

1 HARTLEY LLP
 2 Jason S. Hartley (SBN# 192514)
 3 Jason M. Lindner (SBN# 211451)
 4 101 West Broadway, Suite 820
 5 San Diego, CA 92101
 6 Telephone: (619) 400-5822
 Facsimile: (619) 400-5832
 hartley@hartleyllp.com
 lindner@hartleyllp.com

7 *Attorneys for Plaintiffs and the Putative Class and Collective*

8
 9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 LAURA O’DELL, HANNAH
 12 BAILEY, and HOLLY
 13 ZIMMERMAN, individually and on
 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 AYA HEALTHCARE, INC.,

17 Defendant.

Case No. '22CV1151 BEN BLM

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

Jury Trial Demanded

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 19 Plaintiffs Laura O’Dell, Hannah Bailey, and Holly Zimmerman
 20 (“Plaintiffs”) bring this class and collective action complaint against Aya
 21 Healthcare, Inc. (“Aya” or “Defendant”), on behalf of themselves and all others
 22 similarly situated. Plaintiffs make the following allegations based upon personal
 23 knowledge as to their own actions and upon information and belief as to all other
 24 matters.

25 **NATURE OF THE ACTION**

26 1. Travel nurses serve a valuable role in our nation’s healthcare system.
 27 Hospitals, clinics, and other healthcare facilities rely on skilled travel employees to
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1 fill short-term nursing employment gaps on a temporary basis. To fill these roles,
2 healthcare facilities utilize intermediary staffing agencies to employ the travelers,
3 negotiate pay rates, and schedule assignments. Traveling nurses have played an
4 especially critical role since the start of the COVID-19 pandemic, as many facilities
5 experienced severe staffing shortages that required temporary assistance in order to
6 continue providing quality healthcare.

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

15 3. Aya’s “bait-and-switch” practices are so widespread that it appears to
16 be a core tenet of the company’s business model. Hundreds if not thousands of nurses
17 employed by Aya across the country have reported experiencing mid-contract pay
18 reductions after starting an assignment with Aya, with many reporting that Aya
19 reduced their pay multiple times within the same assignment or slashed their pay by
20 50% or more than what was originally promised. Many are afraid to speak out
21 against the practice because they believe Aya will blacklist them from Aya’s
22 growing network of healthcare providers where it serves as the primary staffing
23 agency.

24 4. Aya is knowingly engaging in these “bait-and-switch” practices to
25 maintain the significant profit margins it had become accustomed to during the
26 COVID-19 pandemic and to gain a competitive advantage that will allow it to
27 become the exclusive staffing agency for more hospitals and healthcare providers.

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1 This lawsuit seeks recovery for the pay losses Plaintiffs and other travelers
2 experienced as the result of Aya’s predatory business practices.

3 5. Additionally, Aya is underpaying its travel employees for overtime
4 hours worked. By law, employers must pay their employees one-and-a-half times
5 their “regular rate” for all hours worked over forty in a workweek. But in
6 determining this “regular rate”, Aya has only included its employees’ direct hourly
7 cash wage among other items, and has excluded, in violation of the law, other parts
8 of its employees’ compensation packages, thereby resulting in an artificially low rate
9 of pay for overtime hours worked.

10 **JURISDICTION, VENUE, AND PARTIES**

11 6. Plaintiff Laura O’Dell is a citizen of Indiana who accepted a travel
12 assignment from Aya to work at a healthcare facility located in California. Plaintiff
13 O’Dell’s written Consent to Join this case is attached and incorporated as **Exhibit 1**.

14 7. Plaintiff Hannah Bailey is a citizen of Georgia who accepted a travel
15 assignment from Aya to work at a healthcare facility located in Virginia. Plaintiff
16 Bailey’s written Consent to Join this case is attached and incorporated as **Exhibit 2**.

17 8. Plaintiff Holly Zimmerman is a citizen of Florida who accepted a travel
18 assignment from Aya to work at a healthcare facility located in New Jersey. Plaintiff
19 Zimmerman’s written Consent to Join this case is attached and incorporated as
20 **Exhibit 3**.

21 9. Aya Healthcare, Inc. is a Delaware corporation with a principal place
22 of business located at 5930 Cornerstone Court West, Suite 300, San Diego, CA
23 92121.

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

3 11. This Court has personal jurisdiction over Aya as to all claims asserted
4 by Plaintiffs herein because Aya is “at home” in California and is therefore subject
5 to general jurisdiction in this forum.

6 12. This Court also has subject matter jurisdiction over the FLSA claims of
7 Plaintiffs and all others similarly situated pursuant to 29 U.S.C. § 216(b) and 28
8 U.S.C. § 1331, and over all related state law claims pursuant to 28 U.S.C. § 1367.

9 13. Venue is proper in this District under 28 U.S.C. § 1391(b) because this
10 is the District in which Aya resides and a substantial part of the conduct at issue in
11 this case occurred in this District.

12 **STATEMENT OF FACTS**

13 **A. Aya’s Bait-and-Switch Tactics and Improper Pay Rate Reductions**

14 14. On its company website, Aya holds itself out as “an employer our team
15 members are proud to work for” and declares that “we strive to provide the best
16 service in the industry to our clinicians and clients.”¹ Aya’s CEO has also stated that
17 he “believes that treating clinicians well directly and positively impacts patient care.
18 If our clinicians are happy and well taken care of, that will trickle down to patients
19 and their families”, and that “[b]ecause of this belief, we work hard to create
20 exceptional experiences for our clinicians, clients and corporate employees while
21 revolutionizing the healthcare workforce industry.”² The company also trumpets its
22 role in the “fight against COVID-19”, claiming that it has “filled tens of thousands
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26 ¹ <https://www.ayahealthcare.com/reviews>

27 ² <https://topworkplaces.com/company/aya-healthcare/sandiego/>

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1 of crisis positions and continue to place high-quality clinicians, ensuring life-saving
2 patient care is available when and where it's needed most.”³

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

9 16. Aya utilizes form employment agreements for its traveling employees
10 that include the following material terms: the facility name and address along with
11 the start and end date for the assignment, the traveler's hourly pay rate, with on-call
12 and charge adjustments, and scheduled hours per week, as well as the traveler's daily
13 meals, incidentals, and housing stipends.

