

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 **SCOTT COLE & ASSOCIATES, APC**
4 555 12th Street, Suite 1725
5 Oakland, California 94607
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: scole@scalaw.com
9 Email: lvannote@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff
12 and Aggrieved Employees

13
14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN DIEGO**

16 MILDRED ARRIAGA individually, and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 ACTIVCARE LIVING, INC., and DOES 1
21 through 100, inclusive,

22 Defendants.

Case No. 37-2020-00012644-CU-OE-CTL

PAGA REPRESENTATIVE ACTION

**FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR CIVIL
PENALTIES**

[CAL. LAB CODE § 2699]

[JURY TRIAL DEMANDED]

23 Representative Plaintiff alleges as follows:

24 **INTRODUCTION**

25 1. This is a representative action seeking civil penalties under the Labor Code Private
26 Attorneys General Act of 2004, codified as California Labor Code §§ 2698 *et seq.* (“PAGA”).

27 2. Plaintiff Mildred Arriaga (“Representative Plaintiff” or “Plaintiff”) brings this
28 action individually as an aggrieved employee and on behalf of all other persons similarly situated
 (“Aggrieved Employees”) who are or have been employed by defendant ActivCare Living, Inc.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 08:00:00 AM
Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

1 and/or Does 1 through 100, inclusive (collectively “Defendants”) as non-exempt medical care
2 providers within the State of California at any time after March 6, 2019.

3 3. The “Relevant Time Period” is designated as the time from March 6, 2019 through
4 the date of trial, based upon the allegation that the violations of California’s wage and hour laws,
5 as described more fully below, have been ongoing throughout that time.

6 4. During the claims period, Defendants have had a consistent policy of (1) unlawfully
7 denying Aggrieved Employees statutorily-mandated meal and rest periods, (2) willfully failing to
8 provide Aggrieved Employees with accurate semimonthly itemized wage statements reflecting the
9 total number of hours each worked, the applicable deductions, and the applicable hourly rates in
10 effect during the pay period, and (3) willfully failing to pay compensation in a prompt and timely
11 manner to those Aggrieved Employees whose employment with Defendants has terminated.

12 5. Defendants operate nursing/assisted living facilities within California for which
13 Representative Plaintiff worked as a caregiver. The Representative Plaintiff is informed and
14 believes and, on that basis, alleges that, within the relevant time period, Defendants employed
15 scores, if not hundreds, of individuals in California to perform these services, employment
16 positions which did not, and currently do not, meet any known test for exemption from the payment
17 of overtime wages and/or the entitlement to meal or rest periods.

18 6. Despite actual knowledge of these facts and legal mandates, Defendants have and
19 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
20 by electing not to sufficiently offer rest periods to Aggrieved Employees and by not providing
21 them all pay when due and/or when certain Aggrieved Employees’ employment with Defendants
22 terminated.

23 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
24 Defendants’ officers knew of these facts and legal mandates yet, nonetheless, repeatedly
25 authorized and/or ratified the violation of the laws cited herein.

26 8. Despite Defendants’ knowledge of Plaintiff’s and Aggrieved Employees’
27 entitlement to these benefits of employment, Defendants failed to provide the same, in violation
28 of California state statutes, the applicable California Industrial Welfare Commission Wage Order,

1 and Title 8 of the California Code of Regulations. This action is brought to redress and end this
2 prolonged pattern of unlawful conduct once and for all.

3
4 **JURISDICTION AND VENUE**

5 9. This Court has jurisdiction over Plaintiff's and Aggrieved Employees' claims for civil penalties
6 sought herein under the California Labor Code §§ 2698 *et seq.*

7 10. Venue as to Defendants is proper in this judicial district pursuant to California Code
8 of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County
9 where Plaintiff and numerous Aggrieved Employees worked, transacts business, has agents, and
10 is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts
11 alleged herein have had a direct effect on Representative Plaintiff and those similarly situated
12 within the State of California and within this County.

13
14 **PLAINTIFF**

15 11. Representative Plaintiff is a natural person who was employed by Defendants as a caregiver during
16 the Relevant Time Period. At all times herein relevant, Plaintiff was and is now an individual
17 within the category of Aggrieved Employees further described and defined herein.

18 12. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted
19 and statutorily-mandated meal and rest periods, as well as other benefits of employment as set
20 forth herein.

21 13. As used throughout this Complaint, the term "Aggrieved Employees" refers to the
22 named Plaintiff herein as well as each and every person employed by Defendants in California as
23 a non-exempt employee during the Relevant Time Period.

