

1 Erica L. Rosasco (SBN 220836)
2 erica@mckaguerosasco.com
3 Adrian M. Hoppes (SBN 288477)
4 adrian@mckaguerosasco.com
5 **McKAGUE | ROSASCO LLP**
6 1217 Pleasant Grove Blvd., Suite 120
7 Roseville, CA 95678
8 Phone: (916) 672-6552
9 Fax: (916) 672-6563

10 Attorneys for Plaintiff Carol Stiles

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SACRAMENTO**

13 CAROL STILES, an individual,

14 Plaintiff,

15 v.

16 IR REHAB HOME HEALTH INC., a
17 California Corporation dba ARIAS HOME
18 HEALTH, DAVID F. SHIRLEY, M.D., an
19 individual, IRINA RILEY, an individual,
20 and DOES 1-10, inclusive,

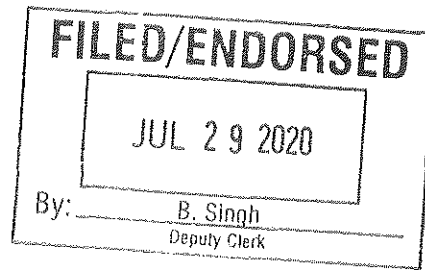
21 Defendants.

Case No.:

COMPLAINT FOR:

1. FAILURE TO PROVIDE REST PERIODS;
2. FAILURE TO PROVIDE MEAL PERIODS;
3. FAILURE TO PAY MINIMUM WAGES;
4. FAILURE TO PAY OVERTIME WAGES;
5. FAILURE TO TIMELY PAY WAGES;
6. FAILURE TO PAY REPORTING TIME WAGES;
7. FAILURE TO FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS;
8. FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
9. FAILURE TO PAY ALL WAGES OWED UPON TERMINATION; AND
10. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ. and
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 ET SEQ.

DEMAND FOR JURY TRIAL



File by Fax

1 Plaintiff Carol Stiles (hereinafter “Plaintiff”), by and through her attorneys of record, brings
2 this action against Defendants IR Rehab Home Health Inc. dba Arias Home Health, David F.
3 Shirley, M.D. and Irina Riley (collectively, “Defendants”) on behalf of herself and all other
4 nonexempt employees of Defendants on the following grounds:

5 **INTRODUCTION**

6 1. Plaintiff brings this action in her individual and representative capacity in order to
7 remedy wage and hour violations by Defendants, who engaged in a pattern of violating the
8 California Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Orders.

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

- 11 a. Failing to authorize and permit their employees to take rest breaks, or
12 provide compensation in lieu thereof;
- 13 b. Failing to provide their employees with timely, uninterrupted, off-duty meal
14 periods, or compensation in lieu thereof;
- 15 c. Failing to pay their employees all wages owed, including minimum wages
16 and overtime wages;
- 17 d. Failing to provide employees with accurate, itemized wage statements;
- 18 e. Failing to timely pay wages;
- 19 f. Failing to pay reporting time wages;
- 20 g. Failing to reimburse employees for expenses necessarily incurred in the
21 discharge of their duties; and
- 22 h. Failing to pay employees all wages owed upon separation of employment.
- 23 i. Violations of the Private Attorneys General Act of 2004 §§ 2698 et seq.
24 (“PAGA”)

25 3. Pursuant to California law, Plaintiff seeks to recover, among other things, unpaid
26 wages and benefits, prejudgment interest, statutory damages, civil penalties pursuant to the Private
27 Attorneys General Act of 2004 and attorneys’ fees and litigation costs.

28 4. All allegations in this complaint are based upon Plaintiff’s own personal knowledge.

Each allegation in this complaint has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Code of Civil Procedure § 410.10. Defendants are licensed to do business, and are actually doing business, in the state of California. The amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the minimum jurisdictional amount for this Court.

6. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395 and 395.5 because the acts, conduct, and events alleged herein occurred in this county. Defendants transact business and maintain offices in Sacramento County, and are otherwise within this Court's jurisdiction for purposes of service of process.

THE PARTIES

7. Plaintiff brings this action on behalf of herself and, all other nonexempt employees employed by Defendants during the applicable statutory period, and other members of the general public similarly-situated. Plaintiff is, and at all times relevant to this complaint was, an individual, a citizen of California, and over the age of 18. Plaintiff was employed by Defendants in an hourly, nonexempt capacity from May 2017 through May 2020.

