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*Attorneys for Plaintiff Jorge Aguilar, an
Aggrieved Employee of Defendants, for the State
of California's Labor and Workforce
Development Agency on Behalf of All Aggrieved
Employees of Defendants*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JORGE AGUILAR, Aggrieved Employee of
Defendants, on Behalf of the State of
California's Labor and Workforce
Development Agency for All Aggrieved
Employees of Defendants,

Plaintiff,

v.

DAKOTA MEDICAL, INC., a California
Corporation; GLENOAKS
CONVALESCENT HOSPITAL, a California
Limited Partnership; and DOES 1-100,
Inclusive,

Defendants.

Case No. **20STCV30650**

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE §§ 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff JORGE AGUILAR (hereinafter, "Plaintiff"), who is an aggrieved employee of
2 Defendants DAKOTA MEDICAL, INC., GLENOAKS CONVALESCENT HOSPITAL, and
3 DOES 1 through 100, inclusive, (collectively, "Defendants"), brings this representative action as
4 proxy for the State of California's Labor and Workforce Development Agency ("LWDA") on
5 behalf of all current and former aggrieved employees of Defendants, and hereby alleges the
6 following facts and claims against Defendants, and respectfully request civil penalties, all other
7 available relief, and a trial by jury of all issues and causes of action so triable.

8 **INTRODUCTION**

9 1. Plaintiff brings this representative action as the proxy for the State of California's
10 LWDA against Defendants for civil penalties pursuant to California's Private Attorneys General
11 Act of 2004 (hereinafter, the "PAGA"), Labor Code section 2698, *et seq.*, resulting from
12 Defendants' violations of "wage and hour" laws protective of Defendants' aggrieved employees
13 under the California Labor Code and the Industrial Welfare Commission ("IWC") Wage Orders.
14 The PAGA permits an aggrieved employee to bring a representative action as the State's
15 designated proxy on behalf of himself and all other current and former non-exempt aggrieved
16 employees of an employer to recover civil penalties for violation of California's Labor Code.

17 2. Defendants' systemic pattern of Labor Code and IWC Wage Order violations
18 toward Plaintiff and other current and former aggrieved employees of Defendants include, but are
19 not limited to:

20 a. Failure to pay all overtime compensation based upon the appropriate regular
21 rate of pay by not taking into account all remuneration paid, including non-discretionary bonuses
22 earned, in violation of Labor Code sections 204, 510 and Section 3 of the applicable IWC Wage
23 Order(s);

24 b. Failure to provide meal periods and meal period premiums in violation of
25 Labor Code sections 226.7, 512, 558, 1198, and 1199 and section 11 of the applicable Wage
26 Order(s);

27 c. Failure to provide a net ten minutes of off-duty rest periods for every four
28 hours worked, or a major fraction thereof, and rest period premiums, in violation of Labor Code

1 section 226.7 and section 12 of the applicable Wage Order(s);

2 d. Failure to furnish accurate itemized wage statements in violation of Labor
3 Code section 226(a) and 226.3; and

4 e. Failure to timely pay all final wages owed upon separation of employment
5 in violation of Labor Code sections 201, 202, and 203.

6 3. Pursuant to the PAGA, Plaintiff brings this representative action as proxy of the
7 LWDA against Defendants, on behalf of himself and all other aggrieved employees of Defendants
8 in California, seeking to recover civil penalties, costs and attorney's fees, and all other available
9 relief for Defendants' violations of the Labor Code, as alleged herein.

10 **PARTIES**

11 4. Plaintiff JORGE AGUILAR is an individual over the age of eighteen (18).
12 Plaintiff and at all relevant times mentioned in this Complaint, was a California citizen residing
13 within Los Angeles County, California. Plaintiff currently resides in the state of Oregon. Plaintiff
14 was employed by Defendants in California as a non-exempt employee in multiple roles, such as
15 cook, dishwasher, and also in housekeeping at their facility located at 409 W Glenoaks Blvd,
16 Glendale, California 91202, from approximately September of 2017 until his separation of
17 employment on or around October of 2019. At all relevant times herein, Plaintiff was an
18 "employee" as that term is used in the Labor Code. During the applicable statutory period,
19 Plaintiff was subject to various policies, procedures, and practices implemented by Defendants
20 that, as alleged herein, were and are in violation of the Labor Code and IWC Wage Orders. At all
21 relevant times, Plaintiff was and is an aggrieved employee of Defendants within the meaning of
22 Labor Code section 2699(c).