14 17. After accepting a travel assignment, Aya knows that travel employees
15 must move to the location of the facility, secure short-term housing, and incur other
16 travel and housing related costs at their own expense in order to comply with their
17 obligations under the agreement.

18 **Plaintiff Laura O'Dell**

19 18. On or before January 25, 2022, Aya made an employment offer to
20 Plaintiff Laura O'Dell which included a fixed-term travel assignment in Santa Rosa,
21 California.

22 19. The employment agreement offered Laura O'Dell a position at Sutter
23 Santa Rosa Regional Hospital in Santa Rosa, California from February 8, 2022, until
24 May 8, 2022, with the following compensation package: a base hourly pay rate of
25 \$51.00 with a minimum of 36 scheduled hours per week; an overtime hourly pay

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27 ³ *Id.*
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1 rate of \$76.50; a holiday hourly pay rate of \$140.00; an hourly call-back rate of
2 \$76.50; a daily meals and incidentals stipend of \$71.00; and a daily housing stipend
3 of \$157.00.

4 20. In reliance on the foregoing material terms, Laura O’Dell accepted
5 Aya’s offer of employment by executing Aya’s form employment agreement on
6 January 25, 2022. To comply with her duties under the agreement, Laura O’Dell
7 incurred expenses traveling away from her home in Indiana to Santa Rosa,
8 California, secured short-term living arrangements, and forwent other employment
9 opportunities.

10 21. On or before March 23, 2022, about seven weeks through her
11 assignment, Aya made Laura O’Dell a “take-it-or-leave-it” demand to accept less
12 pay or be terminated. Specifically, Aya demanded that she accept a more than 50%
13 reduction of her base hourly pay rate from \$51.00 to \$25.00; a reduction in her
14 overtime hourly pay rate from \$76.50 to \$37.50; a reduction in her holiday hourly
15 pay rate from \$140.00 to \$95.00; and a reduction in her call-back hourly pay rate
16 from \$76.50 to \$37.50 in order to complete the previously agreed-upon assignment.

17 22. Having already spent substantial time and money securing the
18 assignment and taking the steps necessary to ensure compliance with her obligations
19 under the agreement, and unable to find comparable employment in such a short
20 period of time, Laura O’Dell had no real choice but to continue working the
21 assignment at the lower rate.

22 23. Plaintiff Laura O’Dell completed her assignment in accordance with
23 her duties. As a result, Laura O’Dell suffered monetary losses. At a minimum, the
24 difference between the value of the original agreement and the unilateral pay
25 reduction was more than \$5,000.

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1 **Plaintiff Hannah Bailey**

2 22. On or before March 2, 2022, Aya made an employment offer to
3 Plaintiff Hannah Bailey which included a fixed-term travel assignment in
4 Fredericksburg, Virginia.

5 24. The employment agreement offered Hannah Bailey a position at Mary
6 Washington Hospital in Fredericksburg, Virginia from March 29, 2022, until June
7 25, 2022, with the following compensation package: a base hourly pay rate of \$85.86
8 with a minimum of 36 scheduled hours per week; an overtime hourly pay rate of
9 \$155.50; a holiday hourly pay rate of \$155.50; an hourly call-back rate of \$155.50;
10 a daily meals and incidentals stipend of \$59.00; and a daily housing stipend of
11 \$96.00.

12 25. In reliance on the foregoing material terms, Hannah Bailey accepted
13 Aya's offer of employment by executing Aya's form employment agreement on
14 March 2, 2022. To comply with her duties under the agreement, Hannah Bailey
15 traveled away from her home in Georgia to Fredericksburg, Virginia, largely at her
16 own expense, secured short-term living arrangements, and forwent other
17 employment opportunities.

18 26. On May 5, 2022, approximately 5 weeks through her assignment, Aya
19 made Hannah Bailey a "take-it-or-leave-it" demand to accept less pay or be
20 terminated. Specifically, Aya demanded that she accept a more than 40% reduction
21 of her base hourly pay rate, from \$85.86 to \$50.85; and a nearly 51% reduction in
22 her overtime hourly pay rate, holiday hourly pay rate, and call-back hourly pay rate
23 from \$155.50 to \$76.28 in order to complete the previously agreed-upon assignment.

24 27. When Hannah Bailey questioned her Aya recruiter about this shocking
25 development, she received the following response: "Rates changing mid-contract is
26 challenging but I'm here to navigate these waters with you. Rest assured we have
27 thousands of jobs in our system and have anticipated rates and job orders normalized.
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1 I'll work closely with you to plan for this current contract and all future contracts.
2 You're in good hands with Aya! As always, I am your advocate and I'm here to
3 support you through these changes.”

4 28. Hannah Bailey refused to sign the revised agreement. Nevertheless,
5 Aya cut her pay rate anyways.

6 29. On June 5, 2022, approximately six weeks into her assignment and one
7 month after the first pay reduction, Aya reduced Hannah Bailey's base hourly pay
8 rate again from \$50.85 to \$34.25 per hour. Again, Hannah Bailey did not sign an
9 agreement purporting to “consent” to the reduction but the pay reduction was
10 implemented regardless. In total, Hannah Bailey's base hourly pay rate was reduced
11 more than 60% from her original contract.

12 30. Having already spent substantial time and money securing the
13 assignment and taking the steps necessary to ensure compliance with her obligations
14 under the agreement, and unable to find comparable employment in such a short
15 period of time, Hannah Bailey had no real choice but to continue working the
16 assignment at the lower rate.

