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Attorneys for Plaintiff
EMILY HOWELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMILY HOWELL, an individual on
behalf of herself and others similarly
situated,

Plaintiff,

v.

ADVANTAGE RN LLC; an Ohio
limited liability company; and DOES 1
to 10 inclusive,

Defendants.

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194)
2. Unfair Business Practices (Cal. Business & Professions Code § 17200, et seq.)
3. Waiting Time Penalties (Cal. Labor Code § 203)

AND DEMAND FOR JURY TRIAL

'17CV0883 JLS BLM

1 Plaintiffs EMILY HOWELL (“Plaintiff”), on behalf of herself and all others
2 similarly situated, allege as follows:

3 **NATURE OF THE ACTION**
4

5 1. This is a California-wide class action against ADVANTAGE RN LLC
6 (“Advantage”) for (1) failing to pay all overtime wages and (2) failing to timely
7 pay all wages owing at the termination of employment.
8

9 **JURISDICTION**

10 2. This Court has jurisdiction under 28 U.S.C. § 1332 because the
11 amount in controversy in this action exceeds \$75,000, exclusive of interests and
12 costs, and because the parties are citizens of different States.
13

14 **VENUE**
15

16 3. This action may be brought in this judicial district pursuant to 28
17 U.S.C. § 1391 because Advantage employed Plaintiff and other putative class
18 members in this judicial district, Advantage transacts business in this judicial
19 district, and a substantial part of the acts and/or omissions giving rise to the claims
20 occurred in this judicial district.
21

22 **PARTIES**
23

24 4. Plaintiff Emily Howell is a citizen of Massachusetts who was
25 employed by Advantage as a travel nurse in San Diego, California from February
26 2016 to October 2016.
27
28

1 5. Defendant Advantage RN LLC is an Ohio limited liability company
2 that, at all relevant times, has been engaged in the business of health care staffing
3 throughout California and elsewhere.
4

5 6. Plaintiff is currently unaware of the true names and capacities of the
6 defendants sued by the fictitious names DOES 1 through 10, inclusive, and,
7 therefore, sues those defendants by fictitious names. Plaintiff alleges on
8 information and belief that each of the DOE defendants is responsible or liable in
9 some manner for the conduct alleged in the complaint and that Plaintiff's damages
10 as herein alleged were proximately caused by those DOE defendants. Plaintiff will
11 amend this complaint to allege the true names and capacities of such fictitiously
12 named defendants when they are ascertained.
13
14
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16 7. Plaintiff alleges on information and belief that, at all times herein
17 mentioned, each of the defendants was the agent, servant and employee of each of
18 the other defendants, and in connection with the conduct hereinafter alleged, was
19 acting within the scope of such agency and employment, and each defendant
20 ratified each and every act, omission and thing done by each and every other
21 defendant named herein.
22
23

24 8. Defendant Advantage RN LLC and DOES 1 through 10 will be
25 referred to hereafter, collectively, as "Defendants."
26
27
28

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1
2 9. Defendants are a staffing company that employ hourly health care
3 professionals for short-term travel assignments at health care providers throughout
4 California and elsewhere.

6 10. The terms and conditions of employment between Defendants and
7 their hourly health care professionals in California are governed by a form
8 agreement titled “Traveler Assignment Confirmation.”

10 11. The Traveler Assignment Confirmation provides that the health care
11 professional’s “rate of pay” consists of specified hourly wages and a specified per
12 diem stipend.

14 12. The hourly wages and per diem stipend are both paid weekly and
15 combined together as “gross pay” on the paychecks issued to health care
16 professionals each week.

18 13. The hourly wages paid by Defendants are substantially below the
19 average hourly wage for health care professionals in California and the per diem
20 stipend constitutes approximately one-half of the “gross pay” each week.

22 14. A health care professional’s receipt of the full specified wage rates
23 and per diem stipend each week is conditioned upon the health care professional
24 working a minimum number of “contracted hours” per week.

