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individually and on behalf of all others similarly situated

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Kern County Superior Court
By Vanesa Jackson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

LA TANYA CARR-OYESILE,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

REHABCARE GROUP OF
CALIFORNIA, LLC; REHABCARE
GROUP EAST, LLC; REHABCARE
GROUP MANAGEMENT SERVICES,
LLC; KINDRED REHAB SERVICES,
LLC; KINDRED HEALTHCARE
OPERATING, LLC; and DOES 1 through
20, inclusive,

Defendants.

Case No. BCV-20-100866

Assigned for all Purposes to:

Hon. Thomas S. Clark

Dept. 17

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff La Tanya Carr-Oyesile, individually and on behalf of others similarly situated,
2 alleges:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff La Tanya Carr-Oyesile (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants RehabCare Group of California, LLC; RehabCare Group East,
7 LLC; RehabCare Group Management Services, LLC; Kindred Rehab Services, LLC; Kindred
8 Healthcare Operating, LLC and DOES 1 through 20, inclusive (collectively, “Defendants”), on
9 behalf of herself individually and on behalf of non-exempt employees employed by Defendants
10 throughout California.

11 2. Defendants are in the business of providing healthcare services.

12 3. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and Industrial
14 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
15 unfair competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failing to pay all wages (including minimum wages and overtime wages);
- 19 (b) Failing to provide meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- 21 (d) Failing to provide accurate itemized wage statements;
- 22 (e) Failing to maintain accurate payroll records;
- 23 (f) Failing to timely pay all wages due during employment;
- 24 (g) Failing to pay all wages due upon separation of employment.

25 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
26 behalf of herself and all others similarly situated in California to recover, among other things,
27 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
28 to Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,

1 1194.2, 1197, 1198, and 2698 *et seq.*

2 **JURISDICTION AND VENUE**

3 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The
4 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
5 of the Superior Court and will be established according to proof at trial.

6 7. This Court has jurisdiction over this action pursuant to the California
7 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
8 causes except those given by statutes to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 8. This Court has jurisdiction over all Defendants because, upon information and
11 belief, they are citizens of California, have sufficient minimum contacts in California or
12 otherwise intentionally avail themselves of the California market so as to render the exercise of
13 jurisdiction over them by the California courts consistent with traditional notions of fair play
14 and substantial justice.

15 9. Venue is proper in this Court because, upon information and belief, Defendants
16 reside, transact business or have offices in this county or the acts and omissions alleged herein
17 took place in this county.

18 **THE PARTIES**

19 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
20 the Class Period in California.

21 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
22 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
23 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
24 and the State of California.

25 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
26 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
27 Complaint and serve such fictitiously named defendants once their names and capacities
28 become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

18. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

19. Plaintiff's proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the date of class certification.

1 20. Plaintiff also seeks to certify the following Subclass of employees:

2 Waiting Time Subclass

3 All members of the Class who separated their employment from Defendants
4 within three years prior to the filing of this action to the date of class certification.

5 21. Members of the Class and Subclass described above will be collectively referred
6 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
7 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
8 specific theories of liability.

9 22. This action has been brought and may properly be maintained as a class action
10 under the California Code of Civil Procedure § 382 because there are common questions of law
11 and fact as to the Class that predominate over questions affecting only individual members
12 including, but not limited to:

- 13 (a) Whether Defendants deprived Plaintiff and class members of all minimum and
14 overtime wages;
15 (b) Whether Defendants deprived Plaintiff and class members of timely meal periods;
16 (c) Whether Defendants deprived Plaintiff and class members of rest breaks;
17 (d) Whether Defendants failed to timely pay Plaintiff and former class members all
18 wages due upon termination or within 72 hours of resignation;
19 (e) Whether Defendants failed to furnish Plaintiff and class members with accurate,
20 itemized wage statements; and
21 (f) Whether Defendants engaged in unfair business practices in violation of Business
22 & Professions Code §§ 17200, *et seq.*

23 23. There is a well-defined community of interest in this litigation and the Class is
24 readily ascertainable:

- 25 (a) Numerosity: The members of the Class are so numerous that joinder of all
26 members is impractical. Although the members of the Class are unknown
27 to Plaintiff at this time, on information and belief, the Class is estimated to
28 be greater than 100 individuals. The identity of the class members are

1 readily ascertainable by inspection of Defendants' employment and payroll
2 records.

