

2/7/2024 5:16 PM

By: Sylvia Guajardo, DEPUTY

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Christina M. Le (SBN 237697)
cle@wilshirelawfirm.com
Arsiné Grigoryan (SBN 319517)
agrigoryan@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiffs Neil Modino and Rita Ortiz

[Additional Counsel listed on the following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

NEIL MODINO, RITA ORTIZ, and VALERIE
J. FOWLER, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

LAUREL AVENUE, LLC DBA TERRACINA
POST ACUTE, a Delaware limited liability
company, and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVDS2009538
[Consolidated with Case Nos.
CIVDS2023687 and CIVDS2022866]

*[Assigned for all purposes to Hon. Jessica
Morgan, Dept. S26]*

**SECOND AMENDED CLASS ACTION
AND REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties Under PAGA (Cal. Lab. Code §§ 2699, *et seq.*)

DEMAND FOR JURY TRIAL

1 David D. Bibiyan (SBN 287811)

2 david@tomorrowlaw.com

3 Vedang J. Patel (SBN 328647)

4 vedang@tomorrowlaw.com

5 **Bibiyan Law Group, P.C.**

6 8484 Wilshire Boulevard, Suite 500

7 Beverly Hills, California 90211

8 Telephone: 310-438-5555

9 Facsimile: 310-300-1705

10 *Attorneys for Plaintiff Valerie J. Fowler*

1 Plaintiffs Neil Modino, Rita Ortiz, and Valerie J. Fowler (“Plaintiffs”), based upon facts
2 that either have evidentiary support or are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiffs bring this action against Defendant Laurel Avenue, LLC dba Terracina
6 Post Acute and Does 1 through 10 (Laurel Avenue, LLC dba Terracina Post Acute and Does 1
7 through 10 are collectively referred to as “Defendants”) for California Labor Code violations and
8 unfair business practices stemming from Defendants’ failure to pay for all hours worked
9 (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize
10 and permit rest periods, failure to timely pay final wages, and failure to furnish accurate wage
11 statements.

12 2. Plaintiffs brings the First through Seventh Causes of Action, each individually and
13 as a class action on behalf of themselves and certain current and former employees of Defendants
14 (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully
15 below). The Class consists of Plaintiffs and all other persons who have been employed by any
16 Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations
17 period applicable to the claims pleaded here.

18 3. Plaintiffs brings the Eighth Cause of Action as a representative action under the
19 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
20 Plaintiff, the State of California, and past and present hourly-paid or non-exempt employees
21 employed by Defendants in the State of California during the statute of limitations period for their
22 PAGA claim (hereinafter referred to as the “Aggrieved Employees”).

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including San Bernardino County. As such, and based
25 upon all the facts and circumstances incident to Defendants’ business in California, Defendants are
26 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
27 (“IWC”), and the California Business & Professions Code.

28 5. Despite these requirements, throughout the statutory period Defendants maintained

1 a systematic, company-wide policy and practice of:

- 2 (a) Failing to pay employees for all hours worked, including all minimum
3 wages, straight time wages, and overtime wages in compliance with the
4 California Labor Code and IWC Wage Orders;
- 5 (b) Failing to provide employees with timely and duty-free meal periods in
6 compliance with the California Labor Code and IWC Wage Orders, failing
7 to maintain accurate records of all meal periods taken or missed, and failing
8 to pay an additional hour's pay for each workday a meal period violation
9 occurred;
- 10 (c) Failing to authorize and permit employees to take timely and duty-free rest
11 periods in compliance with the California Labor Code and IWC Wage
12 Orders, and failing to pay an additional hour's pay for each workday a rest
13 period violation occurred;
- 14 (d) Willfully failing to pay employees all minimum wages, straight time wages,
15 overtime wages, meal period premium wages, and rest period premium
16 wages due within the time period specified by California law when
17 employment terminates; and
- 18 (e) Failing to provide employees with accurate, itemized wage statements
19 containing all the information required by the California Labor Code and
20 IWC Wage Orders.

21 6. On information and belief, Defendants, and each of them were on actual and
22 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
23 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
24 willful and deliberate.