26 15. If a health care professional does not work the minimum number of
27
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1 “contracted hours” in a week and the deficit is more than two hours, the Traveler
2 Assignment Confirmation provides that a “missed shift adjustment,” consisting of
3 a specified hourly deduction, will be taken “from any payments due.”
4

5 16. When assessed, the “missed shift adjustment” is deducted from the
6 “gross pay” in the health care professional’s weekly paycheck.
7

8 17. In addition to the hourly wage rates and per diem stipend, the Traveler
9 Assignment Confirmation provides for various bonuses, including, without
10 limitation, a loyalty bonus, an extension bonus, and a completion bonus.
11

12 18. When health care professional work in excess of 8 hours per day
13 and/or 40 hours per week, Defendants do not include the value of the per diem
14 stipend or various bonuses in the health care professionals’ regular rates of pay for
15 purposes of calculating overtime pay.
16

17 19. Plaintiff’s employment with Defendants was governed by several
18 Traveler Assignment Confirmations each of which required her to work a
19 minimum number of contracted hours per week and provided for a missed shift
20 adjustment to be taken from any payments due if she did not work the minimum
21 number of contracted hours and the deficit is more than two hours.
22

23 20. Plaintiff’s Traveler Assignment Confirmations provided for various
24 forms of remuneration in addition to an hourly wage including, without limitation,
25 a per diem stipend, a loyalty bonus, an extension bonus, and a completion bonus.
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1 and believes that the class contains in excess of 100 individuals.

2 **B. Commonality**

3 26. There are questions of law and fact common to the class that
4 predominate over any questions affecting only individual class members. These
5 common questions include, without limitation, whether Defendants lawfully
6 excluded remuneration from class members' regular rates of pay for purposes of
7 calculating overtime pay.
8
9

10 **C. Typicality**

11 27. The class claims of the proposed class representative are typical of the
12 claims of each class member.
13

14 28. As with other members of the class, when Plaintiff worked in excess
15 of 8 hours per day and/or 40 hours per week, Defendants failed to include all
16 remuneration in Plaintiff's regular rate of pay for purposes of calculating her
17 overtime pay.
18
19

20 **D. Adequacy of Representation**

21 29. Plaintiff will fairly and adequately represent and protect the interests
22 of the members of the class. Counsel who represent Plaintiff are competent and
23 experienced in litigating employment class actions.
24

25 **E. Superiority of Class Action**

26 30. A class action is superior to other available means for the fair and
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1 efficient adjudication of the class claims. Individual joinder of all class members is
2 not practicable, and questions of law and fact common to the class predominate
3 over any questions affecting only individual members of the class. Each member
4 of the class has been damaged and is entitled to recover by reason of Defendants'
5 illegal common policies.
6

7
8 **FIRST CAUSE OF ACTION**

9 **CLASS ACTION CLAIM FOR FAILURE TO PAY OVERTIME**

10 **(LABOR CODE §§ 510, 1194)**

11
12 31. Plaintiff realleges and incorporates herein by reference each and every
13 allegation contained in the preceding paragraphs of this Complaint as though fully
14 set forth herein.
15

16 32. Labor Code section 510 requires an employer to provide premium
17 overtime pay for all work in excess of 8 hours per day and 40 hours per week.
18

19 33. Labor Code section 1194 entitles an employee receiving less than the
20 legal overtime pay to recover, in a civil action, the unpaid balance of overtime
21 wages owing, plus interest thereon, reasonable attorneys' fees, and costs of suit.
22

23 34. As a result of Defendants' failure to include all remuneration in
24 employees' regular rates of pay for purposes of calculating overtime pay, Plaintiff
25 and other members of the class were not paid the correct premium overtime rates
26 for all hours worked in excess of 8 hours per day and/or 40 hours per week.
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1 law, and constitute unlawful business acts and practices in violation of California
2 Business & Professions Code section 17200, *et seq.*