3 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
4 claims (or defenses, if any) of the Class because Defendants' failure to
5 comply with the provisions of California wage and hour laws entitled each
6 class member to similar pay, benefits and other relief. The injuries
7 sustained by Plaintiff are also typical of the injuries sustained by the Class
8 because they arise out of and are caused by Defendants' common course of
9 conduct as alleged herein.

10 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
11 and protect the interests of all members of the Class because it is in her best
12 interest to prosecute the claims alleged herein to obtain full compensation
13 and penalties due to her and the Class. Plaintiff's attorneys, as proposed
14 class counsel, are competent and experienced in litigating large
15 employment class actions and are versed in the rules governing class action
16 discovery, certification and settlement. Plaintiff has incurred and,
17 throughout the duration of this action, will continue to incur attorneys' fees
18 and costs that have been and will be necessarily expended for the
19 prosecution of this action for the substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort and expense as compared with separate lawsuits,
23 and will avoid inconsistent outcomes because the same issues can be
24 adjudicated in the same manner and at the same time for each Class. If
25 appropriate this Court can, and is empowered to, fashion methods to
26 efficiently manage this case as a class action.

27 (e) Public Policy Considerations: Employers in the State of California and
28 other states violate employment and labor laws every day. Current

1 employees are often afraid to assert their rights out of fear of direct or
2 indirect retaliation. Former employees are fearful of bringing actions
3 because they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class actions
5 provide the class members who are not named in the complaint with a
6 type of anonymity that allows for the vindication of their rights at the
7 same time as affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
10 persons as non-exempt employees.

11 25. Plaintiff was employed in a non-exempt position at Defendants' California
12 business location(s).

13 26. Defendants continue to employ non-exempt employees within California.

14 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
16 who were knowledgeable about California's wage and hour laws, employment and personnel
17 practices and the requirements of California law.

18 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive wages for all time
20 worked (including minimum and overtime wages and at the proper rate of pay). In violation of
21 the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages
22 (including minimum and overtime wages) for all hours worked when Defendants required
23 Plaintiff and Class Members to work off-the-clock, including during their meal periods, and
24 failed to pay Plaintiffs and Class Members all wages for all hours worked, among other things.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive all required meal
27 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
28 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and

1 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
2 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
3 when they did not receive a timely meal period.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive all rest breaks or
6 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
7 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
8 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
9 at Plaintiff and class members' regular rate of pay when a rest break was missed.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive itemized wage
12 statements that accurately showed their gross and net wages earned, inclusive dates of pay
13 periods, total hours worked and all applicable hourly rates in effect and the number of hours
14 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
15 Plaintiff and class members were not provided with accurate itemized wage statements.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
18 payment of wages due upon separation of employment. In violation of the Labor Code,
19 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
20 permissible time periods.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known they had a duty to compensate Plaintiff and class members, and Defendants
23 had the financial ability to pay such compensation but willfully, knowingly and intentionally
24 failed to do so all in order to increase Defendants' profits.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;**
4 **and Violation of IWC Wage Order)**

5 34. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 35. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
8 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
9 wage than the minimum so fixed is unlawful.

10 36. During the relevant time period, Defendants paid Plaintiff and Class Members
11 less than minimum wages when Defendants required Plaintiff and Class Members to work off-
12 the-clock, including during meal periods, and failed to pay all wages for all hours worked,
13 among other things.

14 37. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wages to Plaintiff and Class Members for all hours worked pursuant to Labor Code
16 §§ 1182.12, 1194, and 1197.

