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Attorneys for Plaintiff Mary Romo, on behalf of herself
and as representative for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MARY ROMO, on behalf of herself and as
representative for the State of California on
behalf of all other aggrieved employees,

Plaintiff,

v.

BKD PERSONAL ASSISTANCE SERVICES,
LLC, a Delaware Limited Liability Company;
BROOKDALE SENIOR LIVING
COMMUNITIES, INC., a Delaware
Corporation; and DOES 1 through 10,
Inclusive,

Defendants.

CASE NO. RIC2002160

**REPRESENTATIVE ACTION COMPLAINT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
[Labor Code § 2698 *et seq.*]**

1. Civil Penalties Pursuant to the PAGA for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §2698, *et seq.*);
2. Civil Penalties Pursuant to the PAGA for Failure to Provide Meal Periods (Lab. Code §2698, *et seq.*);
3. Civil Penalties Pursuant to the PAGA for Failure to Provide Rest Periods (Lab. Code §2698, *et seq.*);
4. Civil Penalties Pursuant to the PAGA for Failure to Provide Accurate Wage Statements (Lab. Code §2698, *et seq.*);
5. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due During Employment (Lab. Code §2698, *et seq.*);
6. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §2698, *et seq.*);

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7. Civil Penalties Pursuant to the PAGA for Failure to Pay Vacation Wages (Lab. Code §2698, *et seq.*);
8. Civil Penalties Pursuant to the PAGA for Failure to Maintain Accurate Records (Lab. Code §2698, *et seq.*).

1 Plaintiff MARY ROMO ("Plaintiff"), on behalf of herself and as representative for the State of
2 California, the California Labor and Workforce Development Agency ("LWDA"), and on behalf of
3 all other aggrieved employees, hereby alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of
7 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, against BKD PERSONAL ASSISTANCE
8 SERVICES, LLC, a Delaware Limited Liability Company; BROOKDALE SENIOR LIVING
9 COMMUNITIES, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, (collectively,
10 "Defendants") to recover civil penalties arising out of Defendants' labor code violations including
11 failure to pay all wages; inform and provide off-duty meal and rest periods; provide accurate itemized
12 wage statements; maintain accurate records; and, timely pay all wages due during and upon separation
13 of employment, including vested vacation wages.

14 2. Plaintiff has given written notice of these claims and allegations to the California Labor
15 and Workforce Development Agency ("LWDA") on January 24, 2020. A true and correct copy of
16 Plaintiff's Notice showing compliant with Labor Code section 2699.3 is attached hereto as **Exhibit 1**.
17 As there has been no LWDA intervention within 65 days of that notice, Plaintiff asserts claims for
18 civil penalties as a representative for and on behalf of the State of California in a representative
19 capacity, as provided by the PAGA to the extent permitted by law, as an aggrieved non-exempt
20 employee. Plaintiff is an aggrieved employee and has standing to bring a representative action on
21 behalf of the State of California and the LWDA as a private attorney general.

22 3. Plaintiff asserts claims for civil penalties as a representative of the State of California, as
23 authorized by the Private Attorneys General Act of 2004 ("PAGA"), and to the extent permitted by
24 law, on behalf of aggrieved employees who held the positions identified herein and suffered one or
25 more of the violations alleged. Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

26 4. Plaintiff seeks to represent all current and former non-exempt Personalized Living
27 Assistants, Homemakers, Companions, and Registered Home Care Aides of Defendants in California
28 who suffered one or more of the alleged violations ("aggrieved employees") during the period one

1 year and 65 days before this Complaint is filed until the start of trial in this matter (“PAGA Period”).

2 5. Pursuant to the Court’s Public Notice dated March 17, 2020 and all subsequent notices
3 thereto, including the notice dated June 2, 2020, any day during the time period of March 20, 2020 to
4 and including May 29, 2020 is considered a holiday for purposes of computing the for filing papers
5 with the court pursuant to Code of Civ. Proc. §§ 12 and 12(a). Accordingly, the PAGA Period is
6 defined as the one year and sixty-five (65) days preceding the filing of this complaint, including those
7 days in which the Court has declared as holidays, or March 30, 2019, until the commencement of trial
8 in this matter. Moreover, the statute of limitations for this matter was tolled pursuant to Cal. Rules of
9 Court, Appendix I, Emergency Rule No. 9.