8. Plaintiff is informed and believes, and thereon alleges, that Defendant IR Rehab Home Health Inc. dba Arias Home Health is a California Corporation doing business in the state of California and in the county of Sacramento.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant David F. Shirley, M.D. is, and at all times relevant to this complaint was, an individual residing in and conducting business in the state of California and in the county of Sacramento. Defendant Shirley is an owner and a managing agent of Defendant IR Rehab Home Health Inc. dba Arias Home Health, who is largely tasked with implementing and enforcing the company's employment policies, practices and procedures. Among other things, Defendant Shirley is responsible for developing company-wide policies and practices and for directing the work of Plaintiff and other nonexempt employees. As a result, Plaintiff contends that Defendant Shirley directly causes the

1 violations alleged herein.

2 10. Plaintiff is informed and believes, and thereon alleges, that Defendant Irina Riley is,
3 and at all times relevant to this complaint was, an individual residing in and conducting business in
4 the state of California and in the county of Sacramento. Defendant Riley is an owner and a
5 managing agent of Defendant IR Rehab Home Health Inc. dba Arias Home Health, who is largely
6 tasked with implementing and enforcing the company's employment policies, practices and
7 procedures. Among other things, Defendant Riley is responsible for developing company-wide
8 policies and practices and for directing the work of Plaintiff and other nonexempt employees. As a
9 result, Plaintiff contends that Defendant Riley directly causes the violations alleged herein.

10 11. Plaintiff is informed and believes, and thereon alleges, that Defendants, at all times
11 relevant to this complaint, were and are employers as defined in and subject to the Labor Code and
12 applicable IWC Wage Orders, whose employees were and are engaged throughout this county and
13 the state of California.

14 12. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiff, who
16 therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474.
17 Plaintiff will amend her complaint to allege the true names and capacities of Does 1 through 10
18 when they are ascertained.

19 13. At all times relevant to this complaint, acts alleged to have been done by Defendants
20 are also alleged to have been done by the unascertained defendants mentioned above, and by each
21 of their agents and employees who acted within the scope of their agency and/or employment.

22 14. At all times relevant to this complaint, the acts and omissions of each of the
23 defendants concurrently contributed to the various acts and omissions of each and every one of the
24 other defendants in proximately causing the wrongful conduct, harm, and damages alleged herein.
25 Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the
26 acts or omissions complained of herein.

27 **GENERAL FACTUAL ALLEGATIONS**

28 15. Defendants own and operate a home health care company that provides medical

1 assistance to clients in their homes throughout the greater Sacramento area.

2 16. At all relevant times mentioned herein, Defendants employed Plaintiff and other
3 nonexempt employees within California, including the county of Sacramento. Plaintiff is informed
4 and believes, and thereon alleges, that Defendants exercise control over their nonexempt
5 employees' wages, hours, and working conditions. Among other elements of control, Defendants
6 provide employees with specific work duties to complete daily and instruct them as to when and
7 how those duties are to be performed. Defendants Shirley and Riley were Plaintiff's direct
8 supervisors and were tasked with directing and overseeing her work, as well as the work of other
9 nonexempt employees. Defendants Shirley and Riley also routinely implement and enforce IR
10 Rehab Home Health Inc. dba Arias Home Health's employment policies and practices.

11 17. Plaintiff alleges that she and other nonexempt employees were consistently not
12 provided with rest periods of at least 10 minutes for each four-hour work period, or major fraction
13 thereof. This is due to: (1) Defendants' policy of not scheduling rest periods as part of each work
14 shift; (2) Defendants chronically overscheduling clients on employees' schedules; and/or (3)
15 Defendants imposing so much work on each employee that it is all but impossible for employees
16 to take their rest breaks and still finish their work on time.

17 18. Although Defendants are aware that their nonexempt employees are not being
18 provided with compliant rest periods, as a matter of policy and practice, Defendants do not pay
19 employees one additional hour of wages at their regular rate of compensation, as set forth in Labor
20 Code § 226.7.

21 19. Plaintiff also alleges that Defendants routinely failed to provide her and other
22 nonexempt employees with a 30 minute off-duty, uninterrupted meal period on days that they work
23 more than five hours. In addition, Plaintiff contends that on days when she and other nonexempt
24 employees worked in excess of 10 hours, Defendants failed to provide them a second 30 minute
25 off-duty, uninterrupted meal period.