17 38. Defendants' failure to pay Plaintiff and Class Members the required minimum
18 wages violates Labor Code §§ 1182.12, 1194, and 1197. Pursuant to these sections, Plaintiff
19 and Class Members are entitled to recover the unpaid balance of their minimum wage
20 compensation as well as interest, costs and attorneys' fees.

21 39. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
22 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
23 thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME WAGES**

26 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

27 40. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 41. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-half
3 or two times the person's regular rate of pay, depending on the number of hours worked by the
4 person on a daily or weekly basis.

5 42. Specifically, the applicable IWC Wage Order provides that Defendants are and
6 were required to pay Plaintiffs and Class Members employed by Defendants, and working more
7 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of one and
8 one-half times their regular rate of pay for all hours worked in excess of eight (8) hours in a day
9 or more than forty (40) hours in a workweek.

10 43. The applicable IWC Wage Order further provides that Defendants are and were
11 required to pay Plaintiff and Class Members employed by Defendants, and working more than
12 twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a
13 workweek, overtime compensation at a rate of two times their regular rate of pay.

14 44. Labor Code § 510 codifies the right to overtime compensation at one and one-
15 half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty
16 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
17 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
18 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

19 45. At all relevant times, Defendants failed to pay Plaintiff and Class Members all
20 wages when Defendants required Plaintiff and Class Members to work off-the-clock, including
21 during meal periods, and failed to pay all wages for all hours worked, among other things.
22 Defendants failed to pay Plaintiff and Class Members all overtime wages to the extent such
23 work performed entitled Plaintiff and Class Members to pay at the overtime rate of pay.

24 46. At all relevant times, Defendants failed to pay Plaintiff and Class Members at
25 the proper overtime rate. Defendants paid Plaintiff and Class Members a regular overtime rate
26 below one and one-half times their regular rate of pay when Plaintiff and Class Members
27 worked overtime hours.

28 47. In violation of state law, Defendants have knowingly and willfully failed to pay

1 all overtime wages owed to Plaintiff and Class Members.

2 48. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
3 overtime compensation, as required by California law, violates the provisions of Labor Code §§
4 510 and 1198, and is therefore unlawful.

5 49. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
6 recover their unpaid overtime compensation, as well as interest, costs and attorney's fees.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

10 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 51. Labor Code § 226.7 provides that no employer shall require an employee to work
13 during any meal period mandated by the IWC Wage Orders.

14 52. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
15 any person for a work period of more than five (5) hours without a meal period of not less than
16 30 minutes, except that when a work period of not more than six (6) hours will complete the
17 day's work the meal period may be waived by mutual consent of the employer and the
18 employee."

19 53. Labor Code § 512(a) provides that an employer may not require, cause or permit
20 an employee to work for a period of more than five (5) hours per day without providing the
21 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
22 the total work period per day of the employee is not more than six (6) hours, the meal period
23 may be waived by mutual consent of both the employer and the employee.

24 54. Labor Code § 512(a) also provides that an employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the employee
26 with a second meal period of not less than thirty (30) minutes, except that if the total hours
27 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
28 consent of the employer and the employee only if the first meal period was not waived.

1 55. During the relevant time period, Plaintiff and class members did not receive
2 compliant meal periods for each five hours worked per day.

3 56. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
4 an employer to pay an employee one additional hour of pay at the employee's regular rate of
5 compensation for each work day that a meal period is not provided.

6 57. At all relevant times, Defendants failed to pay Plaintiff and class members meal
7 period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section 11
8 of the applicable IWC Wage Order.

9 58. As a result of Defendants' failure to pay Plaintiff and class members an
10 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
11 suffered and continue to suffer a loss of wages and compensation.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PERMIT REST BREAKS**

14 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

15 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 60. Labor Code § 226.7(a) provides that no employer shall require an employee to
18 work during any rest period mandated by the IWC Wage Orders.