23 5. Defendant DAKOTA MEDICAL, INC., is a California corporation with its
24 principal place of business at 409 W. Glenoaks Blvd, Glendale, Los Angeles County, California.
25 Defendant is an "employer" regularly employing California residents and is subject to the Labor
26 Code and IWC Wage Orders. On information and belief, DAKOTA MEDICAL, INC. is or has
27 been doing business as GLENOAKS CONVALESCENT HOSPITAL.

28 6. Defendant GLENOAKS CONVALESCENT HOSPITAL is a California limited

1 partnership with its principal place of business at 409 W. Glenoaks Blvd, Glendale, Los Angeles
2 County, California. Defendant is an “employer” regularly employing California residents and is
3 subject to the Labor Code and IWC Wage Orders.

4 7. Defendants named DOES 1 through 100, inclusive, are on information and belief
5 now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually
6 doing business in California, including Los Angeles County, and each of the fictitiously named
7 Defendants is responsible for the conduct alleged in this Complaint. Plaintiff does not know the
8 true names or capacities, whether individual, partner or corporate, of DOES 1 through 100,
9 inclusive, and for that reason, DOES 1 through 100, inclusive, are sued under such fictitious
10 names pursuant to California Code of Civil Procedure section 474. Plaintiff will seek leave of
11 court to amend their Complaint to allege both the true names and capacities of the DOE
12 Defendants when ascertained.

13 8. Defendants DAKOTA MEDICAL, INC., GLENOAKS CONVALESCENT
14 HOSPITAL, and DOES 1 through 100, inclusive, were Plaintiff’s and other current and former
15 aggrieved employees’ employers or persons acting on behalf of their employer, within the
16 meaning of California Labor Code section 558, who violated or caused to be violated, a section of
17 Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work
18 in any Wage Order of the IWC, and are subject to civil penalties as set forth in Labor Code section
19 2698, *et seq.*

20 9. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
21 or indirectly, or through agents or other persons, is in some manner intentionally, negligently, or
22 otherwise responsible for the acts, omissions, occurrences and transactions alleged herein. Plaintiff
23 is informed and believe and thereon alleges that each Defendant acted in all respects pertinent to
24 this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy
25 in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other
26 Defendants.

27 **JURISDICTION AND VENUE**

28 10. The California Superior Court has jurisdiction in this matter pursuant to California

1 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
2 causes except those given by statute to other trial courts.” The statutes under which this action is
3 brought do not specify any other specific basis for jurisdiction.

4 11. The California Superior Court also has jurisdiction in this matter because both the
5 individual and aggregate penalties sought herein exceed the minimal jurisdictional limits of the
6 Superior Court and will be established at trial, according to proof.

7 12. The California Superior Court also has jurisdiction over Defendants because they
8 are corporations and/or entities and/or persons with sufficient minimum contacts in California, are
9 citizens of California, or otherwise intentionally availed themselves of the California market so as
10 to render the exercise of jurisdiction over them by the California courts consistent with traditional
11 notions of fair play and substantial justice. There is no federal question at issue as the issues herein
12 are based solely on California statutes and law, including the Labor Code. Thus, this Court
13 maintains appropriate jurisdiction to hear this matter.

14 13. Venue is proper in the Superior Court of California for the County of Los Angeles,
15 pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in
16 that liability arose in Los Angeles County because at least some of the acts and omissions that are
17 the subject matter of this Complaint occurred therein and/or each Defendant either is found,
18 maintains offices, transacts business, exists, and/or has an agent in Los Angeles County.

19 **FACTUAL ALLEGATIONS**

20 14. During the applicable statutory period, Defendants employed Plaintiff as a non-
21 exempt employee in several positions, including cook, dishwasher, and also in housekeeping, at
22 their Glenoaks Convalescent Hospital facility located in the City of Glendale, Los Angeles
23 County, California, from approximately September of 2017 to October of 2019.

24 15. During the applicable statutory period, Defendants failed to compensate Plaintiff
25 for all overtime compensation based upon the regular rate of pay by not taking into account all
26 renumeration paid, including non-discretionary bonuses.