26 20. Plaintiff further alleges that Defendants do not inform employees that they are
27 entitled to take off-duty, uninterrupted meal periods, but rather advise them to eat between client
28 visits, while en route from one home to another. As a matter of policy and practice, Defendants do

1 not keep track of meal periods including the timing of the meal period, the length, or whether one
2 was even taken. Despite knowing that employees are not being provided meal periods that comply
3 with California law, Defendants do not pay employees one additional hour of wages at their regular
4 rate of compensation, as required under Labor Code § 226.7.

5 21. As a result of Defendants' practice of not capturing timekeeping records to show a
6 30 minute off-duty meal period whether one was provided or not, nonexempt employees are not
7 compensated for all hours worked, including regular and overtime hours.

8 22. Plaintiff contends that over the course of the relevant time period, Defendants have
9 consistently provided her and other nonexempt employees with wage statements that do not comply
10 with California law. Specifically, Defendants violate Labor Code § 226(a) because the gross and
11 net wages earned, total hours worked, and the applicable hourly rates in effect during the pay period
12 and the corresponding number of hours worked at each hourly rate do not accurately reflect all of
13 the hours employees actually work, including overtime hours.

14 23. Plaintiff is informed and believes, and thereon alleges that Defendants paid her and
15 other nonexempt employees a flat piece-rate for each client they saw, regardless of the actual
16 number of hours they worked each day and each pay period.

17 24. At all relevant times, Plaintiff worked shifts in excess of eight hours. Plaintiff is
18 informed and believes, and thereon alleges that she and other nonexempt employees were not paid
19 for all hours worked, including overtime hours worked.

20 25. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
21 should have known that Plaintiff and other nonexempt employees were entitled to receive at least
22 minimum wages for all hours worked and that, in violation of the California Labor Code, they
23 were not receiving at least minimum wages for all hours worked.

24 26. In addition to depriving employees of wages owed to them, Defendants fail to
25 reimburse employees for reasonable expenses necessarily incurred in the discharge of their duties,
26 including the use of their personal cellphones, internet and vehicles for business purposes. Plaintiff
27 alleges that she and other nonexempt employees were routinely required to use their personal
28 cellphones to contact clients, to communicate with customers and management while away from

1 the work premises, and to send and receive work-related text messages and emails. Plaintiff further
2 contends that she and other employees are frequently required to use their personal vehicles to
3 travel to client's houses without being reimbursed at the applicable IRS rate. Plaintiff further
4 contends that she was required to use her home internet to complete work reports and submit them
5 as required by company policy.

6 27. Despite knowing that their employees are incurring expenses by using their personal
7 cellphones and internet for business purposes, Defendants do not reimburse employees for such
8 expenses. Moreover, while employees who use their personal vehicles for business purposes are
9 generally reimbursed for mileage, the rate Defendants use is less than the IRS standard business
10 rate. This falls far short of what is required under Labor Code § 2802, as it fails to reimburse
11 employees for the actual expenses they incur. Moreover, it does nothing to address the expenses
12 employees incur when they are required to use their personal cellphones for work-related calls, text
13 messages and emails or their home internet connection to create and submit works reports.

14 28. Finally, Plaintiff alleges that as a result of Defendants' failure to pay premium wages
15 for missed or noncompliant meal and rest periods, as well as overtime and minimum wages for
16 work performed, Defendants also failed to pay nonexempt employees all wages owed upon
17 termination, as required under Labor Code §§ 201 and 202. As such, employees who were
18 terminated or resigned are entitled to waiting time penalties under Labor Code § 203.

19 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 referenced, Defendants were advised by skilled lawyers and other professionals, employees, and
21 advisors knowledgeable about California labor and wage law, employment and personnel practices,
22 and the requirements of California law.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

31. Defendants, at all relevant times to this complaint, were employers or persons acting on behalf of an employer, who violated Plaintiff's and other aggrieved employees' rights by violating the California Labor Code and are subject to civil penalties provided for under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq. ("PAGA")

a. Defendants violated Labor Code § 226.7 and IWC Wage Order No. 15-2001 by failing to provide employees with a 10-minute, duty-free rest break for every four hours of work or major fraction thereof, or alternatively, paying those employees one additional hour of pay at their regular rate of pay for each workday that a rest break was not provided.

c. Defendants violated Labor Code § 226(a) by failing to provide Plaintiff and other nonexempt employees with itemized wage statements that accurately reflected, among other things, the total hours worked, all applicable hourly rates during the pay period and the corresponding number of hours worked, and the gross wages earned by each employee.