25 7. At all relevant times, Defendants were and are legally responsible for all of the
26 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
27 foregoing paragraphs as the employer of Plaintiffs, the Class, and the Aggrieved Employees.
28 Further, Defendants are responsible for each of the unlawful acts or omissions complained of

herein under the doctrine of “respondeat superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff Neil Modino is a resident of San Bernardino County, California who worked for Defendants in Redlands, California as a licensed vocational nurse from June 2019 to July 15, 2019.

9. Plaintiff Rita Ortiz is a resident of San Bernardino County, California who worked for Defendants in Redlands, California as a licensed vocational nurse from November 2021 to May 2023.

10. Plaintiff Valerie J. Fowler is a resident of San Bernardino County, California who worked for Defendants in Rancho Cucamonga, California as a licensed vocational nurse from approximately April of 2017 through October of 2019.

11. Plaintiffs reserve the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

12. Plaintiffs are informed and believe, and based upon that information and belief allege, that Defendant Laurel Avenue, LLC dba Terracina Post Acute is, and at all times herein mentioned, was:

- (a) A Delaware limited liability company with its principal place of business in Mission Viejo, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Bernardino County; and,
- (c) The former employer of Plaintiffs and the current and/or former employer of the putative Class, Laurel Avenue, LLC dba Terracina Post Acute, suffered and permitted Plaintiffs, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

13. Plaintiffs do not know the true names or capacities of the persons or entities sued

herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiffs will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

14. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiffs, the Class, and the Aggrieved Employees in the State of California.

15. Plaintiffs are informed and believe and thereon allege that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believe and thereon allege that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

16. Plaintiffs worked for Defendants in California as non-exempt hourly employees. During Plaintiffs' employment for Defendants, Defendants paid Plaintiffs an hourly wage and classified them as non-exempt from overtime. Defendants typically scheduled Plaintiffs to work at least 4 days in a workweek and at least 8 hours per day, but Plaintiffs sometimes worked more than 8 hours in a workday and more than 40 hours in a workweek.

1 17. Throughout Plaintiffs’ employment, Defendants failed to provide Plaintiffs with
2 meal periods, failed to authorize and permit Plaintiffs to take rest periods, failed to pay timely all
3 final wages to Plaintiffs when Defendants terminated their employment and failed to furnish
4 accurate wage statements to Plaintiffs. As discussed below, Plaintiffs’ experience working for
5 Defendants was typical and illustrative.

6 18. Throughout the statutory period, Defendants maintained a policy and practice of not
7 paying Plaintiffs, the Class, and the Aggrieved Employees for all hours worked, including
8 minimum wages, straight time wages, and overtime wages. Defendants did not pay for all the
9 hours Plaintiffs and the Class worked, although the work was performed with Defendants
10 knowledge and Plaintiffs, the Class, and the Aggrieved Employees were subject to Defendants’
11 control. The Defendants also manufactured the time keeping records to falsely show that Plaintiffs,
12 the Class, and the Aggrieved Employees took all meal periods when in fact they worked off-the-
13 clock, uncompensated. The effect is that Plaintiffs, the Class, and the Aggrieved Employees
14 routinely worked through their second meal periods “off-the-clock,” and Defendant frequently paid
15 Plaintiffs, the Class, and the Aggrieved Employees less than all their work time. Much of this
16 unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked,
17 Defendants also failed to maintain accurate records of the hours Plaintiffs, the Class, and the
18 Aggrieved Employees worked.

19 19. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiffs,
20 the Class, and the Aggrieved Employees with legally compliant meal periods. Defendants
21 regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees to work in
22 excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free
23 meal period for every five hours of work, or without compensating Plaintiff, the Class, and the
24 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work
25 or tenth hour of work. Instead, Defendants continued to assert control over Plaintiffs, the Class,
26 and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks
27 which could not be completed without working in lieu of taking mandatory meal periods, or by
28 denying Plaintiffs, the Class, and the Aggrieved Employees permission to take a second meal

1 period. As described above, Defendants would routinely manufacture time keeping records to
2 falsely show that Plaintiffs, the Class, and the Aggrieved Employees took meal periods when in
3 fact they worked off-the-clock, uncompensated. Defendants also never informed Plaintiffs of their
4 right to, nor rarely permitted them to take, a second meal period of 10 hours of work in one
5 workday. Accordingly, Defendants' policy and practice was not to provide meal periods to
6 Plaintiffs, the Class, and the Aggrieved Employees in compliance with California law.