19 61. Section 12 of the applicable IWC Wage Order states "every employer shall
20 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
21 the middle of each work period" and the "authorized rest period time shall be based on the total
22 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
23 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

24 62. During the relevant time period, Plaintiff and class members did not receive a ten
25 (10) minute rest period for every four (4) hours or major fraction thereof worked.

26 63. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
27 requires an employer to pay an employee one additional hour of pay at the employee's regular
28 rate of compensation for each work day that the rest period is not provided.

1 64. At all relevant times, Defendants failed to pay Plaintiff and class members rest
2 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of
3 the applicable IWC Wage Order.

4 65. As a result of Defendants' failure to pay Plaintiff and class members an
5 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
6 suffered and continue to suffer a loss of wages and compensation.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(Violation of Labor Code § 226)**

10 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 67. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including: (1) gross
14 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
18 for which the employee is paid, (7) the name of the employee and the last four digits of his or
19 her social security number or an employee identification number other than a social security
20 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at
22 each hourly rate by the employee.

23 68. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
25 and class members. The deficiencies include, among other things, the failure to correctly state
26 accurate inclusive dates of the pay period for Plaintiff and class members.

27 69. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
28 and class members have suffered injury and damage to their statutorily protected rights.

1 Specifically, Plaintiff and class members have been injured by Defendants' intentional
2 violation of California Labor Code § 226(a) because they were denied both their legal right to
3 receive, and their protected interest in receiving, accurate itemized wage statements under
4 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
5 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
6 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
7 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
8 recover the underpayment of wages from Defendants.

9 70. California Labor Code § 226(a) requires an employer to pay the greater of all
10 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
11 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
12 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
13 comply with California Labor Code § 226(a).

14 71. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
15 and class members from knowing, understanding and disputing the wages paid to them, and
16 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
17 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
18 class members have suffered an injury, and the exact amount of damages and/or penalties is all
19 in an amount to be shown according to proof at trial.

20 72. Plaintiff and class members are also entitled to injunctive relief under California
21 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
22 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**
25 **WITHIN THE REQUIRED TIME**

26 **(Violation of Labor Code §§ 201, 202 and 203)**

27 73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 74. California Labor Code §§ 201 and 202 provide that if an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and that if an employee voluntarily leaves his employment, his wages shall
4 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
5 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
6 employee is entitled to his wages at the time of quitting.

7 75. During the relevant time period, Defendants willfully failed to pay Plaintiff and
8 Waiting Time Subclass members all their earned wages upon termination including, but not
9 limited to, proper minimum wages and overtime compensation, either at the time of discharge
10 or within seventy-two (72) hours of their leaving Defendants' employ.

11 76. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
12 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
13 Defendants' employ is in violation of Labor Code §§ 201 and 202.

14 77. California Labor Code § 203 provides that if an employer willfully fails to pay
15 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
16 and 202, then the wages of the employee shall continue as a penalty from the due date at the
17 same rate until paid or until an action is commenced; but the wages shall not continue for more
18 than thirty (30) days.

19 78. Plaintiff and Waiting Time Subclass members are entitled to recover from
20 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
21 members' regular daily wages for each day they were not paid, at their regular hourly rate of
22 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

25 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

27 80. Defendants' conduct, as alleged herein, has been and continues to be unfair,
28 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights

1 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

2 81. Defendants' activities, as alleged herein, violate California law and constitute
3 unlawful business acts or practices in violation of California Business and Professions Code
4 §§ 17200, *et seq.*

5 82. A violation of Business and Professions Code §§ 17200, *et seq.* may be
6 predicated on the violation of any state or federal law.

7 83. Defendants' policies and practices have violated state law in at least the
8 following respects:

- 9 (a) Failing to pay all wages (including minimum and overtime wages) owed
10 to Plaintiff and class members in violation of Labor Code §§ 510,
11 1182.12, 1194, 1194.2, 1197 and 1198;
- 12 (b) Failing to provide timely meal periods without paying Plaintiff and class
13 members premium wages for every day said meal periods were not
14 provided in violation of Labor Code §§ 226.7 and 512;
- 15 (c) Failing to authorize or permit rest breaks without paying Plaintiff and
16 class members premium wages for every day said rest breaks were not
17 authorized or permitted in violation of Labor Code § 226.7;
- 18 (d) Failing to provide Plaintiff and class members with accurate itemized
19 wage statements in violation of Labor Code § 226; and
- 20 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
21 Subclass members upon separation of employment in violation of Labor
22 Code §§ 201, 202 and 203.