17 31. Plaintiff Hannah Bailey completed her assignment in accordance with
18 her duties. As a result, Hannah Bailey suffered monetary losses. At a minimum, the
19 difference between the value of the original agreement and the unilateral pay
20 reductions was more than \$10,000.

21 **Plaintiff Holly Zimmerman**

22 32. On or before December 22, 2021, Aya made an employment offer to
23 Plaintiff Holly Zimmerman which included a fixed-term travel assignment in Jersey
24 City, New Jersey.

25 33. The employment agreement offered Holly Zimmerman a position at
26 Jersey City Medical Center Rapid Response in Jersey City, New Jersey from January
27 18, 2022, until April 16, 2022, with the following compensation package: a base
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1 hourly pay rate of \$85.00 with a minimum of 48 scheduled hours per week; an
2 overtime hourly pay rate of \$127.50; a holiday hourly pay rate of \$127.50; an hourly
3 call-back rate of \$127.50; a daily meals and incidentals stipend of \$69.00; and a daily
4 housing stipend of \$147.00.

5 34. In reliance on the foregoing material terms, Holly Zimmerman accepted
6 Aya’s offer of employment by executing Aya’s form employment agreement on
7 December 22, 2021. To comply with her duties under the agreement, Holly
8 Zimmerman traveled away from her home in Florida to Jersey City, New Jersey,
9 secured short-term living arrangements, and forwent other employment
10 opportunities.

11 35. On or before March 3, 2022, about six weeks through her assignment,
12 Aya made Holly Zimmerman a “take-it-or-leave-it” demand to accept less pay or be
13 terminated. Specifically, Aya demanded that she accept a nearly 35% reduction of
14 her base hourly pay rate from \$85.00 to \$56.50; her overtime hourly pay rate from
15 \$127.50 to \$84.75; her holiday hourly pay rate from \$127.50 to \$84.75; and her call-
16 back hourly pay rate from \$127.50 to \$84.75 in order to complete the previously
17 agreed-upon assignment.

18 36. Having already spent substantial time and money securing the
19 assignment and taking the steps necessary to ensure compliance with her obligations
20 under the agreement, and unable to find comparable employment in such a short
21 period of time, Holly Zimmerman had no real choice but to refuse the pay reduction
22 and continue working until its effective date, at which time she was prevented from
23 working as previously agreed.

24 37. Plaintiff Holly Zimmerman completed her assignment in accordance
25 with her duties until she was prevented from doing so and forced to return home. As
26 a result, Holly Zimmerman suffered monetary losses including the entire value of
27 her contract from March 20 until April 16, 2022. At a minimum, the difference
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1 between the value of the original agreement and the unilateral pay reduction was
2 more than \$15,000.

3 38. Plaintiffs are not alone. Hundreds if not thousands of traveling nurses
4 and other healthcare workers employed by Aya have reported experiencing similar
5 “take-it-or-leave it” pay cuts in the middle of their contracts. In fact, the practice has
6 become so pervasive that that it appears to be a core tenet of Aya’s business model.
7 For example, when Aya must compete with other staffing agencies to fill a travel
8 position, it advertises higher pay packages that are more likely to entice travel
9 employees and increase its likelihood of filling the position knowing that it will
10 never actually pay that amount after the employees begin the assignment. In other
11 instances, Aya positions itself to be the exclusive staffing agency for hospitals and
12 other healthcare providers by marketing its ability to successfully fill positions of
13 need at a lower cost, a value proposition that hinges on its “bait-and-switch” business
14 model. In certain parts of the country, like San Diego, Aya’s reach is becoming so
15 great (through use of exclusive contracts and other means) that if a travel employee
16 refuses to complete an assignment at a reduced rate, the employee will be blacklisted
17 from working all facilities in the region.

18 39. As set forth above, Plaintiffs relied on the material terms of their
19 agreements including: the fixed assignment term, the payment package, and the
20 guaranteed hours or days in accepting their offers; as the assignment had to be worth
21 foregoing other employment, relocating, and incurring the associated professional
22 and personal costs of accepting the travel assignment. In addition, Plaintiffs relied
23 on the fact the foregoing material terms could not be changed without additional
24 consideration and the reasonable expectation that Aya would act in good faith and
25 fair dealing and honor its promises or representations. Plaintiffs would not have
26 accepted the agreement had they known that Aya would violate the terms and spirit
27 of the agreement.

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1 40. By making the take-it-or-leave-it demands described above, after
2 Plaintiffs relied on Aya’s representations and undertook obligations under their
3 agreements, Aya breached its contracts with Plaintiffs—specifically the promises of
4 employment at a specified rate of pay for a fixed-term assignment. Aya made this
5 take-it-or-leave-it-demand in breach of the express terms of the contracts and
6 implied duty of good faith and fair dealing.

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

11 42. The “revised” agreements that Plaintiffs and other similarly situated
12 employees were (sometimes) coerced to sign are not enforceable because an
13 effective contract modification or accord requires the exchange of new
14 consideration.⁴ As alleged herein, there was no exchange of new consideration
15 because Plaintiffs were compelled to undertake the same obligations for less pay.
16 Consequently, Aya cannot relieve itself of its contractual obligations under one
17 contract by coercing acceptance of a second contract with less favorable terms.

18 **B. Aya’s Miscalculation of Its Employees’ Regular Rate of Pay and**
19 **Resulting Failure to Lawfully Pay Overtime.**

20 43. By law, employers must pay their employees one-and-half times their
21 “regular rate” for all overtime hours (*i.e.*, hours over 40 in a single workweek)
22 worked. In addition to the bait-and-switch tactics discussed above, the reduced
23 overtime rate that Aya paid Plaintiffs failed to compensate them at 1.5 times their
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26 ⁴ In some instances, Aya’s conduct was so brazen that that it would slash employees’ pay without
27 even telling them or purporting to seek their “agreement” first. The employees would discover the
28 pay reduction only *after* they received reduced paychecks.

1 regular rate of pay in violation of the Fair Labor Standards Act and state overtime
2 statutes.