27 16. During the applicable statutory period, Defendants have consistently denied
28 Plaintiff an opportunity to take timely off-duty and uninterrupted thirty-minute-long meal periods

1 before the end of the fifth hour of work. Defendants also did not pay Plaintiff a premium wage
2 equivalent to an additional hour of pay at his regular rate of pay for each workday that a compliant
3 meal period was not provided. For example, Plaintiff was instructed by supervisors to clock out
4 for his meal periods prior to the fifth hour of work, continue working, clock back in, and take his
5 lunch at a later time so that his timesheets would indicate he took compliant meal periods.
6 Additionally, on information and belief, Defendants had and has a practice to modify Plaintiff's
7 timesheets without his knowledge to make it appear as if he took legally compliant meal periods
8 and was thus not owed meal period premiums. Moreover, Plaintiff was instructed by Defendants'
9 personnel that he could not leave the premises during his meal periods. Lastly, if Plaintiff was able
10 to take a meal period, he was often interrupted and asked to perform work-related tasks during the
11 period.

12 17. During the applicable statutory period, Defendants consistently failed to authorize
13 and permit Plaintiff to take timely off-duty and uninterrupted ten-minute-long rest periods every
14 four hours worked, or major fraction thereof. For example, For example, Plaintiff was frequently
15 not provided the opportunity to take a first and/or second rest period in instances where he worked
16 over six hours and was not paid a premium wage for these non-compliant rest periods.
17 Additionally, Plaintiff was instructed by Defendants' personnel that he could not leave the
18 premises during his rest periods and, if he was able to take rest periods, they were interrupted by
19 Defendants' personnel to perform work-related tasks.

20 18. During the applicable statutory period, Defendants failed to provide Plaintiff with
21 accurate itemized wage statements. For example, Plaintiff's wage statements are inaccurate
22 because Defendants appear to be including holiday payments into the total regular hours worked,
23 resulting in the inaccuracy of the total hours worked and an employee's inability to determine the
24 sum of all hours worked without referring to their time records. Additionally, the wage statements
25 do not list the total hours and applicable rate for non-discretionary bonus payments, and an
26 employee cannot determine the rates through the application of basic math. The wage statements
27 are also inaccurate because they fail to identify, among other things, all applicable hourly rates in
28 effect during the pay period and the corresponding numbers of hours worked at each hourly rate

1 by the employee , the correct number of hours worked, the correct amount of gross and net wages
2 earned, and the correct number of and the correct amount of deductions.

3 19. During the applicable statutory period, Defendants willfully failed to pay all wages
4 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
5 final wages owed to him due to their failure to pay Plaintiff for all minimum wages, overtime
6 compensation, and their failure to pay meal and rest period premium wages owed.

7 **GENERAL ALLEGATIONS**

8 20. Plaintiff and all other aggrieved employees are current and former non-exempt
9 employees of Defendants that work or worked at Defendants' facilities in California as non-
10 exempt employees during the statutory period.

11 21. During the applicable statutory period, Plaintiff and all other current and former
12 aggrieved employees were subject to the same various policies, procedures, and practices
13 implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

14 22. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
15 and/or practice, Defendants failed to pay Plaintiff and all other aggrieved employees for all
16 overtime compensation based upon the regular rate of pay by not taking into account all
17 renumeration paid, including non-discretionary bonuses.

18 23. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
19 and/or practice Defendants denied and continue to deny Plaintiff and all other aggrieved
20 employees an opportunity to take timely off-duty and uninterrupted thirty minute long meal
21 periods before the end of the fifth hour of work. Defendants also did not pay Plaintiff and
22 aggrieved employees a premium wage equivalent to an additional hour of pay at their regular rate
23 of pay for each workday that a compliant meal period was not provided.

24 24. Plaintiff is informed and believes, and thereon alleges, Defendants maintain a
25 policy and/or practice that denied and continues to deny Plaintiff and all other aggrieved
26 employees the opportunity to take timely off-duty and uninterrupted ten minute long rest periods
27 every four hours worked, or major fraction thereof. Defendants also did not pay Plaintiff and
28 aggrieved employees a premium wage equivalent to an additional hour of pay at their regular rate

1 of pay for each workday that a compliant rest period was not provided.