10 II.

11 JURISDICTION AND VENUE

12 6. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure
13 section 395. Defendants conduct business and commit Labor Code violations in Riverside County,
14 and each Defendant or DOE is within California for service of process. The unlawful acts alleged have
15 a direct effect on aggrieved employees within California and within Riverside County.

16 7. This Court has jurisdiction over Plaintiff’s claims because Defendants regularly conduct
17 business in California; are alleged to have violated the law in California; Plaintiff’s claims raise no
18 federal question; and, PAGA civil penalty actions are not subject to federal jurisdiction.

19 8. This Court has jurisdiction over Plaintiff’s and other aggrieved employees’ claims under
20 Labor Code sections 2698, *et seq.*

21 9. On information and belief, the California Superior Court has primary and original
22 jurisdiction in this matter because there is no federal question at issue, as the issues herein are based
23 solely on California statutes and law, including the California Labor Code, Industrial Welfare
24 Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions
25 Code.

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1 **III.**

2 **THE PARTIES**

3 **A. Plaintiff**

4 10. Plaintiff Mary Romo is over the age of eighteen (18) and was at all relevant times a
5 California resident. From approximately October 17, 2108 through June 6, 2019, Claimant worked as
6 a Personalized Living Assistant/Homemaker/Companion/Registered Home Care Aide, classified as a
7 non-exempt employee in Defendants' personalized living facility location in Rancho Mirage,
8 California in the County of Riverside.

9 **B. Defendants**

10 11. Plaintiff is informed, believes, and alleges BKD PERSONAL ASSISTANCE SERVICES,
11 LLC is a Delaware Limited Liability Company and has conducted business, and employed Plaintiff and
12 other aggrieved employees during the PAGA Period, in the County of Riverside.

13 12. Plaintiff is informed, believes, and alleges BROOKDALE SENIOR LIVING
14 COMMUNITIES, INC. is a Delaware Corporation and has conducted business, and employed Plaintiff
15 and other aggrieved employees during the PAGA Period, in the County of Riverside.

16 13. The true names and capacities, whether individual, corporate, associate, or otherwise, of
17 Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues Defendants by
18 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and
19 alleges, each DOE Defendant is legally responsible in some manner for the unlawful acts alleged.
20 Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE
21 Defendants when they become known.

22 14. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this
23 action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of
24 each Defendant are legally attributable to the other Defendants.

25 **IV.**

26 **GENERAL ALLEGATIONS**

27 15. During the PAGA Period, Defendants conducted business in California and Riverside
28 County, and employed Plaintiff and other aggrieved employees in the State of California.

1 16. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants worked
2 under the same policies, practices, and procedures relating to their employment.

3 17. Responsibilities for Plaintiff and other aggrieved employees include, among other things,
4 assisting clients with daily living activities, including bathing, dressing, grooming, medication, and
5 meals.

6 18. Plaintiff and other aggrieved employees must remain available at all times to perform
7 their responsibilities and job duties.

8 19. During the PAGA Period, Defendants subjected Plaintiff and other aggrieved employees
9 to a uniform policy and practice of unlawful time rounding, resulting in the underpayment of wages,
10 including minimum, regular and overtime wages, on a systematic basis. This rounding policy was not
11 neutral on its face or in application and resulted in a cumulative loss of time and wages to Claimant
12 and other aggrieved employees.

13 20. During the PAGA Period, Plaintiff and other aggrieved employees were not provided
14 duty-free 30-minute meal periods for shifts of five hours or more, which began before the end of the
15 fifth hour of work, pursuant to the Labor Code, IWC Wage Order 15-2001, and all other applicable
16 Wage Orders, or paid compensation in lieu thereof in the amount of one hour of pay at their regular
17 rate of pay. Furthermore, Plaintiff and other aggrieved employees regularly worked shifts of more than
18 10 hours per day and were not provided with a second off-duty meal period of 30 minutes for each
19 shifts of more than 10 hours. Plaintiff contends that due to the demand of the job, Defendants required
20 her and other aggrieved employees to be available at all times during their shift, including during meal
21 periods, to respond as needed to work-related issues. Accordingly, any meal periods taken were on-
22 duty and should have been paid.