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

9 45. In calculating the overtime rate paid to its employees, Aya wrongfully
10 excluded from their regular rate various stipends and allowances paid to its
11 employees, including a “Holiday” pay, “Charge” pay, “On Call” pay, “Call Back”
12 pay, “Meals and Incidentals Stipend,” and “Housing Stipend,” even though these
13 payments functioned as a form of compensation as part of its’ employees’ pay
14 package. For instance:

- 15 a. Prior to her rate reduction, Plaintiff Laura O’Dell was paid overtime at
16 a rate of \$76.50 per hour, or 1.5 times her base hourly pay rate of
17 \$51.00. Similarly, after her pay was reduced, she was still paid overtime
18 at a rate of 1.5 times her new base hourly rate. Her Daily Meals &
19 Incidentals Stipend of \$71.00 and her Daily Housing Stipend of
20 \$157.00 were never included in the calculation of her regular rate;
- 21 b. Prior to her rate reduction, Plaintiff Hannah Bailey was paid overtime
22 at a rate of \$155.50 per hour, or 1.5 times a regular rate of \$103.66.
23 Similarly, after her pay was reduced, she was still paid overtime at a
24 rate of 1.5 times her new base hourly rate. Her Daily Meals &
25 Incidentals Stipend of \$59.00 and her Daily Housing Stipend of \$96.00
26 were never included in the calculation of her regular rate;

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1 c. Prior to her rate reduction, Plaintiff Holly Zimmerman was paid
2 overtime at a rate of \$127.50 per hour, or 1.5 times her base hourly pay
3 rate of \$85.00. Similarly, after her pay was reduced, she was still paid
4 overtime at a rate of 1.5 times her new base hourly rate. Her Daily
5 Meals & Incidentals Stipend of \$69.00 and her Daily Housing Stipend
6 of \$157.00 were never included in the calculation of her regular rate.

7 46. Plaintiffs, and each of them, worked more than 40 hours in multiple
8 workweeks during their contracts with Aya during which these forms of
9 compensation were not included in their regular rate of pay in violation of federal
10 and state law.

11 47. Aya's exclusion of the various pay rates, stipends, and allowances paid
12 to its employees, including the "Holiday" pay, "Charge" pay, "On Call" pay, "Call
13 Back" pay, "Meals and Incidentals Stipend," and "Housing Stipend" from said
14 employees' "regular rate" in calculating overtime was wrongful and in violation of
15 the law, in that:

- 16 a. Said payments functioned as compensation for the employees' hours of
17 employment;
- 18 b. Said payments were tied to the number of hours worked, rather than the
19 amount of expenses actually incurred;
- 20 c. Said payments varied with the number of hours worked per week, such
21 that if an employee missed one or more shifts, said payments would be
22 reduced a corresponding amount;
- 23 d. Said payments did not vary with the amount of expenses an employee
24 actually incurred, nor were they calculated to approximate actual
25 expenses. Employees were not required to document expenses, nor
26 provide any attestation that he or she actually incurred a particular
27 amount of expenses in a given period;

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1 e. Upon information and belief, said payments were not limited to
2 employees who were actually traveling, but instead could be received
3 by local employees who worked proximate to their residence; and

4 f. Upon information and belief, employees could roll over extra shifts
5 worked in a previous week avoid a *pro rata* reduction in said payments
6 occasioned by having missed one or more shifts in a given week.

7 48. Aya classified this form of compensation as expense reimbursement to
8 avoid paying payroll taxes on these wages and to avoid paying materially increased
9 overtime rates, particularly given that many travel nurses are guaranteed more than
10 40 hours per week.

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

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

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

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

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1 53. During all relevant times to this action, Aya acted as the “employer” of
2 Plaintiffs and other similarly situated employees within the meaning of the FLSA.
3 29 U.S.C. § 203(d).

4 54. During all times relevant to this action, Plaintiffs and other similarly
5 situated employees were Aya’s “employees” within the meaning of the FLSA. 29
6 U.S.C. § 203(e).

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

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

13 57. Plaintiffs and other similarly situated employees are victims of uniform
14 and unlawful compensation policies.

15 58. Plaintiffs and other similarly situated employees are entitled to
16 damages equal to the mandated overtime premium pay within the three (3) years
17 preceding the filing of this Complaint, plus periods of equitable tolling, because Aya
18 acted willfully and knew, or showed reckless disregard of whether, its conduct was
19 prohibited by the FLSA.

20 59. Aya has acted neither in good faith nor with reasonable grounds to
21 believe that its actions and omissions were not a violation of the FLSA, and as a
22 result, Plaintiffs and other similarly situated employees are entitled to recover an
23 award of liquidated damages in an amount equal to the amount of unpaid wages as
24 described by Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b).
25 Alternatively, should the Court find Aya acted in good faith or with reasonable
26 grounds in failing to pay overtime compensation, Plaintiffs and other similarly
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1 situated employees are entitled to an award of prejudgment interest at the applicable
2 legal rate.

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

9 **CLASS ACTION ALLEGATIONS**

10 61. Class Definitions: Plaintiffs bring this action individually and on behalf
11 of other similarly situated individuals. Pursuant to Federal Rules of Civil Procedure
12 23(b)(3), 23(b)(2), and/or 23(c)(4), Plaintiffs seek certification of the foregoing
13 classes and subclasses, defined as follows:

14
15 The Class: All persons who entered into a travel agreement
16 with Aya and whose total compensation was reduced before the
end of the agreed upon term.

17 State Wage Payment Laws Class: All persons who entered into
18 a travel agreement with Aya to work at a facility or location in
19 Alaska, Arizona, Arkansas, California, Colorado, Connecticut,
20 Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana,
21 Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota,
22 Mississippi, Missouri, Montana, Nebraska, Nevada, New
23 Hampshire, New Jersey, New Mexico, New York, North
24 Carolina, North Dakota, Ohio, Oklahoma, Oregon,
25 Pennsylvania, Rhode Island, South Carolina, South Dakota,
26 Utah, Vermont, Virginia, Washington, West Virginia,
27 Wisconsin, or Wyoming and whose total compensation was
reduced before the end of the agreed upon term.