2 25. Plaintiff is informed and believes, and thereon alleges, that Defendants maintain a
3 policy or practice that fails to furnish them and all other aggrieved employees with accurate
4 itemized wage statements. For example, the wage statements provided to Plaintiff and the
5 aggrieved employees are inaccurate because Defendants appear to be including holiday payments
6 into the total regular hours worked, resulting in the inaccuracy of the total hours worked and an
7 employee's inability to determine the sum of all hours worked without referring to their time
8 records. Additionally, the wage statements do not list the total hours and applicable rate for non-
9 discretionary bonus payments, and an employee cannot determine the rates through the application
10 of basic math. The wage statements are also inaccurate because they failed to identify, among
11 other things, all applicable hourly rates in effect during the pay period and the corresponding
12 numbers of hours worked at each hourly rate by the employee, the correct number of hours
13 worked, the correct amount of gross and net wages earned, and the correct number of and the
14 correct amount of deductions.

15 26. Plaintiff is informed and believes, and thereon alleges, that Defendants maintain a
16 policy or practice that willfully failed and continue to fail to timely pay Plaintiff and aggrieved
17 employees all wages owed upon separation of employment, and that by virtue of failing to pay all
18 wages owed and rest period premium wages owed, Plaintiff and aggrieved employees were not
19 timely paid all wages owed upon separation of their employment with Defendants.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

22 **(California Labor Code §§ 2698, *et seq.*)**

23 27. Plaintiff incorporates by reference and realleges each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
25 set forth herein.

26 28. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
27 applicable civil penalties, reasonable attorneys' fees and costs, and all other available relief
28 permitted under the PAGA through a representative action on behalf of the State of California's

1 LWDA for all aggrieved employees, including himself, that work or worked for Defendants
2 during the relevant time period.

3 29. In accordance with *Arias v. Superior Court*, (2009) 46 Cal.4th 969, a representative
4 action is not subject to the formalities required of a class action and class certification of PAGA
5 claims is not required.

6 30. Plaintiff is an “aggrieved employee” of Defendants within the meaning of Labor
7 Code section 2699(c) because he was employed by Defendants during the applicable statutory
8 period and suffered one or more of the Labor Code violations, as alleged herein.

9 31. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
10 penalties recovered by aggrieved employees shall be distributed to the LWDA for enforcement of
11 labor laws and education of employers and employees about their rights and responsibilities under
12 the Labor Code, and twenty-five percent (25%) shall be distributed to the aggrieved employees.

13 32. Plaintiff’s representative action alleges violations of certain Labor Code sections
14 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
15 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

16 33. On May 20, 2020, Plaintiff complied with Labor Code section 2699.3(a) by
17 electronically filing written notice with the LWDA and serving written notice, via certified mail,
18 upon Defendants regarding the specific provisions of the Labor Code alleged to have been violated
19 by Defendants and Plaintiff intent to pursue civil penalties against Defendants on behalf of himself
20 and all other aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit A** is a true and
21 correct copy of Plaintiff’s notice letter. Plaintiff also paid the filing fee to the LWDA.

22 34. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall
23 notify the employer and the aggrieved employee or representative by certified mail that it does not
24 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
25 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
26 of the postmark date of the notice given... the aggrieved employee may commence a civil action
27 pursuant to Section 2699.” Sixty-five calendar days have passed since Plaintiff served notice upon
28 the LWDA and Defendants, and the LWDA did not provide notice of its intent to investigate

1 Plaintiff's claims. Accordingly, Plaintiff exhausted his obligation to provide administrative notice
2 and is authorized to commence this representative action seeking civil penalties on behalf of all
3 aggrieved employees of Defendants.

4 35. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
5 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
6 divisions, commissions, boards, agencies or employees for violation of the code may, as an
7 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
8 herself and other current or former employees pursuant to the procedures specified in Labor Code
9 section 2699.3.

10 36. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
11 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
12 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation.