7 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
8 and permit Plaintiffs, the Class, and the Aggrieved Employees to take legally compliant rest
9 periods. Defendants regularly required Plaintiffs, the Class, and the Aggrieved Employees to work
10 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
11 take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major
12 fraction of four hours), or without compensating Plaintiffs, the Class, and the Aggrieved
13 Employees for rest periods that were not authorized or permitted. Instead, Defendants continued
14 to assert control over Plaintiffs, the Class, and the Aggrieved Employees by requiring, pressuring,
15 or encouraging them to perform work tasks which could not be completed without working in lieu
16 of taking mandatory rest periods, or by denying Plaintiffs, the Class, and the Aggrieved Employees
17 permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize
18 and permit Plaintiffs, the Class, and the Aggrieved Employees to take rest periods in compliance
19 with California law.

20 21. Throughout the statutory period, Defendants willfully failed and refused to timely
21 pay Plaintiffs, the Class, and the Aggrieved Employees at the conclusion of their employment all
22 final wages due at their termination of employment. In addition, Plaintiffs' final paychecks did
23 not include payment for all meal period premium wages and rest period premium wages owed to
24 them by Defendants at the conclusion of their employment. On information and belief,
25 Defendants' failure to timely pay Plaintiffs' final wages when their employment terminated was
26 not a single, isolated incident, but was instead consistent with Defendants' policy and practice that
27 applied to Plaintiffs, the Class, and the Aggrieved Employees.
28

22. Throughout the statutory period, Defendants failed to furnish Plaintiffs, the Class, and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). As a result of these violations of California Labor Code § 226(a), the Plaintiffs, the Class, and the Aggrieved Employees suffered injury because, among other things:

- (a) the violations led them to believe that they were not entitled to be paid minimum wages, straight time wages, overtime wages, meal period premium wages, and rest period premium wages, even though they were entitled;
- (b) the violations led them to believe that they had been paid the minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;
- (c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were;
- (d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- (e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;

(h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiffs, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

CLASS ACTION ALLEGATIONS

23. Plaintiff bring certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

24. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

25. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

26. At all material times, Plaintiffs were each a member of the Class.

27. Plaintiffs undertook this concerted activity to improve the wages and working conditions of all Class Members.

28. There is a well-defined community of interest in the litigation and the Class and Subclass are readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time;

1 however, the Class is estimated to be greater than 40 individuals and the
2 identity of such membership is readily ascertainable by inspection of
3 Defendants' records.

4 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect
5 the interests of each Class Member with whom there is a shared, well-
6 defined community of interest, and Plaintiffs' claims (or defenses, if any)
7 are typical of all Class Members' claims as demonstrated herein.

8 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect
9 the interests of each Class Member with whom there is a shared, well-
10 defined community of interest and typicality of claims, as demonstrated
11 herein. Plaintiffs have no conflicts with or interests antagonistic to any Class
12 Member. Plaintiffs' attorneys, the proposed class counsel, are versed in the
13 rules governing class action discovery, certification, and settlement.
14 Plaintiffs have incurred, and throughout the duration of this action, will
15 continue to incur costs and attorneys' fees that have been, are, and will be
16 necessarily expended for the prosecution of this action for the substantial
17 benefit of each class member.

18 (d) Superiority: A Class Action is superior to other available methods for the
19 fair and efficient adjudication of the controversy, including consideration of:

- 20 1) The interests of the members of the Class in individually controlling
21 the prosecution or defense of separate actions;
22 2) The extent and nature of any litigation concerning the controversy
23 already commenced by or against members of the Class;
24 3) The desirability or undesirability of concentrating the litigation of the
25 claims in the particular forum; and
26 4) The difficulties likely to be encountered in the management of a class
27 action.