28 The California Class: All persons who entered into a travel
agreement with Aya to work at a facility or location in
California, or who traveled from California to an assignment in
another state, and whose total compensation was reduced before
the end of the agreed upon term.

1 State Unpaid Overtime Class: All persons who entered into a
2 travel agreement with Aya to work at a facility or location in
3 Alaska, California Colorado, Connecticut, Delaware, Florida,
4 Georgia, Hawaii, Illinois, Kentucky, Michigan, Minnesota,
5 Missouri, Montana, Nevada, New Hampshire, New Jersey,
6 New Mexico, New York, North Carolina, North Dakota, Ohio,
7 Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont,
8 Virginia, Washington, West Virginia, or Wisconsin who
9 worked more than 40 hours in a workweek and whose regular
10 rate of pay did not include the “Holiday” pay, “Charge” pay,
11 “On Call” pay, “Call Back” pay, “Meals and Incidentals
12 Stipend,” or “Housing Stipend” (or their equivalents by any
13 other name).

14 62. Excluded from the Class are the Court and its officers, employees, and
15 relatives; Aya and its subsidiaries, officers, and directors; and governmental entities.

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

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

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

- 26 a. Did Aya make actionable misrepresentations or omissions?
- 27 b. Were Aya’s promises, representations, or omissions false or
28 misleading?
- c. Did Aya intend for Plaintiffs and the Class to rely on its promises,
 representations, or omissions?
- d. Should Aya have known that such promises or representations
 would cause justifiable or reasonable reliance?

- 1 e. Did Aya owe a duty to disclose to Plaintiffs and the Class to not
conceal the truth?
- 2 f. Did Aya’s conduct in reducing compensation packages breach the
3 travel assignment agreements?
- 4 g. Did Aya act in bad faith?
- 5 h. Did Aya engage in fraudulent concealment?
- 6 i. Did Aya’s conduct violate state wage payment statutes?
- 7 j. Did Aya fail to include certain forms of non-discretionary
8 compensation in Plaintiffs and class members’ regular rate of pay?
- 9 k. Did Aya’s failure to include forms of compensation such as
10 “Holiday” pay, “Charge” pay, “On Call” pay, “Call Back” pay,
11 “Meals and Incidentals Stipend,” and “Housing Stipend” in
12 calculating its employees’ regular rates result in said employees not
being adequately compensated for overtime work?

13 66. Typicality: Plaintiffs’ claims are typical of other members of the Class
14 because all of the claims arise from the same course of conduct by Aya, the same
15 fraudulent business practice, and are based on the same legal theories.

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

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

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1 73. Aya offered Plaintiffs and class members employment by certain
2 written terms in the agreement.

3 74. As consideration for their agreement, Aya agreed, among other things,
4 to employ, pay, and provide certain benefits to Plaintiffs and class members under
5 their respective agreements; and Plaintiffs and class members agreed, among other
6 things, to provide undertake certain obligations.

7 75. The parties mutually assented to the agreement.

8 76. Plaintiffs and class members accepted Aya's offer of employment by
9 executing the agreement.

10 77. Plaintiffs and class members did all or substantially all of the significant
11 things that the agreement required.

12 78. After the parties entered the agreement, Aya materially breached the
13 agreement by failing to pay Plaintiffs and class members the amounts they promised.

14 79. In making take-or-leave-it pay reductions under circumstances where
15 Aya knew Plaintiffs and class members would have no choice but to continue
16 working despite the unilateral pay reduction, Aya also deliberately breached the
17 implied covenant of good faith and fair dealing inherent in the parties' agreements.

18 80. Before the breaches, all conditions precedent had been fulfilled.

19 81. Plaintiffs' and class members' damages would not have occurred but
20 for Aya's breaches and Aya's breaches proximately caused Plaintiffs' and class
21 members' damages.

22 82. Following the breaches, Plaintiffs and class members made all
23 reasonable efforts to mitigate resulting damages.

24 83. Plaintiffs' and class members' damages include the difference in
25 compensation agreed to under the agreement and the actual compensation Plaintiffs
26 and class members received, as well as the costs, expenses, and losses Plaintiffs and
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1 class members incurred as a natural and foreseeable result or consequence of Aya's
2 breaches.

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4 **SECOND CAUSE OF ACTION: PROMISSORY ESTOPPEL**

5 *On Behalf of Plaintiffs and the Class*

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

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

12 86. Aya did not intend to perform its promises when those promises were
13 made and in fact did not perform them.

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

17 88. Aya's promises in fact induced Plaintiffs and class members to enter
18 into employment agreements, relocate, and incur certain expenses, costs, and losses.
19 Aya knew and intended for Plaintiffs and class members to rely on these promises,
20 and Plaintiffs' reliance on these promises was foreseeable on the part of Aya.

21 89. It would be unjust to allow Aya to profit from making such inducing
22 promises and not fulfilling them.

23 90. This injustice can only be avoided by forcing Aya to fulfill these
24 promises.

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THIRD CAUSE OF ACTION: QUASI-CONTRACT

On Behalf of Plaintiffs and the Class

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

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

93. Aya appreciated and had knowledge of the benefit Plaintiffs and class members conferred on it.

94. Aya, 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 Aya to retain such benefits without payment of its value.

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

FOURTH CAUSE OF ACTION: FRAUDULENT INDUCEMENT

On Behalf of Plaintiffs and the Class

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

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

98. At the time it made such representations, Aya knew that its representations were false and it would pay Plaintiffs and class members less than the amounts it promised if it so determined.

1 99. Aya’s misrepresentations were made with the purpose to defraud
2 Plaintiffs and class members.