23 21. During the PAGA Period, Plaintiff and other aggrieved employees were not authorized
24 or permitted to take duty-free 10-minute rest periods for work periods of four (4) hours or major
25 fractions, pursuant to the Labor Code, IWC Wage Order 15-2001, and all other applicable Wage
26 Orders, paid compensation in lieu thereof in the amount of one hour of pay at their correct regular rate
27 of pay including all wage compensation during the pay period. Furthermore, Plaintiff and other
28 aggrieved employees regularly worked shifts of more than 10 hours per day and were not provided

1 with a third duty-free rest period of 10-minutes for each shifts of more than 10 hours. Plaintiff contends
2 that due to the demand of the job, Defendants required her and other aggrieved employees to be
3 available at all times during their shift, including during rest periods, to respond as needed to work-
4 related issues. Accordingly, any rest periods taken were on-duty and non-compliant.

5 22. During the PAGA Period, Defendants knowingly and willfully failed to provide accurate
6 itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among
7 other things, the total number of hours worked and/or wages due. Additionally, because Defendants'
8 failed to compensate Plaintiff and other aggrieved employees for all hours worked and for any non-
9 compliant meal or rest period, the itemized wage statements provided by Defendants to Plaintiff and
10 other aggrieved employees were inaccurate. As a result, the wage statements that Defendants furnished
11 to Plaintiff and other aggrieved employees were incomplete and inaccurate and fail to comply with the
12 requirements of Labor Code section 226(a).

13 23. During the PAGA Period, Defendants had a consistent policy and practice of failing to
14 timely compensate Plaintiff and other aggrieved employees for all wages owed during and upon
15 separation of employment, in violation of California state wage and hour laws.

16 24. During the PAGA Period, Defendants had a consistent policy of failing to timely pay
17 Plaintiff and other aggrieved employees all vested vacation wages due at termination, in violation of
18 California state wage and hour laws.

19 25. By requiring Plaintiff and other aggrieved employees to work off-the-clock, including by
20 requiring them to work while clocked out for meals, Defendants did not keep required records showing
21 the accurate number of daily hours worked and wages earned by Plaintiff and aggrieved employees.

22 26. For purposes of this action, Plaintiff, as a representative of the State of California, will
23 seek to invoke Labor Code section 1195.5 which states: "The Division of Labor Standards
24 Enforcement shall determine, upon request, whether the wages of employees, which exceed the
25 minimum wages fixed by the commission, have been correctly computed and paid. For this purpose,
26 the division may examine the books, reports, contracts, payrolls and other documents of the employer
27 relative to the employment of employees. The division shall enforce the payment of any sums found,
28 upon examination, to be due and unpaid to the employees."

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

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

13 29. Pursuant to California Labor Code section 558(a), “Any employer or other person acting
14 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
16 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
17 underpaid employee for each pay period for which the employee was underpaid in addition to an
18 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars
19 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
20 addition to an amount sufficient to recover underpaid wages.” Plaintiff seeks only to recover the civil
21 penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover
22 underpaid wages.

23 30. Pursuant to California Labor Code section 558.1, Defendants are employers of Plaintiff,
24 and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused to be violated, any
25 provision regulating minimum wages or hours and days of work in the applicable order of the Industrial
26 Welfare Commission, as well as California Labor Code sections 201, 202, 203, 226, 510, 512, 558, 1194,
27 1197.1, and 1198, and as such, are liable as an employer of Plaintiff and other aggrieved employees
28 employed in the State of California.

31. Plaintiff, as a representative of the general public and State of California, seeks to recover all civil penalties under the PAGA, Labor Code sections 2699 and 2699(f)(2), for violations of sections 201-204, 226, 226.3, 226.7, 227.3, 510, 512, , 1174, 1174.5, 1194, 1194.2, 1197, and 1198 shown to have occurred, in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. The funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered distributed to the LWDA on and 25% distributed to the aggrieved employees, subject to Court approval.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
**CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES**
[Labor Code §§ 2698, *et seq.*]

32. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

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

34. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

35. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this 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 Section 2699.3.”