24 14. Plaintiff brings this action individually and as a representative action, pursuant to
25 California Labor Code §§ 2699, on behalf of all Aggrieved Employees similarly situated and
26 proximately damaged by the unlawful conduct described herein.

DEFENDANTS

15. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants (including the Doe defendants) did business within the State of California providing nursing/assisted living services.

16. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and the Aggrieved Employees within the State of California.

17. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants were responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the damages, as herein alleged, were proximately caused thereby.

18. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

REPRESENTATIVE ALLEGATIONS

19. The Representative Plaintiff brings this action as a representative action on behalf of the following category of Aggrieved Employees:

Non-Exempt Employees

“All persons employed by Defendants as non-exempt medical care providers in California on or after March 6, 2019.”

20. Defendants' officers and directors are excluded from the category of Aggrieved Employees defined in the preceding paragraph.

COMMON FACTUAL ALLEGATIONS

21. As described herein, for years, Defendants have knowingly failed to properly compensate Plaintiff and the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to, compensation for missed meal and/or rest periods). Moreover, Defendants have failed to provide Plaintiff and the Aggrieved Employees with net ten-minute rest periods for work shifts exceeding four hours or a major fraction thereof. Defendants have declined to pay these wages, even upon an Aggrieved Employee's termination or resignation from employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days have passed since certain Aggrieved Employees have left Defendants' employ.

22. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are entitled to penalties pursuant to Labor Code §§ 2698 *et seq.* for violations described above including missed rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are also entitled to recover attorneys' fees, litigation costs, and restitution of ill-gotten gains, pursuant to statute.

23. Representative Plaintiff has complied with the procedures for bringing suit (as specified in California Labor Code § 2699.3) necessary to maintain a civil action against Defendants for violation of (and/or recovery under) California's Private Attorneys General Act. On March 6, 2020, Representative Plaintiff served and filed a notice upon the Labor and Workforce Development Agency in compliance with Labor Code §§ 2699, *et seq.*

FIRST CAUSE OF ACTION **PRIVATE ATTORNEYS GENERAL ACT CLAIM** **(California Labor Code §§ 2699)**

24. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

1 25. California Labor Code § 2699(a) provides, in pertinent part:

2 Notwithstanding any other provision of the law, any provision of this code
3 that provides for a civil penalty to be assessed and collected by the Labor
4 and Workforce Development Agency or any of its departments, divisions,
5 commissions, boards, agencies, or employees, for a violation of this code,
6 may, as an alternative, be recovered through a civil action brought by an
7 aggrieved employee on behalf of himself or herself and other current or
8 former employees. . .

9 26. Representative Plaintiff and each and every other Aggrieved Employee working for
10 Defendants within one year of Representative Plaintiff's exhaustion of its administrative
11 prerequisites under the California Private Attorneys General Act are "aggrieved employees," as
12 defined by California Labor Code § 2699(c), because they were employed by Defendants and were
13 among the employees against whom violations of law were committed.

14 27. Representative Plaintiff has met all of the requirements set forth in California Labor
15 Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or
16 recovery under) California's Private Attorneys General Act.

17 28. Representative Plaintiff brings this action individually and on behalf of all
18 Aggrieved Employees alleging violations of the California Labor Code provisions cited in the
19 preceding paragraphs.

20 29. As a direct and proximate result of Defendants' unlawful conduct, as set forth
21 herein, Representative Plaintiff and Aggrieved Employees are entitled to recover penalties as
22 provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs
23 and attorneys' fees, pursuant to statute.

24 **RELIEF SOUGHT**

25 **WHEREFORE, the Representative Plaintiff**, individually and on behalf of the
26 Aggrieved Employees, prays for judgment and the following specific relief against Defendants,
27 and each of them, jointly and separately, as follows:

28 1. That the Court declare, adjudge, and decree that this action is a proper
representative action pursuant to California Labor Code § 2699;

2. That the Court make an award of civil penalties for violations of the California Labor Code, pursuant to California Labor Code § 2699;

3. For reasonable attorneys' fees, pursuant to California Labor Code § 2699(g) and/or California Code of Civil Procedure § 1021.5;

4. For costs of suit and any and all such other relief as the Court deems just and proper; and

5. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff and the Aggrieved Employees hereby demand a trial by jury of all issues trial as of right by jury.

Dated: May 11, 2020

SCOTT COLE & ASSOCIATES, APC

By: 

Laura Van Note, Esq.
Attorneys for Representative Plaintiff
and Aggrieved Employees