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

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

12 102. Plaintiffs and class members did not know Aya’s representations
13 regarding their pay rate were false or misleading and had a right to rely on and
14 reasonably relied on them in entering into travel assignment agreements, relocating,
15 and incurring certain expenses, costs, and losses.

16 103. As a result of and in reliance upon Aya’s fraudulent inducement,
17 Plaintiffs and class members sustained damages as described herein.

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19 **FIFTH CAUSE OF ACTION: FRAUDULENT CONCEALMENT**

20 *On Behalf of Plaintiffs and the Class*

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

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

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1 106. Aya intended to defraud or deceive Plaintiffs and class members and
2 intentionally failed to disclose the fact that Aya would unilaterally reduce their pay
3 rates or total compensation after they accepted a position that required relocating
4 and incurring certain expenses, costs, and losses.

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

8 108. Plaintiffs and class members justifiably relied on Aya’s fraudulent
9 concealment by entering into employment agreements, relocating, and incurring
10 certain expenses, costs, and losses.

11 109. As a result of Aya’s fraudulent inducement, Plaintiffs and class
12 members sustained damages as described herein, which were substantially caused
13 by Aya’s concealment.

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15 **SIXTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION**

16 *On Behalf of Plaintiffs and the Class*

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

19 111. As their prospective employer, Aya owed Plaintiffs and class members
20 a duty or reasonable care to not make false or misleading statements regarding their
21 employment.

22 112. Aya knew, should have known, or recklessly disregarded that its
23 representations to Plaintiffs and class members regarding their pay rates and overall
24 compensation reflected in the travel assignment agreements were false or
25 misleading, because it was reasonably foreseeable that Aya would make a “take-it-
26 or-leave-it” demand to accept less compensation or be terminated after acceptance
27 of the initial offer.

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1 113. Aya intended for Plaintiffs and class members to act on the false or
2 misleading statements.

3 114. Aya knew or should have known that Plaintiffs and class members
4 would rely on the false or misleading statements.

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

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

14 117. As a result of Aya's negligent misrepresentations, Plaintiffs and class
15 members sustained damages as described herein, which were substantially caused
16 by Aya's misrepresentations.

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18 **SEVENTH CAUSE OF ACTION: VIOLATION OF**
19 **STATE WAGE PAYMENT LAWS**

20 *On Behalf of Plaintiffs and the State Wage Payment Laws Class*

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

23 119. At all times relevant to this action, Plaintiffs and class members were
24 employed by Aya.

25 120. At all times relevant to this action, Plaintiffs and the class members
26 performed work for Aya.

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1 121. Aya owes Plaintiffs and the class members wages under the terms of
2 the employment.

3 122. Aya’s course of conduct described above violated wage payment laws
4 of the states listed herein by failing to pay all wages due or owed to Plaintiffs and
5 other similarly situated employees for which the company had agreed to pay. Aya’s
6 failure to pay all wages due and owing to its employees is in violation of the
7 following state wage payment laws, each of whose relevant terms are materially
8 equivalent such that a common violation may be established on a class-wide basis:

- 9 a. Alaska – Alaska Stat. § 23.05.140 *et seq.*;
- 10 b. Arizona – Ariz. Rev. Stat. Ann. § 23–351 *et seq.*;
- 11 c. Arkansas – Ark. Code Ann. § 11–4–401 *et seq.*;
- 12 d. California – Cal. Lab. Code § 204 *et seq.*;
- 13 e. Colorado – Colo. Rev. Stat. § 8–4–101 *et seq.*;
- 14 f. Connecticut – Conn. Gen. Stat. Ann. § 31–71b *et seq.*;
- 15 g. Delaware – Del. Code Ann. tit. 19, § 1102 *et seq.*;
- 16 h. Florida – Fla. Stat. Ann. § 448.08 *et seq.*;
- 17 i. Georgia – Ga. Code Ann. § 34–7–2 *et seq.*; Ga. Code Ann. § 51-1-
18 6 *et seq.*;
- 19 j. Hawaii – Haw. Rev. Stat. § 388–2 *et seq.*;
- 20 k. Idaho – Idaho Code Ann. § 45–608 *et seq.*;
- 21 l. Illinois – 820 ILCS 115/1 *et seq.*;
- 22 m. Indiana – Ind. Code Ann. § 22–2–5–1 *et seq.*;
- 23 n. Iowa – Iowa Code Ann. § 91A.3 *et seq.*;
- 24 o. Kansas – Kan. Stat. Ann. § 44–314 *et seq.*;
- 25 p. Kentucky – Ky. Rev. Stat. Ann. § 337.020 *et seq.*;
- 26 q. Louisiana – La. Rev. Stat. Ann. § 23:631 *et seq.*;
- 27 r. Massachusetts – Mass. Gen. Laws Ann. ch. 149, § 148 *et seq.*;