36. “For all provisions of this code except those for which a civil penalty is specifically

1 provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at
2 the time of the alleged violation, the person employs one or more employees, the civil penalty is one
3 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”
5 Labor Code section 2699(f)(2).

6 37. Labor Code section 2699.5 provides, in pertinent part that “provisions of subdivision (a)
7 of Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] ...1194,
8 1194.1” and allow for recovery of civil penalties pursuant to the PAGA.

9 38. During all or a substantial part of the PAGA Period, Defendants failed to pay minimum,
10 regular, and overtime wages for all hours worked in excess of 8 hours per day and/or 40 hours per
11 week and all hours subject to Defendants’ control. Specifically, Plaintiff and other aggrieved
12 employees were required to remain under the Defendants’ control during meal and rest periods without
13 being paid any compensation, including minimum, regular, or overtime wages for hours worked
14 during on-duty meal periods. To the extent these unpaid hours worked were overtime hours,
15 Defendants failed to pay overtime premium wages.

16 39. As a result of Defendants’ failure to pay overtime wages for hours worked in excess of
17 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
18 eight hours worked on the seventh day of work in any one workweek, Defendants, and each of them,
19 are liable for civil penalties within the applicable limitations period of Labor Code section 2699(f)(2)
20 for violations of Labor Code sections 1194 and 1194.2 in the amount of \$100 for each aggrieved
21 employee per pay period for the initial violation and \$200 for each subsequent violation, for
22 Defendants’ failure to pay Plaintiff and other aggrieved employees overtime wages.

23 40. Pursuant to California Labor Code section 558(a), “Any employer or other person acting
24 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
26 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
27 underpaid employee for each pay period for which the employee was underpaid in addition to an
28 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars

1 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
2 addition to an amount sufficient to recover underpaid wages.” Plaintiff seeks only to recover the civil
3 penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover
4 any underpaid wages.

5 41. Defendants’ conduct also violates Wage Order 15-2001 by failing to pay minimum and
6 overtime wages to employees.

7 42. Plaintiff, as a representative of the general public, will and does seek to recover any and
8 all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code shown
9 to exist or to have occurred, in an amount according to proof, as to those penalties that are otherwise
10 only available in public agency enforcement actions. Funds will be distributed in accordance with the
11 PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf of the
12 State of California. The exact amount of the applicable penalty is all in an amount to be shown according
13 to proof at trial.

14 **SECOND CAUSE OF ACTION**
15 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE MEAL**
16 **PERIODS**
17 **[Labor Code §§ 2698, *et seq.*]**

18 43. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

19 44. Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an
20 employee for a work period of more than five hours per day without providing the employee with a
21 meal period of not less than 30 minutes. An employer may not employ an employee for a work period
22 of more than 10 hours per day without providing the employee with a second meal period of not less
23 than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee
24 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
25 Commission.

26 45. Labor Code section 226.7(b)(c) provides: “An employer shall not require an employee
27 to work during a meal period mandated pursuant to an applicable statute, or applicable regulation,
28 standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health.”

46. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee a

1 meal period in accordance with a state law...the employer shall pay the employee one additional hour
2 of pay at the employee's regular rate of compensation for each workday that the meal or rest or
3 recovery period is not provided."

4 47. During the PAGA Period, Plaintiff and other aggrieved employees were not provided
5 with legally compliant, off-duty meal periods. Defendants required Plaintiff and other aggrieved
6 employees to remain available to respond to work-related issues, including during meal periods. As
7 such, Plaintiff and other aggrieved employees remained subject to the control of Defendants and were
8 therefore not provided with off-duty and uninterrupted meal periods, as required under California law.

9 48. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30)
10 minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of work, and
11 failing to pay employees one hour of pay at their regular rate of pay for each workday a meal period
12 was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage
13 Order 15-2001.

14 49. By failing to provide a second off-duty and uninterrupted meal period of at least thirty
15 (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their
16 regular rate of pay for each eligible workday a second meal period was not provided, Defendants
17 willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage Order 15-2001.

18 50. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
19 Code for which there is no corresponding civil penalty, including Labor Code section 226.7. The civil
20 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
21 employee. Labor Code § 2699(f)(2).