15 37. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of the State of
16 California's LWDA for all aggrieved employees of Defendants, including himself, seeks
17 applicable civil penalties for violations of Labor Codes 201, 202, 203, 204, 226, 226.7, 510, 512,
18 558, 1194, 1197, 1198, and 1199 during the statutory period, as set forth below:

19 a. For violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194,
20 1197 1198, and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred
21 dollars (\$100) for each aggrieved employee per pay period for each initial violation and two
22 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

23 b. For violations of Labor Code section 204, Labor Code section 210 imposes
24 a civil penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation
25 that was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved
26 employee, for each subsequent violation, regardless of whether the subsequent violation was
27 willful or intentional;

28 c. For violations of Labor Code section 203, Labor Code section 256 imposes

1 a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Labor
2 Code section 203. Labor Code section 203(a), provides that if an employer willfully fails to pay,
3 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8,
4 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the
5 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
6 an action therefor is commenced; but the wages shall not continue for more than 30 days;

7 d. For violations of Labor Code section 226(a), Labor Code section 226.3
8 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty
9 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
10 per aggrieved employee for each subsequent violation.

11 38. Defendants violated Labor Code sections 510, 1194, 1197, 1198, and 1199 by not
12 paying Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period
13 as a result of Defendants' policy or practice of failing to pay overtime compensation based upon
14 the regular rate of pay by not taking into account all remuneration paid, including non-
15 discretionary bonuses, as alleged herein. Thus, pursuant to Labor Code section 2699(f)(2),
16 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
17 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
18 aggrieved employee per pay period for each subsequent violation.

19 39. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
20 all other aggrieved employees of Defendants an opportunity to take timely off-duty and
21 uninterrupted thirty minute meal periods for every five hours worked, including timely off-duty
22 and uninterrupted thirty minute long meal periods before the end of the fifth hour of work, and by
23 failing to pay a premium wage equivalent to an additional hour of pay at the regular rate of pay for
24 each day a compliant meal period was not provided. Thus, pursuant to Labor Code section
25 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
27 each aggrieved employee per pay period for each subsequent violation.

28 40. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other

1 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,
2 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
3 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
4 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
5 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
6 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
7 subsequent violation.

8 41. Defendants violated Labor Code section 204 by failing to pay Plaintiff and all other
9 aggrieved employees of Defendants all overtime compensation during a pay period, meal period
10 premium wages and rest period premium wages equivalent to an additional hour of pay at their
11 regular rate of pay for each day a compliant meal periods and/or rest period was not provide
12 during a pay period. In accordance with Labor Code sections 210(a) and 2699(a), Defendants, in
13 addition to, and entirely independent and apart from any other penalty, are subject to a civil
14 penalty for failing to pay all wages earned by Plaintiff and all other aggrieved employees of
15 Defendants for each pay period as provided in Labor section 204, in the amount of one hundred
16 dollars (\$100) for the initial violation per aggrieved employee and two hundred dollars (\$200) for
17 each subsequent violation, or any willful or intentional violation, per aggrieved employee.

18 42. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
19 all other aggrieved employees of Defendants with accurate itemized wage statements correctly
20 identifying, among other things, the total hours worked. the total hours and applicable rate for
21 non-discretionary bonus payments, all applicable hourly rates in effect during the pay period and
22 the corresponding numbers of hours worked at each hourly rate by the employee, the correct
23 number of hours worked, the correct amount of gross and net wages earned, and the correct
24 number of and the correct amount of deductions that were paid or should have been paid. Thus,
25 pursuant to Labor Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely
26 independent and apart from any other penalty, are subject to a civil penalty for violation Labor
27 Code section 226(a) in the amount of two hundred and fifty dollars (\$250) per aggrieved employee
28 per violation in an initial citation and one thousand dollars (\$1,000) per aggrieved employee for

1 each violation in a subsequent citation.

2 43. At all material times, Defendants were Plaintiff and all other aggrieved employees’
3 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
4 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
5 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
6 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
7 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
8 provided by law.

9 44. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
10 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
11 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
12 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
13 Defendants’ failure to pay wages owed for all overtime, as alleged herein.

14 45. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
15 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
16 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
17 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
18 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
19 worked, or major fraction thereof, as alleged herein.