28 (e) Public Policy Considerations: The public policy of the State of California is

1 to resolve the California Labor Code claims of many employees through a
2 class action. Indeed, current employees are often afraid to assert their rights
3 out of fear of direct or indirect retaliation. Former employees are also fearful
4 of bringing actions because they believe their former employers might
5 damage their future endeavors through negative references and/or other
6 means. Class actions provide the class members who are not named in the
7 complaint with a type of anonymity that allows for the vindication of their
8 rights at the same time as their privacy is protected.

9 29. There are common questions of law and fact as to the Class (and each subclass, if
10 any) that predominate over questions affecting only individual members, including without
11 limitation, whether, as alleged herein, Defendants have:

- 12 (a) Failed to pay Class Members for all hours worked, including minimum,
13 straight time, and overtime wages;
- 14 (b) Failed to provide meal periods and pay meal period premium wages to Class
15 Members;
- 16 (c) Failed to authorize and permit rest periods and pay rest period premium
17 wages to Class Members;
- 18 (d) Failed to provide Class Members with timely final wages;
- 19 (e) Failed to provide Class Members with accurate wage statements; and
- 20 (f) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
21 result of their illegal conduct as described above.

22 30. This Court should permit this action to be maintained as a class action pursuant to
23 California Code of Civil Procedure § 382 because:

- 24 (a) The questions of law and fact common to the Class predominate over any
25 question affecting only individual members;
- 26 (b) A class action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the Class;
- 28 (c) The members of the Class are so numerous that it is impractical to bring all

members of the class before the Court;

- (d) Plaintiffs, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

31. Plaintiffs contemplate the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiffs contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail

notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

32. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Complaint.

33. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

34. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiffs and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

35. Accordingly, Plaintiffs and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

36. By and through the conduct described above, Plaintiffs and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

37. By virtue of the Defendants’ unlawful failure to pay additional compensation to Plaintiffs and the Class for their non-overtime hours worked without pay, Plaintiffs and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiffs and the Class, and which will be ascertained according to proof at trial.

38. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

39. Pursuant to California Labor Code § 1194.2, Plaintiffs and the Class are entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum wages.

40. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiffs and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiffs and the Class all such wages due and failed to pay those wages twice a month.

41. Plaintiffs and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

42. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Complaint.

43. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

44. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

45. At all times relevant hereto, Plaintiffs and the Class have worked more than eight hours in a workday, as employees of Defendants.

46. At all times relevant hereto, Defendants failed to pay Plaintiffs and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code §§ 510 and 1198.

47. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiffs and the Class for their overtime hours worked, Plaintiff and the

1 Class have suffered, and will continue to suffer, damages in amounts which are presently unknown
2 to them but which exceed the jurisdictional minimum of this Court and which will be ascertained
3 according to proof at trial.

4 48. By failing to keep adequate time records required by Labor Code § 1174(d),
5 Defendants have made it difficult to calculate the full extent of overtime compensation due to
6 Plaintiffs and the Class.

7 49. Plaintiffs and the Class also request recovery of overtime compensation according
8 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
9 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
10 California Labor Code and/or other statutes.

11 50. California Labor Code § 204 requires employers to provide employees with all
12 wages due and payable twice a month. The Wage Orders also provide that every employer shall
13 pay to each employee, on the established payday for the period involved, overtime wages for all
14 overtime hours worked in the payroll period. Defendants failed to provide Plaintiffs and the Class
15 with all compensation due, in violation of California Labor Code § 204.

16 **THIRD CAUSE OF ACTION**

17 **(Against all Defendants for Failure to Provide Meal Periods)**

18 51. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
19 1 through 22 in this Complaint.

20 52. Under California law, Defendants have an affirmative obligation to relieve the
21 Plaintiffs and the Class of all duty in order to take their first daily meal periods no later than the
22 start of Plaintiffs and the Class' sixth hour of work in a workday, and to take their second meal
23 periods no later than the start of the eleventh hour of work in the workday. California Labor Code
24 § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal
25 periods of at least 30 minutes for each five-hour period worked. It is a violation of California
26 Labor Code § 226.7 for an employer to require any employee to work during any meal period
27 mandated under any Wage Order.