22 51. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
23 2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation, according to proof, as to
24 those penalties otherwise only available in public agency enforcement actions. Funds will be
25 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed
26 to the LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in
27 an amount to be shown according to proof at trial.

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THIRD CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE REST PERIODS
[Labor Code §§ 2698, *et seq.*]

52. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

53. The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

54. Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

55. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with legally compliant, duty-free rest periods. Defendants required Plaintiff and other aggrieved employees to remain available to respond to work-related issues at all times including during rest periods. As such, Plaintiff and other aggrieved employees remained subject to the control of Defendants and were therefore not provided with *duty-free* rest periods, as required under California law.

56. By failing to authorize and permit Plaintiff to receive a duty-free rest period of at least 10 minutes for every four (4) hours or major fraction thereof worked per day, and by failing to provide premium wages at the regular rate of pay when these periods were not permitted or authorized, Defendants willfully violated Labor Code section 226.7 and Wage Order 15-2001.

57. By failing to provide a third duty-free rest period of at least thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their regular rate of pay for each eligible workday a third rest period was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage Order 15-2001.

58. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor

Code for which there is no corresponding civil penalty, including Labor Code section 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

59. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds will be distributed in accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

FOURTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE STATEMENTS
[Labor Code §§ 2698, *et seq.*]

60. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

61. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages earned... ..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...”

62. Due to Defendants’ failure to pay for all hours worked and all meal and rest periods premiums as required by the Labor Code, the wages and hours worked listed on each wage statement provided to Plaintiff and other aggrieved employees were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants’ actions were intentional and willful.

63. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Labor Code section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Division of Labor Standards Enforcement (“DLSE”). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section 226.

64. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The

1 civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

2 65. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
3 2699(f)(2) penalties for each Labor Code section 226 violation, according to proof, as to those
4 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
5 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
6 behalf of the State of California.

7 **FIFTH CAUSE OF ACTION**
8 **PAGA CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
9 **WAGES DUE DURING EMPLOYMENT**
10 **[Labor Code §§ 2698, *et seq.*]**

11 66. Plaintiff incorporates all preceding paragraphs of this Complaint.

12 67. Labor Code section 204(a) requires employers to pay wages earned by employees within
13 strict time requirements. Defendants had a policy, practice, and procedure of willfully failing to pay
14 the earned wages of Defendants' employees twice during each calendar month, on days designated in
15 advance by the employer as the regular paydays.

16 68. Defendant failed to pay Plaintiff and other aggrieved employees all minimum, regular,
17 and overtime wages and all meal and rest period premium wages during their employment, as required
18 by Labor Code sections 204.

19 69. Labor Code sections 2698, *et seq.* impose upon Defendants, and each of them, a penalty
20 of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
21 and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation
22 of Labor Code sections 204, and 1198.

23 70. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
24 Code for which there is no corresponding civil penalty, including Labor Code section 203. The civil
25 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
26 employee. Labor Code § 2699(f)(2).

27 71. Plaintiff, as a representative of the general public, seeks to recover all penalties under
28 Labor Code section 2699(f)(2) for each and every violation of Labor Code section 204(a), in an amount
according to proof, as to those penalties that are otherwise only available in public agency enforcement
actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties

1 recovered provided to the LWDA on behalf of the State of California.

2 **SIXTH CAUSE OF ACTION**
3 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
4 **WAGES DUE UPON SEPARATION**
5 **[Labor Code §§ 2698, *et seq.*]**

6 72. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

7 73. Labor Code sections 201-203 require employers to pay wages earned by employees
8 within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing
9 to pay the earned wages of Defendants' former employees. If an employer willfully fails to timely and
10 fully pay all final wages the employer must, as a penalty, continue to pay an employee's wages for 30
11 days, or until the back wages are paid in full.

12 74. Defendants failed to pay Plaintiff and other aggrieved employees who ended their
13 employment with the Defendant all wages, including minimum, overtime, and meal and rest period
14 premium wages, as required by Labor Code sections 201-203.

15 75. Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in
16 an amount not exceeding 30 day's pay as waiting time under the terms of Section 203."

17 76. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
18 Code for which there is no corresponding civil penalty, including Labor Code section 203. The civil
19 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
20 employee. Labor Code § 2699(f)(2).

