

FILED/ENDORSED

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12 LEMUSU on behalf of themselves and other
13 Aggrieved Employees

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 PINA AFOA and KASIA LEMUSU, on)
12 behalf of themselves and other Aggrieved)
13 Employees)

14 Plaintiffs,)

15 vs.)

16 MILESTONE RETIREMENT)
17 COMMUNITIES, LLC., a Delaware)
18 Limited Liability Corporation;)
19 MILESTONE RETIREMENT)
20 COMMUNITIES OF WASHINGTON,)
21 LLC., a Washington Limited Liability)
22 Corporation; MILESTONE)
23 MANAGEMENT (CA) – MEADOWS,)
24 LLC., a California Limited Liability)
25 Corporation; and DOES 1 to 100, inclusive,)

26 Defendants.)

Case No. 34-2020-00282555

COMPLAINT FOR CIVIL
PENALTIES

Private Attorneys General Act (Labor
Code §§ 2699, *et seq.*)

JURY TRIAL DEMANDED

Plaintiffs PINA AFOA and KASIA LEMUSU (hereinafter collectively referred to as "Plaintiffs"), hereby file this Complaint against Defendants MILESTONE RETIREMENT COMMUNITIES, LLC., a Delaware Limited Liability Corporation, MILESTONE RETIREMENT COMMUNITIES OF WASHINGTON, LLC., a Washington State Limited Liability Corporation; MILESTONE MANAGEMENT (CA) – MEADOWS, LLC., a California Limited Liability Corporation; and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe and based on this information and belief thereon allege as follows:

PARTIES

1. Plaintiff PINA AFOA is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident of the State of California.

2. Plaintiff KASIA LEMUSU is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident of the State of California.

3. Plaintiffs are informed and believe, and thereupon allege, that Defendant MILESTONE RETIREMENT COMMUNITIES, LLC., is now and/or at all times mentioned in this Complaint, was a Delaware Limited Liability Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

4. Plaintiffs are informed and believe, and thereupon allege, that Defendant MILESTONE RETIREMENT COMMUNITIES OF WASHINGTON, LLC., is now and/or at all times mentioned in this Complaint, was a Washington State Limited Liability Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

5. Plaintiffs are informed and believe, and thereupon allege, that Defendant MILESTONE MANAGEMENT (CA) – MEADOWS, LLC., is now and/or at all times mentioned in this Complaint, was a California Limited Liability Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

6. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of MILESTONE RETIREMENT COMMUNITIES, LLC., MILESTONE RETIREMENT COMMUNITIES OF WASHINGTON, LLC., and MILESTONE MANAGEMENT (CA) –

1 MEADOWS, LLC., corporate or otherwise, who participated in and are liable for the actions herein
2 alleged. Plaintiffs themselves will seek to amend this Complaint to allege the true names and capacities
3 of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant
4 was the agent or employee of each of the other Defendants and was acting within the course and scope
5 of such agency or employment. Defendants, and each of them, are, therefore, jointly and severally liable
6 between and among themselves.

7 7. Defendants, and each of them, are now and/or at all times mentioned in this Complaint,
8 were members of and/or engaged in a joint employment, joint venture, partnership and common
9 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
10 joint venture, partnership, and common enterprise.

11 8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint,
12 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

13 9. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
14 wrongs, complaints, injuries, and/or damages alleged in this Complaint.

15 **JURISDICTION AND VENUE**

16 10. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
17 violations of the California Labor Code.

18 11. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that some
19 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.
20 Additionally, Defendants' obligation to pay wages, including minimum wages, overtime wages, meal
21 period premiums, reimbursement expenses, and rest period premiums, arose in Sacramento County
22 pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

23 12. Plaintiffs have sought permission pursuant to Labor Code section 2699, *et seq.* to pursue
24 the claims set forth in this Complaint against Defendants as a private attorney general on behalf of
25 themselves and all other Aggrieved Employees. Pursuant to California Labor Code section 2699.3,
26 Plaintiffs have submitted written notice to the Labor and Workforce Development Agency ("LWDA")
27 of the Private Attorney General Act ("PAGA") claims outlined in this Complaint via online submission.
28 Plaintiffs also submitted the \$75.00 filing fee. The notice was also sent to Defendants via certified mail

1 on the same day it was submitted to the LWDA. More than the statutorily required time has passed
2 without the LWDA notifying Plaintiffs that it intends to investigate the violations. As such, Plaintiffs
3 have exhausted all administrative remedies under the PAGA and may bring this action on behalf of all
4 Aggrieved Employees as outlined in the notice to the LWDA. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
5 (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

6 GENERAL ALLEGATIONS

7 13. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 12 as though fully
8 set forth herein.