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- 1 s. Minnesota – Minn. Stat. Ann. § 181.101 *et seq.*;
- 2 t. Mississippi – Miss. Code. Ann. § 71–1–35 *et seq.*;
- 3 u. Missouri – Mo. Ann. Stat. § 290.080 *et seq.*;
- 4 v. Montana – Mont. Code Ann. § 39–3–204 *et seq.*;
- 5 w. Nebraska – Neb. Rev. Stat. § 48–1230 *et seq.*;
- 6 x. Nevada – Nev. Rev. Stat. Ann. § 608.060 *et seq.*;
- 7 y. New Hampshire – N.H. Rev. Stat. Ann. § 275:43 *et seq.*;
- 8 z. New Jersey – N.J. Stat. Ann. § 34:11–4.2 *et seq.*;
- 9 aa. New Mexico – N.M. Stat. Ann. § 50–4–26 *et seq.*;
- 10 bb. New York – N.Y. Lab. Law § 191 *et seq.*;
- 11 cc. North Carolina – N.C. Gen. Stat. Ann. § 95–25.6 *et seq.*;
- 12 dd. North Dakota – N.D. Cent. Code Ann. § 34–14-02 *et s–q.*;
- 13 ee. Ohio – Ohio Rev. Code Ann. § 4113.15 *et seq.*;
- 14 ff. Oklahoma – Okla. Stat. Ann. tit. 40, § 165.2 *et seq.*;
- 15 gg. Oregon – Or. Rev. Stat. Ann. § 652.120 *et seq.*;
- 16 hh. Pennsylvania – 43 Pa. Stat. Ann. § 260.3 *et seq.*;
- 17 ii. Rhode Island – R.I. Gen. Laws Ann. § 28–14–2.2 *et seq.*;
- 18 jj. South Carolina – S.C. Code § 41–10–10 *et seq.*;
- 19 kk. South Dakota – S.D. Codified Laws § 60–11–1 *et seq.*;
- 20 ll. Utah – Utah Code Ann. § 34–28–3 *et seq.*;
- 21 mm. Vermont – Vt. Stat. Ann. tit. 21, § 342 *et seq.*;
- 22 nn. Virginia – Va. Code Ann. § 40.1–29 *et seq.*;
- 23 oo. Washington – RCW 49.48 *et seq.*;
- 24 pp. West Virginia – W. Va. Code Ann. § 21–5–3 *et seq.*;
- 25 qq. Wisconsin – Wis. Stat. Ann. § 109.03 *et seq.*; and
- 26 rr. Wyoming – Wyo. Stat. Ann. § 27–4-101 *et seq.*

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1 123. Aya maintains a company-wide policy and practice of failing and
2 refusing to pay wages due and owing to Plaintiffs and other similarly situated
3 employees, and said policy is willful in nature and not the result of a good-faith
4 mistake.

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6 **EIGHTH CAUSE OF ACTION: VIOLATION OF**

7 **CALIFORNIA LABOR CODE § 970**

8 *On Behalf of Plaintiff O’Dell and the California Class*

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

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

16 108. Aya made representations to Plaintiff O’Dell and members of the
17 California Class (collectively “Plaintiffs” for purposes of this and the following
18 count) concerning the kind or character of the work, the length of time the work
19 would last, or the compensation therefor.

20 109. Aya’s representations were false, for the reasons alleged herein.

21 110. Aya knew when the representations were made that they were false.

22 111. Aya intended that Plaintiffs would rely on its false representations.

23 112. Plaintiffs reasonably relied on Aya’s false representations and
24 relocated for the purpose of working for Aya.

25 113. As a result of Aya’s misrepresentations, Plaintiffs were harmed, and
26 their reliance on the Aya’s representations was a substantial factor in causing such
27 harm.

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NINTH CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE

§ 17200

On Behalf of Plaintiff O’Dell and the California Class

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

115. The California Unfair Competition Law prohibits “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200, *et seq.* Aya has engaged in business acts and practices that, as alleged above, constitute unfair competition in violation of Business and Professions Code section 17200.

Unlawful

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

Unfair

117. Aya’s business practices, as alleged herein, violate the “unfair” prong of the Unfair Competition Law because they resulted in Plaintiffs and members of the California 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.

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

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Fraudulent

119. Aya’s conduct, as described herein, is fraudulent because it is likely to deceive members of the public.

120. Aya’s bait-and-switch tactics were indeed calculated to deceive—and in fact did deceive—Plaintiffs and members of the California 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.

121. Plaintiffs and members of the California Class have standing to pursue this cause of action because they suffered injury in fact and lost money as a result of Aya’s misconduct described herein.

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

123. Plaintiffs and members of the California Class seek all monetary and non-monetary relief allowed by law, including restitution of all profits stemming from Aya’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.

TENTH CAUSE OF ACTION: UNPAID OVERTIME UNDER THE FLSA

On Behalf of Plaintiffs and the Nationwide FLSA Collective

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

125. At all times relevant to this action, Plaintiffs and other similarly situated employees (collectively “Plaintiffs” for purposes of this count) were employed by Aya.

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

4 127. Specifically, the FLSA requires that employees are paid one and one-
5 half times their “regular rate” of pay. The “regular hourly rate of pay of an
6 employee is determined by dividing his or her total remuneration for employment
7 (except statutory exclusions) in any workweek by the total number of hours
8 actually worked by him in that workweek for which such compensation was paid.”
9 29 C.F.R. § 778.109.

10 128. Aya improperly reduced its employees’ regular rate when calculating
11 overtime by wrongfully excluding certain forms of compensation, including
12 stipends and allowances.

13 129. In so doing, Aya failed to properly compensate Plaintiffs for overtime
14 worked pursuant to the FLSA.

15 130. Aya is not eligible for any FLSA exemption excusing their failure to
16 pay overtime.

17 131. Plaintiffs are victims of a uniform, company-wide compensation
18 policy.

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

23 133. Aya has acted neither in good faith nor with reasonable grounds to
24 believe that its actions and omissions were not a violation of the FLSA, and as a
25 result thereof, Plaintiffs are entitled to recover an award of liquidated damages in
26 an amount equal to the amount of unpaid overtime pay pursuant to 29 U.S.C. §
27 216(b). Alternatively, should the Court find Aya did act with good faith and
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1 reasonable grounds in failing to pay overtime pay, Plaintiffs are entitled to an
2 award of prejudgment interest at the applicable legal rate.

3 **ELEVENTH CAUSE OF ACTION: VIOLATION OF**
4 **STATE OVERTIME STATUTES**

5 *On Behalf of Plaintiffs and the State Unpaid Overtime Class*

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

8 135. At all times relevant to this action, Plaintiffs and other similarly
9 situated employees were employed by Aya and worked overtime hours. Aya knew
10 or should have known that Plaintiffs and other similarly situated employees had
11 worked overtime hours.

12 136. Aya's course of conduct described herein violated the various
13 overtime statutes of the several states listed in the subsequent paragraph by
14 improperly excluding from its employees' regular rate certain forms of
15 compensation, including stipends and allowances, thereby resulting in unpaid
16 overtime owed to Plaintiffs and other similarly situated employees.