28 53. Despite these legal requirements, Defendants regularly failed to provide Plaintiffs

1 and the Class with both meal periods as required by California law. By their failure to permit and
2 authorize Plaintiffs and the Class to take all meal periods as alleged above (or due to the fact that
3 Defendants made it impossible or impracticable to take these uninterrupted meal periods),
4 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
5 Wage Orders.

6 54. Under California law, Plaintiffs and the Class are entitled to be paid one hour of
7 additional wages for each workday he or she was not provided with all required meal period(s),
8 plus interest thereon.

9 **FOURTH CAUSE OF ACTION**

10 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

11 55. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
12 1 through 22 in this Complaint.

13 56. Defendants are required by California law to authorize and permit breaks of 10
14 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
15 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
16 permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour
17 period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes, the
18 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself
19 a violation of California's rest break laws. It is a violation of California Labor Code § 226.7 for
20 an employer to require any employee to work during any rest period mandated under any Wage
21 Order.

22 57. Despite these legal requirements, Defendants failed to authorize Plaintiffs and the
23 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a workday.
24 By their failure to permit and authorize Plaintiffs and the Class to take rest periods as alleged above
25 (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted
26 rest periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and
27 the applicable Wage Orders.

28 58. Under California law, Plaintiffs and the Class are entitled to be paid one hour of

premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

59. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Complaint.

60. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or his employment, his or his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

61. Within the applicable statute of limitations, the employment of Plaintiffs and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

62. Defendants' failure to pay Plaintiffs and those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

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

64. Plaintiffs and the Class are entitled to recover from Defendants their additionally

1 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
2 maximum pursuant to California Labor Code § 203.

3 65. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiffs and the Class
4 are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in
5 this action.

6 **SIXTH CAUSE OF ACTION**

7 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
8 **Compliant Wage Records)**

9 66. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
10 1 through 22 in this Complaint.

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

22 68. Defendants have intentionally and willfully failed to provide employees with
23 complete and accurate wage statements. The deficiencies include, among other things, the failure
24 to correctly identify the gross wages earned by Plaintiffs and the Class, the failure to list the true
25 "total hours worked by the employee," and the failure to list the true net wages earned.

26 69. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
27 and the Class have suffered injury and damage to their statutorily protected rights.

28 70. Specifically, Plaintiffs and the members of the Class have been injured by

Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

71. Calculation of the true wage entitlement for Plaintiffs and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiffs and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

72. Plaintiffs and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

73. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

75. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

76. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, other Class members, and to the general public. Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

77. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

1 78. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
2 predicated on the violation of any state or federal law. All of the acts described herein as violations
3 of, among other things, the California Labor Code, are unlawful and in violation of public policy;
4 and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby
5 constitute unfair, unlawful and/or fraudulent business practices in violation of California Business
6 & Professions Code §§ 17200, *et seq.*

7 **Failure to Pay Minimum and Straight Time Wages**

8 79. Defendants' failure to pay minimum wages, straight time wages, and other benefits
9 in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by
10 California Business & Professions Code §§ 17200, *et seq.*

11 **Failure to Pay Overtime Wages**

12 80. Defendants' failure to pay overtime compensation and other benefits in violation of
13 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
14 prohibited by California Business & Professions Code §§ 17200, *et seq.*

15 **Failure to Provide Meal Periods**

16 81. Defendants' failure to provide meal periods in accordance with California Labor
17 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
18 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

19 **Failure to Authorize and Permit Rest Periods**

20 82. Defendants' failure to authorize and permit rest periods in accordance with
21 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
22 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

23 83. By and through their unfair, unlawful and/or fraudulent business practices described
24 herein, the Defendants, have obtained valuable property, money and services from Plaintiffs, and
25 all persons similarly situated, and have deprived Plaintiffs, and all persons similarly situated, of
26 valuable rights and benefits guaranteed by law, all to their detriment.

27 84. Plaintiffs and the Class Members suffered monetary injury as a direct result of
28 Defendants' wrongful conduct.

1 85. Plaintiffs, individually, and on behalf of members of the putative Class, are entitled
2 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
3 Defendants have wrongfully acquired, or of which Plaintiffs and the Class have been deprived, by
4 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and
5 the Class are not obligated to establish individual knowledge of the wrongful practices of
6 Defendants in order to recover restitution.