21 77. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
22 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to proof, as to those
23 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
24 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
25 behalf of the State of California.

26 **SEVENTH CAUSE OF ACTION**
27 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PAY VACATION**
28 **WAGES**
[Labor Code §§ 2698, *et seq.*]

78. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

79. Labor Code section 227.3 states: "Unless otherwise provided by a collective-bargaining
agreement, whenever a contract of employment or employer policy provides for paid vacations, and

1 an employee is terminated without having taken off his vested vacation time, all vested vacation shall
2 be paid to him as wages at his final rate in accordance with such contract of employment or employer
3 policy respecting eligibility or time served; provided, however, that an employment contract or
4 employer policy shall not provide for forfeiture of vested vacation time upon termination.”

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

11 81. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for
12 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
13 provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
15 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
16 for each subsequent violation.”

17 82. At all relevant times, Plaintiff and other aggrieved employees were not paid all vested
18 vacation wages upon termination of employment. During Plaintiff’s employment, Plaintiff was
19 entitled to paid time off/vacation time which was not paid out in full upon separation of employment.
20 On information and belief, Defendants failed to pay all vested vacation wages due upon separation of
21 employment to other aggrieved employees. Furthermore, because Defendants failed to accurately
22 record all hours worked, including hours worked during meal periods, the vested vacation provided to
23 Plaintiff and other aggrieved employees was not accurate nor based on the accurate number of hours
24 worked.

25 83. Defendants’ conduct violates Labor Code section 227.3.

26 84. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
27 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

28 85. Plaintiff, as a representative of the general public, seek to recover all Labor Code section

1 2699(f)(2) penalties for each Labor Code section 227.3 violation, according to proof, as to those
2 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
3 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
4 behalf of the State of California.

5 **EIGHTH CAUSE OF ACTION**
6 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
7 **[Labor Code §§ 2698, *et seq.*]**

8 86. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

9 87. Labor Code section 1174(d) states: “Every person employing labor in this state shall:
10 Keep, at a central location in the state or at the plants or establishments at which employees are
11 employed, payroll records showing the hours worked daily by and the wages paid to employees
12 employed at the respective plants or establishments. These records shall be kept in accordance with
13 rules established for this purpose by the commission, but, in any case shall be kept on file for not less
than three years.”

14 88. Labor Code section 1174.5 states “Any person employing labor who willfully fails to
15 maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject
16 to a civil penalty of five hundred dollars.”

17 89. IWC Wage Order 15-2001, section 7 obligates an employer to keep accurate information
18 of wages earned and paid including applicable overtime, rest period and gratuity wages. IWC Wage
19 Order 15-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate
20 information with respect to each employee including the following: ... (3) Time records showing when
21 the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours
22 worked shall also be recorded.”

23 90. During all or a substantial portion of the PAGA Period, Defendants failed to maintain
24 accurate records showing the accurate number of hours works.

25 91. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and
26 other aggrieved employees, for civil penalties as required by Labor Code section 1174(d) or, in the
27 alternative, section 2699(f)(2).

28 92. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an

1 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

2 93. Plaintiff, as a representative of the general public, will and does seek to recover any and
3 all civil penalties for each and every violation, in an amount according to proof, as to those penalties
4 that are otherwise only available in public agency enforcement actions. Civil penalties recovered will
5 be distributed in accordance with the PAGA, with 75% of civil penalties recovered provided to the
6 LWDA on behalf of the State of California.

7 **PRAYER FOR RELIEF**

8 Plaintiff prays for judgment as follows:

9 A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff
10 and his counsel be provided with all enforcement capability as if the action were brought by the
11 California Division of Labor Standards Enforcement;

12 B. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid
13 minimum, regular, and overtime wages pursuant to Labor Code section 1194, according to proof;

14 C. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid meal
15 period premiums earned pursuant to Labor Code section 226.7, according to proof;

16 D. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid rest
17 period premiums earned pursuant to Labor Code section 226.7, according to proof;

18 E. For recovery of civil penalties permitted by Labor Code section 2699, for inaccurate
19 itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

20 F. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for failing to
21 timely pay all wage due pursuant to Labor Code section 204(a).