17 137. Aya's failure to pay overtime to its employees is in violation of the
18 following state overtime laws, each of whose relevant terms are materially
19 equivalent such that a common violation may be established on a class-wide basis:

- 20 a. Alaska – Alaska Stat. § 23.10.060 *et seq.*;
- 21 b. California – Cal. Lab. Code § 510 *et seq.* and Cal. Lab. Code § 1194
22 *et seq.*;
- 23 c. Colorado – Colo. Rev. Stat. §§ 8–6–101 *et seq.*; 7 Colo. Code Regs
24 § 1103–1(4) *et seq.*;
- 25 d. Connecticut – Conn. Gen. Stat. Ann. § 31–76c *et seq.*;
- 26 e. Delaware – Del. Code Ann. tit. 19, § 1102 *et seq.*;
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- 1 f. Florida – Fla. Stat. Ann. § 448.08 *et seq.*; Fla. Stat. Ann. § 488.01
- 2 *et seq.*;
- 3 g. Georgia – Ga. Code Ann. § 9-3-22 *et seq.*;
- 4 h. Hawaii – Haw. Rev. Stat. Ann. § 387–3 *et seq.*;
- 5 i. Illinois – 820 Ill. Comp. Stat. Ann. 105/4a *et seq.*;
- 6 j. Kentucky – Ky. Rev. Stat. Ann. § 337.285 *et seq.*;
- 7 k. Michigan – Mich. Comp. Laws Ann. § 408.414a *et seq.*;
- 8 l. Minnesota – Minn. Stat. Ann. § 177.23 *et seq. et seq.*;
- 9 m. Missouri – Mo. Ann. Stat. § 290.505 *et seq.*;
- 10 n. Montana – Mont. Rev. Code Ann. § 39–3–405 *et seq.*;
- 11 o. Nevada – Nev. Rev. Stat. § 608.018 *et seq.*;
- 12 p. New Hampshire – N.H. Rev. Stat. Ann. § 279:21 *et seq.*;
- 13 q. New Jersey – N.J. Stat. Ann. § 34:11–56a4 *et seq.*;
- 14 r. New Mexico – N.M. Stat. Ann. § 50–4–22 *et seq.*;
- 15 s. New York – N.Y. Comp. Codes R. & Regs. tit. 12, § 142–3.2 *et*
- 16 *seq.*;
- 17 t. North Carolina – N.C. Gen. Stat. Ann. § 95–25.4 *et seq.*;
- 18 u. North Dakota – N.D. Admin. Code 46–02–07–02(4) *et seq.*;
- 19 v. Ohio – Ohio Rev. Code Ann. § 4111.03 *et seq.*;
- 20 w. Oklahoma – Okla. Stat. Ann. tit. 74, § 840–2.15 *et seq.*;
- 21 x. Oregon – Or. Rev. Stat. Ann. §§ 653.055, 653.261 *et seq.*;
- 22 y. Pennsylvania – 43 Pa. Stat. Ann. § 333.104 *et seq.*;
- 23 z. Rhode Island – 28 R.I. Gen. Laws Ann. § 28–12–4.1 *et seq.*;
- 24 aa. Vermont – Vt. Stat. Ann. tit. 21, § 384 *et seq.*;
- 25 bb. Virginia – Va. Code Ann. § 40.1–29.2 *et seq.*;
- 26 cc. Washington – Wash. Rev. Code Ann. § 49.46.130 *et seq.*;
- 27 dd. West Virginia – W. Va. Code Ann. § 21–5C–3 *et seq.*; and
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1 ee. Wisconsin – Wis. Admin. Code DWD § 274.015 *et seq.*

2 138. Aya maintains a uniform, company-wide policy and practice of
3 miscalculating the overtime rate of Plaintiffs and other similarly situated
4 employees, and said policy is willful in nature and not the result of a good faith
5 mistake.

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7 **TWELTH CAUSE OF ACTION: ENFORCEMENT OF THE CALIFORNIA**
8 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

9 *By Plaintiff O’Dell on Behalf of the State of California*

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

12 140. Plaintiff O’Dell is an “aggrieved employee” within the meaning of
13 California Labor Code § 2699(c) and a proper representative to bring a civil action
14 as a representative of the State of California and on behalf of herself and other
15 current and former employees of Aya in California pursuant to the procedures
16 specified in California Labor Code § 2699.3, because Plaintiff O’Dell was
17 employed by Aya and the alleged violations of the California Labor Code were
18 committed against Plaintiff O’Dell and other aggrieved employees of Aya during
19 the relevant period.

20 141. Pursuant to the California Private Attorneys General Act of 2004
21 (“PAGA”), Labor Code §§ 2698-2699.5, Plaintiff O’Dell, as a representative of the
22 State of California and on behalf of herself and all other similarly aggrieved
23 employees, seeks to recover civil penalties, including but not limited to penalties
24 under California Labor Code § 2699 for Aya’s violation of the following Labor
25 Code sections:

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

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

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

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

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

11 F. That the Court award statutory and civil penalties according to proof,
12 including but not limited to all penalties authorized by the California Labor Code §
13 2698 *et seq.*;

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

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

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

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

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

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a jury trial on all claims so triable.

Dated: August 4, 2022

Respectfully submitted,

HARTLEY LLP

/s/ Jason S. Hartley
Jason S. Hartley (SBN 192514)
Jason M. Lindner (SBN 211451)
101 West Broadway, Suite 820
San Diego, California 92101
Tel: 619-400-5822
hartley@hartleyllp.com
lindner@hartleyllp.com

George A. Hanson*
J. Austin Moore*
K. Ross Merrill*
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: 816-714-7100
hanson@stuevesiegel.com
moore@stuevesiegel.com
merrill@stuevesiegel.com
**Pro hac vice applications forthcoming*

*Attorneys for Plaintiffs and the Putative
Class and Collective*