20 46. Defendants violated Labor Code section 1198 by failing to comply with the
21 maximum hours of work and the standards conditions of labor fixed by the IWC under the “Hours
22 and Days of Work”, the “Meal Period”, the “Rest Period” and “Record” sections of the applicable
23 IWC Wage Order, by failing to provide compliant meal periods, failing to pay meal periods
24 premium wages, failing to provide compliant rest periods, failing to pay rest period premium
25 wages, failing to keep and provide accurate records, and failing to timely pay owed wages upon
26 separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2),
27 Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each
28 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for

1 each aggrieved employee per pay period for each subsequent violation.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff pray for judgment against Defendants as follows:

4 1. For all civil penalties authorized by Labor Code section 2698, *et seq.*;

5 2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
6 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
7 per aggrieved employee for each subsequent violation;

8 3. For civil penalties under Labor Code section 256 in an amount not exceeding 30
9 days pay as waiting time under the terms of Labor Code section 203;

10 4. For civil penalties under Labor Code section 210 in the amount of one hundred
11 dollars (\$100) for each aggrieved employee for each initial violation that was neither willful nor
12 intentional, and two hundred dollars (\$200) for each aggrieved employee, for each subsequent
13 violation, regardless of whether the subsequent violation was willful or intentional;

14 5. For civil penalties under Labor Code section 2699(f), for Labor Code violations
15 without a specific civil penalty, in the amount of one hundred dollars (\$100) for each aggrieved
16 employee per pay period for each initial violation and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation;

18 6. For civil penalties under Labor Code section 558, as follows: (1) for an initial
19 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
20 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid;

22 7. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
23 section 2699(g)(1), or other applicable laws;

24 8. For pre-judgment and post-judgment interest as provided by law; and

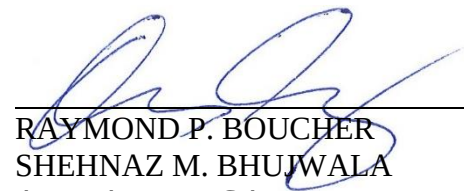
25 9. For such additional relief as this Court may deem just and proper.

1 DATED: August 12, 2020

Respectfully submitted,

2 BOUCHER LLP

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4 By:


RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

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6
7 LAW OFFICES OF SAHAG MAJARIAN II

SAHAG MAJARIAN II

8
9 *Attorneys for Plaintiff Jorge Aguilar, an Aggrieved*
10 *Employee of Defendants, for the State of*
11 *California's Labor and Workforce Development*
12 *Agency on Behalf of All Aggrieved Employees of*
13 *Defendants*

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DATED: August 12, 2020

BOUCHER LLP

RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
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Attorneys for Plaintiff Jorge Aguilar, an Aggrieved Employee of Defendants, for the State of California's Labor and Workforce Development Agency on Behalf of All Aggrieved Employees of Defendants

EXHIBIT A

BOUCHER LLP

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May 20, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
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VIA CERTIFIED MAIL

Dakota Medical, Inc.
c/o Agent for Service of Process
Henry Levine
409 W. Glenoaks Blvd.
Glendale, CA 91202

Glenoaks Convalescent Hospital
c/o Agent for Service of Process
Jacob Lunger
13347 Ventura Blvd.
Sherman Oaks, CA 91423

Re: *Aguilar v. Dakota Medical, Inc., et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 ("PAGA" or "the Act") (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Mr. Jorge Aguilar as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by Dakota Medical, Inc., ("Dakota Medical") and the Glenoaks Convalescent Hospital ("Glenoaks") in California during the statutory period, against Dakota Medical and Glenoaks.

On information and belief, Dakota Medical and Glenoaks own and operate at least one convalescent home in Glendale, California. Mr. Aguilar was employed as a non-exempt employee in multiple roles¹ at Dakota Medical and Glenoaks' facility located at 409 W Glenoaks Blvd,

¹ Mr. Aguilar worked in multiple roles as a cook, dishwasher, and also in housekeeping.

Glendale, California 91202 from approximately September of 2017 to October of 2019. Pursuant to California law, Dakota Medical and Glenoaks have at all relevant times been Mr. Aguilar's employer during the statutory period.

In his representative action, Mr. Aguilar will seek civil penalties pursuant to PAGA as a result of Dakota Medical and Glenoaks' failure to: (1) compensate for all overtime hours worked based on the appropriate regular rate of pay that includes all remuneration for employment paid to employees (Lab. Code § 510); (2) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (3) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (4) furnish complete and accurate itemized wage statements (Lab. Code § 226(a); and (5) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

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

Labor Code section 1197 states, in pertinent part, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means 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."

In relevant part, Section 4 of the applicable Wage Order states that, “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.

