foregoing was filed with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to the following counsel of record via email:

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