3 41. Pursuant to California Business & Professions Code section 17200, *et*
4 *seq.*, Plaintiff and other class members are entitled to an accounting for and
5 restitution of the wages unlawfully withheld and retained by Defendants during the
6 class period, an award of attorneys' fees pursuant to California Code of Civil
7 Procedure section 1021.5 and other applicable laws, and an award of costs.
8
9

10 **THIRD CAUSE OF ACTION**

11 **CLASS ACTION CLAIM FOR WAITING TIME PENALTIES**

12 **(LABOR CODE §§ 201, 202, 203)**

13
14 42. Plaintiff realleges and incorporates herein by reference each and every
15 allegation contained in the preceding paragraphs of this Complaint as though fully
16 set forth herein.
17

18
19 43. Labor Code sections 201 and 202 require an employer to promptly
20 pay all wages owing to an employee at the conclusion of employment.
21

22 44. Plaintiff and some other members of the class are no longer employed
23 by Defendants.

24 45. Throughout the class period, Plaintiff and other class members who
25 are former employees of Defendants were not timely paid all wages owing at the
26 time of termination of employment because during their employment they were not
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1 paid all overtime wages.

2 46. Defendants' failure to pay Plaintiff and other class members who are
3 former employees of Defendants all wages owing, as alleged above, was willful, as
4 Defendants intentionally excluded remuneration from their regular rates of pay for
5 purposes of calculating overtime pay.
6

7 47. Plaintiff and other class members who are former employees of
8 Defendants are therefore entitled to penalties, in an amount to be determined at
9 trial, pursuant to Labor Code section 203, which provides that an employee's
10 wages shall continue as a penalty until paid for a period of up to thirty (30) days
11 from the time they were due.
12
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for the following relief:
16

17 **Class Certification**

- 18
- 19 1. That this action be certified as a class action;
 - 20 2. That Plaintiff be appointed as the representative of the class; and
 - 21 3. That counsel for Plaintiff be appointed as class counsel.
22

23 **First Cause of Action**

24 4. That the Court declare, adjudge and decree that Defendants violated
25 Labor Code section 510 by failing to pay Plaintiff and other class members the
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1 correct overtime rates for all hours worked in excess of 8 hours per day and/or 40
2 hours per week;

3 5. For unpaid overtime wages and such general and special damages as
4 may be appropriate;

6 6. For pre-judgment interest on any unpaid overtime wages owing
7 commencing from the date such amounts were due;

9 7. For reasonable attorneys' fees and costs of suit incurred herein
10 pursuant to Labor Code section 1194(a); and

12 8. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **Second Cause of Action**

16 9. That the Court declare, adjudge and decree that Defendants violated
17 Business & Professions Code section 17200, et. seq. by failing to pay Plaintiff and
18 other class members the correct premium overtime rates for all hours worked in
19 excess of 8 hours per day and/or 40 hours per week in violation of Labor Code
20 section 510;

23 10. For an accounting for and restitution of the wages unlawfully withheld
24 and retained by Defendants during the class period;

26 11. For reasonable attorneys' fees and costs of suit incurred herein
27 pursuant to Code of Civil Procedure section 1021.5; and

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EMILY HOWELL, an individual on behalf of herself and others similarly situated,

(b) County of Residence of First Listed Plaintiff Hampden County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hayes Pawlenko LLP
595 E. Colorado Blvd., Suite 303, Pasadena, CA 91101, 626.808.4357

DEFENDANTS

ADVANTAGE RN LLC, an Ohio Limited Liability Company; and DOES 1 to 10 inclusive,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) **'17CV0883 JLS BLM**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Contract Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a)(1) (diversity)

Brief description of cause:
California class action claims for failure to pay overtime wages, unfair business practices, and waiting time penalties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE
05/01/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Traveling Nurse Hits Advantage RN with Unpaid Overtime Lawsuit](#)