22 G. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to
23 timely pay all final wages due pursuant to Labor Code sections 201-202;

24 H. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to
25 pay statutory waiting time penalties due pursuant to Labor Code section 203;

26 I. For recovery of all civil penalties as permitted by Labor Code section 2699, for unpaid
27 vacation wages owed pursuant to Labor Code section 227.3, according to proof;

28 J. For Pre-Judgment and Post-Judgment interest;

1 K. For the Plaintiff to be recognized by the Court as serving as a Representative of the
2 LWDA, that he has suffered sufficient harm to be deemed and “aggrieved employees” and to proceed
3 in this PAGA Action, and to be awarded some form of enhanced compensation for bringing this action
4 should he prevail and provide benefit to the State of California or other “aggrieved employees,” subject
5 to the Court’s discretion;

6 L. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to California
7 Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including Code of Civil
8 Procedure section 1021.5; and,

9 M. Such other relief as this Court deems necessary, just, equitable, and proper.

10 COHELAN KHOURY & SINGER
11 LAW OFFICES OF SAHAG MAJARIAN II

12
13 Dated: June 26, 2020

14 By: 

Michael Singer, Esq.

Marta Manus, Esq.

15 Attorneys for Plaintiff Mary Romo, on behalf of herself
16 and as representative for the State of California on behalf
17 of all other aggrieved employees
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLCSM
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
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(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

January 24, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

BKD Personal Assistance Services, LLC
111 Westwood Place, Suite 400
Brentwood, TN 37027

BKD Personal Assistance Services, LLC
c/o CSC- Lawyers Incorporating Service
2710 Gateway Oak Drive, Suite 150N
Sacramento, CA 95833

Brookdale Senior Living Communities, Inc.
111 Westwood Place, Suite 400
Brentwood TN 37027

Brookdale Senior Living Communities, Inc.
c/o CSC- Lawyers Incorporating Service
2710 Gateway Oak Drive, Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Mary Romo on behalf of herself and all other aggrieved employees of BKD Personal Assistance Services, LLC and Brookdale Senior Living Communities, Inc. in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator, BKD Personal Assistance Services, LLC, and Brookdale Senior Living Communities, Inc.:

Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698, *et seq.* ("PAGA"), Mary Romo ("Claimant") intends to bring an action against BKD Personal Assistance Services, LLC and/or Brookdale Senior Living Communities, Inc. (collectively, "Employer" or "Defendant"), on behalf of herself and all other aggrieved non-exempt employees employed by Defendant in California for alleged violations of Labor Code sections 201, 202, 203, 204, 218, 226, 226.3, 226.7, 246, 256, 227.3, 351, 558, 558.1, 1194, 1197, 1197.1, 1198, 1199(c), and 2802. This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(A)(1) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein.

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of herself and all other aggrieved employees of the Defendant, seeking civil penalties on behalf of herself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to Defendant by certified mail at the addresses above.

FACTUAL STATEMENT

Brookdale Senior Living Communities, Inc. operates over 750 senior living communities in 45 states, including 61 communities in California. Brookdale's communities include independent living; assisted living; memory care; skilled nursing home facilities; continuing care retirement; and health care services.

From approximately October 17, 2108 through June 6, 2019, Claimant worked as a Personalized Living Assistant/Homemaker/Companion/Registered Home Care Aide, classified as a non-exempt employee. Claimant's job duties included, among other things, assisting clients with daily living activities, including bathing, dressing, grooming, medication, and meals. Due to the demands of the job, Claimant was not provided with legally compliant meal and rest periods as required by Labor Code sections 226.7 and 512. Claimant frequently missed or had to forego meal and rest breaks or was otherwise not provided with the opportunity to take duty-free meal and rest breaks.

Additionally, Claimant alleges that she and other non-exempt employees were not paid all wages for hours worked including regular, minimum, and overtime wages. Defendant subjected all non-exempt hourly employees, including Claimant, to a uniform policy and practice of unlawful time rounding, resulting in the underpayment of wages, including minimum, regular and overtime wages, on a systematic basis. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time and wages to Claimant and other aggrieved employees. Despite being readily capable and able to use clock-based-time for all "hours worked," Defendant disregarded actual work time and issued pay checks and wages statements that systematically used rounding as a basis to underpay its employees. This resulted in underpayment for all straight-time and overtime worked (including double-time hours).