23 84. Defendants intentionally avoided paying Plaintiff and class members' wages and
24 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
25 undercut their competitors and establish and gain a greater foothold in the marketplace.

26 85. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
27 members are entitled to restitution of the wages unlawfully withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the Complaint; an

1 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
2 laws; and an award of costs.

3 **EIGHTH CAUSE OF ACTION**

4 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

5 86. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
6 though fully set forth herein.

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

13 88. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
17 period in which Defendants violated these provisions of the Labor Code.

18 89. Defendants' conduct violates numerous Wage Order and Labor Code sections,
19 including, but not limited to, the following:

- 20 a. violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194,
21 1194.2, 1197 and 1198 for failure to timely pay all earned wages
22 (including minimum and overtime wages) owed to Plaintiff and other
23 aggrieved employees during their employment and upon separation of
24 employment as herein alleged;
- 25 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
26 periods to Plaintiff and other aggrieved employees and failure to pay
27 premium wages for missed meal periods as herein alleged;
- 28

- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and
- e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

90. Plaintiff is an “aggrieved employee” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

91. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

92. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

93. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of La Tanya Carr-Oyesile as the class representatives;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest

1 thereon;

2 5. For economic and/or special damages in an amount according to proof with
3 interest thereon;

4 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
5 by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code § 226(e), and
6 2698 *et seq.*;

7 7. For statutory penalties to the extent permitted by law, including those pursuant
8 to the Labor Code and IWC Wage Orders;

9 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

10 9. For an order requiring Defendants to restore and disgorge all funds to each
11 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
12 or fraudulent and, therefore, constituting unfair competition under Business and Professions
13 Code §§ 17200, *et seq.*;

14 10. For an award of damages in the amount of unpaid compensation including, but
15 not limited to, unpaid wages, benefits and penalties, including interest thereon;

16 11. For pre-judgment interest;

17 12. For civil penalties; and

18 13. For such other relief as the Court deems just and proper.

19
20 Dated: April 20, 2022

AEGIS LAW FIRM, PC

21
22 By: _____

23 Joseph M. Szilagyi
24 Attorneys for Plaintiff
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On April 20, 2022, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Elizabeth Staggs Wilson, SBN: 183160

8 James Payer, SBN: 292158

9 LITTLER MENDELSON, P.C.

633 West 5th Street, 63rd Floor

Los Angeles, CA 90071

Tel: 213.443.4300

Fax: 213.443.4299

estaggs-wilson@littler.com

jpayer@littler.com

Jyoti Mittal, SBN: 288084

LITTLER MENDELSON, P.C.

2049 Century Park East, 5th Floor

Los Angeles, CA 90067.3107

Tel: 310.553.0308

Fax: 310.553.5583

jmittal@littler.com

12 *Attorneys for Defendants:*

13 REHAB GROUP OF CALIFORNIA, LLC;

14 REHABCARE GROUP EAST, LLC; REHABCARE

15 GROUP MANAGEMENT SERVICES, LLC;

16 KINDRED REHAB SERVICES, LLC; and KINDRED

HEALTHCARE OPERATING, LLC

17 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S.
19 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
20 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

21 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
22 practice of Aegis Law Firm PC for collection and processing correspondence for
23 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

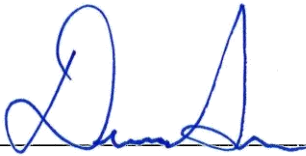
24 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
25 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

26 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
27 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on April 20, 2022, at Irvine, California.

4 
5 _____
6 Delaney Graves
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