9 14. Plaintiff PINA AFOA began working for Defendants at The Meadows - Assisted Living,
10 located at 9325 East Stockton Boulevard, Elk Grove, CA 95624 (hereinafter "The Meadows") on June
11 16, 2018.

12 15. When Plaintiff PINA AFOA began working at The Meadows, she was a Care
13 Provider/Medication Technician, making approximately \$14.50 an hour. Soon thereafter, Defendants
14 promoted her to Resident Care Coordinator, where, among other job duties, she was responsible for
15 staffing shifts when employees called in to work sick. At the time of her employment separation on
16 May 29, 2019, Plaintiff PINA AFOA was making \$18.00 per hour.

17 16. Plaintiff KASIA LEMUSA began working for Defendants at The Meadows on
18 approximately October 25, 2019. She worked as a Care Provider/Medication Technician, making
19 \$14.00 dollars per hour at the time of her termination, on February 18, 2020.

20 17. Defendant MILESTONE RETIREMENT COMMUNITIES, LLC., and associated
21 entities ("Defendants") are Washington and California based companies that operate senior living
22 facilities throughout the United States. In fact, Defendants operate approximately eighty (80) senior
23 living facilities in approximately twenty (20) states. In California alone, Defendants operate eleven (11)
24 facilities, including Sierra Ridge Memory Care, Windchime of Chico, Sienna at Otay Ranch, The
25 Meadows - Assisted Living, Kingston Bay Senior Living, Sage Glendale, Regency Palms Palmdale,
26 Skyline Place Senior Living, Oak Terrace Memory Care, Eagle Lake Village Senior Living, and Sage
27 Mountain.
28

1 18. While Plaintiffs worked for Defendants, Defendants failed to pay Plaintiffs and
2 Aggrieved Employees for all hours worked. For instance, while Plaintiffs were working at The
3 Meadows, the facility used a fingerprint device to allow employees to clock in and out. Often this
4 device was not functional and caused errors in the time keeping process. Defendants were aware of this
5 problem and knew Plaintiffs and other Aggrieved Employees had errors in time keeping. These errors
6 resulted in forfeiture in pay and loss of time in the form of wages.

7 19. Outside of time lost due to clock in and out errors, there were other instances where
8 Defendants failed to pay Plaintiffs and Aggrieved Employees for all hours worked. For instance, on one
9 occasion, when Plaintiff KASIA LEMUSA worked a fifteen (15) hour night shift that carried over until
10 the next morning, Defendants failed to pay her for any hours worked after 12:00 a.m. Even after
11 Plaintiff KASIA LEMUSA brought this to management's attention and prepared a time correction sheet,
12 Defendants still never paid her for her time. This occurred weekly for many employees and was brought
13 to management's attention.

14 20. Defendants would also consistently contact Plaintiffs after work hours and when they
15 off the clock. Plaintiffs received calls and texts about work and questions relating to operations.
16 Defendants did not record this time and did not pay for this time as hours worked.

17 21. The amount of time Plaintiffs spent working after hours was particularly excessive in
18 Plaintiff PINA AFOA's case. In fact, Plaintiff PINA AFOA estimates she spent approximately eight (8)
19 to ten (10) hours per week doing work related business on her personal cell phone and company
20 computer while not at work. This included, among other things, answering operational questions and
21 making arrangements to cover shifts when employees called off work. Management was aware of this
22 but, nonetheless, failed to pay Plaintiff PINA AFOA for the work she was doing after working hours
23 when she was not at work.

24 22. Defendants also failed to reimburse Plaintiffs and Aggrieved Employees for their
25 required use of personal cell phones and gas mileage for offsite resident assessments at hospitals and
26 skilled nursing facilities. Plaintiffs and other Aggrieved Employees often had to use their cell phones
27 while at work or at home to perform their duties. They received work calls and texts regularly,
28 sometimes daily, from managers and other employees.

1 23. Additionally, Defendants did not have a practice and policy that informed Plaintiffs and
2 Aggrieved Employees of their right to take a second meal break after working ten (10) hours.
3 Moreover, Plaintiffs and Aggrieved Employees did not voluntarily agree to, or otherwise waive, their
4 right to a second meal break. While Defendants sometimes paid meal break premiums to employees
5 who took their first meal break after five (5) hours of work or missed their first meal breaks, no such
6 policy was instituted for a second meal break.