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of herself and all other non-exempt employees who were employed by Employer in California and suffered one or more of the alleged violations:

1. Failure to pay all wages for hours worked including regular, minimum, and overtime wages;
2. Failure to provide Claimant and other aggrieved employees with off-duty meal periods of not less than thirty (30) minutes on work periods of more than five (5) hours per day and failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided;
3. Failure to provide Claimant and other aggrieved employees with duty-free rest periods of ten (10) minutes net rest time on work periods of more than three and a half (3 ½) hours per day and failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided;

4. Failure to maintain accurate records including records showing the accurate start and end times of meal periods;
5. Failure to provide accurate itemized wage statements; and
6. Failure to timely pay all wages upon separation of employment, including paid time off.

Accordingly, Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 226.2, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 218 states: "Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article."

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." [emphasis added.]

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code section 2699.5 and 2699(f)(2), provides that: "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1197.1 states: "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless ..."

Pursuant to the "Hours & Days of Work" Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the "Minimum Wages" and "Hours & Days of Work" Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

At all relevant times at least one year prior to the date of this Notice, Employer subjected all non-exempt hourly employees, including Claimant, to a uniform policy and practice of unlawful time rounding, resulting in the underpayment of wages, including minimum, regular and overtime wages, on a systematic basis. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time and wages to Claimant and other aggrieved employees. Despite being readily capable and able to use clock-based-time for all “hours worked,” Defendant disregarded actual work time and issued pay checks and wages statements that systematically used rounding as a basis to underpay its employees. This resulted in underpayment for all straight-time and overtime worked (including double-time hours).

The Employer violated Labor Code sections 218, 510, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked as a result of its unlawful rounding system.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Claimant and other aggrieved non-exempt employees regularly worked shifts of more than 5 hours per workday. Despite working for more than 5 hours per workday, Defendant failed to provide Claimant and other aggrieved employees with off-duty meal periods and duty-free rest periods on eligible workdays. Furthermore, Defendant regularly failed to provide a legally compliant meal period before the end of the fifth hour of work, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including their right to a second meal period on eligible workdays. Defendant failed to pay premium compensation in the form of a meal and/or rest period premium for eligible workdays on which a compliant meal period and/or rest period was not provided to Claimant and other aggrieved employees. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods on eligible workdays.

During Claimant's employment, Defendant failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free, paid rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, Defendant failed to consistently pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (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.

Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement."

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

The wage statements issued by Defendant are inaccurate and do not correctly reflect the total hours worked. For example, Defendant included meal premium penalties in the total hours worked. Furthermore, due to Defendant's failure to pay all wages due at all times during Claimant's employment, including minimum, regular, or overtime for all hours worked in excess of 8 hours in a given workday, due in part to Defendant's unlawful rounding practice, Defendant violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. As such, the wage statements issued by Defendant fail to inform of the accurate number of hours worked and accurate total wages due and earned.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: "Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years."

Labor Code section 1174.5 states "Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars."

IWC Wage Order 15-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 15-2001, section 7(A)(3) states in pertinent part: "Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded."

Defendant failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order.

FAILURE TO PAY VEST VACATION WAGES

(Labor Code §§ 227.3)

Labor Code section 227.3 provides, “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

During Claimant’s employment, Claimant was entitled to paid time off/vacation time. At the time of Claimant’s termination of employment, Defendant failed to pay Claimant her accrued but unused paid time off, in violation of Labor Code section 227.3.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, 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. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under

this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, Defendant failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal/rest period premiums, and regular, minimum, and overtime wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Claimant’s employment with Defendant ended on June 6, 2019. However, Defendant did not pay Claimant her final wages until June 21, 2019. As a result, Defendant violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Defendant underpaid Claimant and other aggrieved non-exempt employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay overtime wages as required by Labor Code sections 226.7, 510, 512 and sections 3, 11, and 12 of the applicable IWC Wage Order. As a result, the Defendant is liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for herself and other current and former non-exempt employees, including recovery of attorney's fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Defendant failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of herself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

California LWDA
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ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Defendant is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Defendant's unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



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