Upon information and belief, during Mr. Aguilar’s employment, Dakota Medical and Glenoaks failed to compensate him and aggrieved employees all overtime compensation based upon the appropriate regular rate of pay by not taking into account all remuneration paid, including holiday pay earned by Mr. Aguilar and aggrieved employees. Accordingly, Mr. Aguilar, on behalf of himself and other aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the “Meal Periods” Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, “An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.”

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Section 2 of the applicable Wage Order states that, “Hours worked means 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.”

Section 11 of the applicable Wage Order provides that:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Dakota Medical and Glenoaks failed and fail to provide Mr. Aguilar and aggrieved employees with compliant thirty minute off-duty meal periods for work periods of more than five hours and failed to pay them premium wages at their regular rates of pay on workdays they failed to provide them with required meal periods. For example, Mr. Aguilar regularly did not receive his first meal break until after the sixth hour of work. Further, during his employment Mr. Aguilar was instructed by supervisors to clock out for his meal periods prior to the fifth hour of work, continue working, clock back in, and take his lunch at a later time so that his timesheets would indicate he took compliant meal breaks. Additionally, on information and belief, Dakota Medical and Glenoaks had and has a practice to modify Mr. Aguilar and aggrieved employees' timesheets without their knowledge to make it appear as if employees took legally compliant meal breaks and were thus not owed meal break premiums. Moreover, Mr. Aguilar was instructed by Dakota Medical and Glenoaks personnel that he could not leave the premises during his meal breaks. Lastly, if Mr. Aguilar was able to take a meal period he was often interrupted and asked to perform work-related tasks.

Accordingly, Mr. Aguilar, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1197, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, “An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

Section 12 of the applicable Wage Order provides that:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Dakota Medical and Glenoaks’ policies and practices failed and fail to provide Mr. Aguilar and aggrieved employees with off-duty net rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays they failed to provide them with an opportunity to take rest periods. For example, Mr. Aguilar frequently was not provided the opportunity to take a first and/or second rest period in instances where he worked over six hours and was not paid a premium wage for these non-compliant rest periods. Lastly, Mr. Aguilar was instructed by Dakota Medical and Glenoaks personnel that he could not leave the premises during his rest breaks and if he was able to take rest breaks, they were interrupted by Dakota Medical and Glenoaks personnel to perform work-related tasks.

Accordingly, Mr. Aguilar, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Mr. Aguilar and aggrieved employees were furnished with inaccurate itemized wage statements. For example, Mr. Aguilar and aggrieved employees were furnished with wage statements that did not identify Dakota Medical, Inc. or Glenoaks Convalescent Hospital as their employers. Moreover, as a result of alleged violations discussed above, Dakota Medical and Glenoaks furnished wage statements that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned. Accordingly, Mr. Aguilar on behalf of himself and other aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

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

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer

willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

Dakota Medical and Glenoaks willfully failed and fails to provide Mr. Aguilar, and, upon information and belief, aggrieved employees all wages due and owed upon separation of employment. By furnishing Mr. Aguilar and aggrieved employees with a final check that failed to include all earned and owed wages including overtime compensation and meal and rest period premiums – as described above, Dakota Medical and Glenoaks violated Labor Code sections 201 or 202.

Accordingly, Mr. Aguilar, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE
ORDERS**

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Dakota Medical and Glenoaks failed to provide Mr. Aguilar and aggrieved employees compliant meal periods and/or rest periods and failed to pay premium wages owed and failed to pay all overtime compensation owed. Accordingly, Mr. Aguilar, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

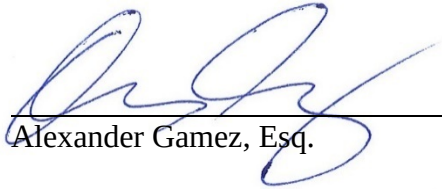
The allegations set forth herein are supported by, among other things, records and documents from Mr. Aguilar's employment with Dakota Medical and Glenoaks, including Employee timecard reports and Earnings Statements, and Mr. Aguilar's confirmation of Dakota Medical and Glenoaks' unlawful practices and policies. As a result of the foregoing violations, Mr. Aguilar is entitled to file a Complaint and invoke the protections of the Act. Mr. Aguilar has placed Dakota Medical and Glenoaks on notice by mailing a certified copy of this notice to their corporate headquarters and/or authorized agents.

BOUCHERLLP

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Very truly yours,

BOUCHER LLP

By: 

Alexander Gamez, Esq.

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