7 24. Moreover, when Plaintiffs worked double shifts (16 hours), which Plaintiff KASIA
8 LEMUSA regularly did, they were routinely unable to take their second meal break before the end of the
9 tenth hour of work. This was due to both staffing and workflow issues, as well as the lack of any
10 coherent company policy on second meal breaks. For instance, when Plaintiff KASIA LEMUSA
11 worked double shifts, she regularly started at 6:00 a.m. and took her first break at approximately 9:30
12 a.m. After this, she was not able to take a second meal break until between 5:30 p.m. and 6:00 p.m.
13 There were other Aggrieved Employees who took only a single one (1) hour break over the course of a
14 sixteen (16) hour shift. Again, this was due to Defendants' failure to institute a coherent policy
15 regarding second meal breaks.

16 25. In addition to this, there were many instances when Plaintiffs and others Aggrieved
17 Employees were not able to take a full thirty (30) minute, uninterrupted meal break, as a result of staff
18 shortages and Defendants' policies.

19 26. Similarly, when Plaintiffs worked up to twelve (12) or more hours a day or major fraction
20 thereof, Defendants failed to provide a third and fourth rest break. In fact, Plaintiffs and other
21 Aggrieved Employees were unaware of any such policy allowing for a third or fourth rest period. Also,
22 like the meal breaks, staffing shortages and Defendants' policies regularly made it difficult for Plaintiffs
23 to take their rest breaks.

24 27. As a result of Defendants' failure to pay Plaintiffs and Aggrieved Employees for all time
25 worked, failure to pay reimbursement expenses, and failure to pay meal and rest period premiums,
26 Defendants failed to provide all final wages owed to Plaintiffs and Aggrieved Employees within twenty-
27 four (24) hours of their termination or seventy-two (72) hours of their resignation. In addition,
28 Defendants failed to keep accurate time records and failed to provide Plaintiffs and Aggrieved

1 Employees with accurate wage statements that accurately listed their total regular hours worked, gross
2 wages and net wages, and all deductions made.

3 **CAUSE OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **PRIVATE ATTORNEYS GENERAL ACT**
6 **(As to all Defendants)**

7 28. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 27 as though fully
8 set forth herein.

9 29. Plaintiffs themselves have alleged to the Labor Commissioner that Defendants have
10 violated the following provisions of the Labor Code in their dealings with Plaintiffs and other current
11 and former Aggrieved Employees:

- 12 • Violation of Labor Code sections 1194, 1197.1 and Wage Order No. 5, section 4 (Failure
13 to Pay Minimum Wages);
- 14 • Violation of Labor Code sections 510, 1194, and Wage Order No. 5, section 3 (Failure to
15 Pay Overtime Wages);
- 16 • Violation of Labor Code section 2802 (Failure to Pay Reimbursement for Expenses);
- 17 • Violation of Labor Code sections 201-203, 225.5, 256 (Failure to Pay Final Wages);
- 18 • Violation of Labor Code section 558 (Provisions Regulating Hours and Days of
19 Work in Any Industrial Welfare Commission Order);
- 20 • Violation of Labor Code sections 226.7, 512 and Wage Order No. 5, sections 11(A) and
21 11(D) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- 22 • Violation of Labor Code section 226.7 and Wage Order No. 5, sections 12(A) and 11(B)
23 (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- 24 • Violation of Labor Code sections 226.3, 1174 (Failure to Maintain Accurate Records);
- 25 • Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if
26 no civil penalty is provided, default penalties pursuant to Labor Code section
27 2699(f)(2).

28 30. Plaintiffs sees these civil penalties from Defendants pursuant to Labor Code sections
2699(a) and 2699.3.

31. Plaintiffs have received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiffs' claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendants.

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. As to the First Cause of Action:

- a. Penalties according to the following schedule: For any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period; or otherwise enumerated for specific Labor Code sections;
 - b. Reasonable attorney's fees and costs pursuant to the Labor Code section 2699.
2. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Penalties as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Reasonable attorney's fees and costs as provided by law; and
 - d. Interest.

Dated: July 31, 2020

Shimoda Law Corp.

By:

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Attorneys for Plaintiffs**

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CLERK OF COURT
SUPERIOR COURT
OF CALIFORNIA
SAN RAFAEL COUNTY

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