7 86. Plaintiffs, individually, and on behalf of members of the putative class, is further
8 entitled to and does seek a declaration that the above described business practices are unfair,
9 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
10 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices
11 in the future.

12 87. Plaintiffs, individually, and on behalf of members of the putative class, has no plain,
13 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered
14 as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a
15 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiffs,
16 individually, and on behalf of members of the putative Class, has suffered and will continue to
17 suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to
18 engage in said unfair, unlawful and/or fraudulent business practices.

19 88. Plaintiffs also allege that if Defendants are not enjoined from the conduct set forth
20 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
21 withholdings.

22 89. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and
23 putative Class Members is entitled to restitution of the wages withheld and retained by Defendants
24 during a period that commences four years prior to the filing of this complaint; a permanent
25 injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and Class Members;
26 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
27 applicable laws; and an award of costs.

28 //

EIGHTH CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

90. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Complaint.

91. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

92. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “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.”

93. Plaintiffs Modino and Fowler have exhausted their administrative remedies pursuant to California Labor Code § 2699.3. They gave written notices by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiffs and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiffs also paid the filing fee.

94. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notices. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

95. In addition, Plaintiffs seek penalties for Defendants’ violation of Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject

1 to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall
2 keep time records showing when the employee begins and ends each work period. Meal periods,
3 and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC
4 Order § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable
5 rates of pay.

6 96. During the time period of employment for Plaintiffs and the Aggrieved Employees,
7 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
8 maintain accurate records showing meal periods, and accurate records showing when employees
9 begin and end each work period. Defendants' failure to provide and maintain records required by
10 the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to
11 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
12 their hours worked stated in Defendants' records. Therefore, Plaintiffs and the Aggrieved
13 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
14 unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved
15 Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment
16 of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
17 Defendants to fully perform its obligation under state law, all to their respective damage in amounts
18 according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code
19 and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an
20 injury in that they were prevented from knowing, understanding, and disputing the wage payments
21 paid to them.

22 97. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award
23 of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees
24 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
25 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

26 98. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant
27 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
28 shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiffs, individually, and on behalf of all others similarly situated only with respect to the class claims, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action;
2. That Plaintiffs be appointed as the representatives of the Class; and
3. That counsel for Plaintiffs be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;
11. For unpaid wages at overtime wage rates as may be appropriate;
12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

26. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and for costs of suit incurred herein; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

30. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual damages, according to proof;

32. For statutory penalties pursuant to California Labor Code § 226(e);

33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

34. For reasonable attorneys' fees and for costs of suit incurred herein; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, and failing to authorize and permit rest periods;

37. For restitution of unpaid wages to Plaintiffs and all Class Members and prejudgment interest from the day such amounts were due and payable;

38. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

39. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

40. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated the California

Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages) failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to furnish accurate wage statements, failing to pay all final wages to terminated employees, and failing to maintain accurate records of all hours worked;

43. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all other applicable Labor Code provisions;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

45. For such other and further relief as the Court may deem equitable and appropriate

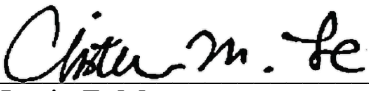
As to all Causes of Action

46. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: February 7, 2024

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiffs Neil Modino and Rita Ortiz

Dated: February 7, 2024

Bibiyan Law Group, P.C.

By: /s/ Vedang J. Patel
David D. Bibiyan
Vedang J. Patel

Attorneys for Plaintiff Valerie Fowler

//

//

//

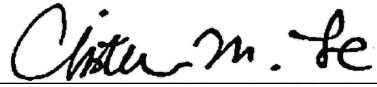
//

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: February 7, 2024

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiffs Neil Modino and Rita Ortiz

Dated: February 7, 2024

Bibiyan Law Group, P.C.

By: /s/ Vedang J. Patel
David D. Bibiyan
Vedang J. Patel

Attorneys for Plaintiff Valerie Fowler

Neil Modino v. Laurel Avenue, LLC dba Terracina Post Acute
CIVDS2009538

1 PROOF OF SERVICE