- 1 d. Defendants violated Labor Code § 204 by routinely failing to pay employees their
2 earned wages on days designated in advance by the company as the regular
3 paydays.
- 4 e. Defendants violated Labor Code §§ 204 and 1198, as well IWC Wage Order No.
5 15-2001, by failing to provide reporting time pay to employees who are required
6 to report for work, and do report to work, but are not put to work or are furnished
7 with less than half of their usual or scheduled day's work.
- 8 f. Defendants violated IWC Wage Order No. 15-2001 and Labor Code §§ 510, 1194
9 and 1198 by failing to provide overtime wages for work performed in excess or
10 eight hours on a workday and double-time for work performed in excess of twelve
11 hours on a workday.

12 33. On May 18, 2020, Plaintiff gave written notice by certified mail of Defendants'
13 violations of various provisions of the California Labor Code as alleged in this complaint to the
14 Labor and Workforce Development Agency ("LWDA") and Defendants.

15 34. The LWDA had until July 22, 2020 to provide notice of whether it intended to
16 investigate the violations Plaintiff alleges. As of the date of this complaint, the LWDA has not
17 provided such notice. Accordingly, Plaintiff files this action in her representative capacity as
18 permitted under Labor Code § 2699.3(a)(2)(A).

19 **FIRST CAUSE OF ACTION**

20 **Failure to Provide Rest Periods**

21 **(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)**

22 35. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
23 though fully set forth herein.

24 36. Labor Code § 226.7 states "no employer shall require any employee to work during
25 any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

26 37. IWC Wage Order No. 15-2001, § 12 provides, in relevant part:
27 Every employer shall authorize and permit all employees to take rest
28 periods, which insofar as practicable shall be in the middle of each
work period. The authorized rest period time 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

38. Under Labor Code § 226.7, if an employer fails to provide an employee a rest period in accordance with the applicable Wage Order, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for each workday that a rest period is not provided.

39. Plaintiff contends that at all times relevant to this complaint, Defendants maintained unlawful rest break policies and procedures.

40. Plaintiff and other nonexempt employees regularly work in excess of four hours a day without Defendants authorizing and permitting them to take at least a 10-minute paid rest period. Despite having knowledge that their employees are not being provided rest breaks, Defendants do not pay an additional hour of pay at the employee's regular rate of pay for each workday that a rest period is not provided, as required by Labor Code § 226.7 and IWC Wage Order No. 2001-15

41. As a direct result of Defendants' unlawful employment practices, Plaintiff and other nonexempt employees have been deprived of wages owed to them. Pursuant to Labor Code § 226.7, Plaintiff is entitled to seek, and does seek, one hour of pay at her regular rate of pay for each workday that Defendants failed to provide her with rest periods, as required under California law. In addition, Plaintiff is entitled to recover civil penalties on behalf of herself and all other nonexempt employees.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods

(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)

42. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as though fully set forth herein.

43. Under Labor Code § 512 and the applicable IWC Wage Order, an employer may not employ an employee for more than five hours per day without providing the employee with a 30-minute meal period. An employer satisfies its meal period obligation when the employee is

provided at least 30 minutes uninterrupted and is relieved of all duty for the entire period. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.

44. When an employer fails to provide such a meal period, Labor Code § 226.7 requires the employer to pay the employee one additional hour of pay at the employee's regular rate of pay.

45. At all times relevant to this complaint, Plaintiff and other nonexempt employees regularly worked in excess of five hours in a workday without being provided an uninterrupted, off-duty meal period of at least 30 minutes, as required by Labor Code § 512 and IWC Wage Order No. 15-2001.

46. Plaintiff contends that Defendants have knowledge that their employees are not being provided with compliant meal periods, in part, because employees' timekeeping records show such. However, Defendants not only fail to pay an additional hour of pay for each workday that a meal period is not provided, but as a matter of policy and practice, automatically deduct 30 minutes from each shift that exceeds five hours.

47. Defendants unlawful employment practices deprived, and continues to deprive, Plaintiff and other nonexempt employees of wages owed to them. As permitted under Labor Code § 226.7, Plaintiff is entitled to one hour of wages at her regular rate of pay for each workday that Defendants failed to provide her with an uninterrupted, off-duty meal period of at least 30 minutes. As described below, Plaintiff is also entitled to recover civil penalties on behalf of herself and all other nonexempt employees.

THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)

48. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as though fully set forth herein.

49. Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee 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.

50. In addition, Labor Code § 1194.2(a) states, in part:

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

51. Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

52. Labor Code 1197.1(a) provides, in part, "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee"

53. Similarly, section 4(B) of IWC Wage Order No. 2001-15 states, "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." The term "hours worked" is defined as "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" *Id.* at § 2(K).

54. Defendants frequently require nonexempt employees to work during all or part of their meal periods. In addition to depriving employees of premium pay owed under Labor Code § 226.7, Defendants' practice results in employees not being compensated at least minimum wage for all hours worked.

55. Defendants' unlawful conduct, which is tantamount to wage theft, has deprived, and continues to deprive, nonexempt employees of wages owed to them. Pursuant to the applicable IWC Wage Order and Labor Code §§ 1194, 1194.2, 1197 and 1197.1, Plaintiff is entitled to recover unpaid wages, as well as reasonable attorney's fees and costs of suit. In addition, Plaintiff is entitled

1 to seek, and does seek, civil penalties on behalf of herself and all other aggrieved employees.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Pay Overtime Wages**

4 **(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)**

5 56. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
6 though fully set forth herein.

7 57. In pertinent part, California Labor Code § 510 provides:

8 Eight hours of labor constitutes a day's work. Any work in excess of
9 eight hours in one workday and any work in excess of 40 hours in
10 any one workweek and the first eight hours worked on the seventh day
11 of work in any one workweek shall be compensated at the rate of no
12 less than one and one-half times the regular rate of pay for an
13 employee. (Emphasis added.)

14 58. Likewise, section 3(C) of the applicable IWC Wage Order, explains that
15 employment beyond eight hours in a workday is permissible, so long as the employee is
16 compensated at least one and one-half times his or her regular rate of pay for all hours worked in
17 excess of eight hours or 40 hours in a workweek.

18 59. Labor Code § 1198 states, "The maximum hours of work and the standard conditions
19 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
20 of labor for employees. The employment of any employee for longer hours than those fixed by the
21 order or under conditions of labor prohibited by the order is unlawful."

22 60. Under California law, an employee may not waive his or her right to overtime
23 compensation and any agreement by the employee to accept less than the statutorily required rate
24 is unenforceable as a matter of law. *See Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1430
(2000).

25 61. At all times relevant to this complaint, Plaintiff and the other nonexempt employees
26 were required to work in excess of the hours set forth in Labor Code § 510 and the applicable IWC
27 Wage Order, for which they did not receive adequate compensation.

28 62. Defendants' unlawful conduct, as described herein, deprives Plaintiff of wages owed
to her. Pursuant to the applicable IWC Wage Order and Labor Code §§ 510, 1194 and 1198,

1 Plaintiff is entitled to recover unpaid overtime wages and interest, as well as her reasonable
2 attorneys' fees and costs. In addition, as described below, Plaintiff is entitled to recover civil
3 penalties on behalf of herself and all other nonexempt employees.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Timely Pay Wages**

6 **(By Plaintiff in Her Representative Capacity Against All Defendants)**

7 63. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
8 though fully set forth herein.

9 64. Labor Code § 204(a) states, in part:

10 All wages, other than those mentioned in Section 201, 201.3, 202,
11 204.1, or 204.2, earned by any person in any employment are due and
12 payable twice during each calendar month, on days designated in
13 advance by the employer as the regular paydays. Labor performed
14 between the 1st and 15th days, inclusive, of any calendar month shall
15 be paid for between the 16th and the 26th day of the month during
16 which the labor was performed, and labor performed between the
17 16th and the last day, inclusive, of any calendar month, shall be paid
18 for between the 1st and 10th day of the following month.

19 65. Subsection (d) further states that "all wages earned for labor in excess of the normal
20 work period shall be paid no later than the payday for the next regular payroll period."

21 66. Labor Code § 210(a) provides:

22 In addition to, and entirely independent and apart from, any other
23 penalty provided in this article, every person who fails to pay the
24 wages of each employee as provided in Sections 201.3, 204, 204b,
25 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a
26 penalty as follows:

27 (1) For any initial violation, one hundred dollars (\$100) for each
28 failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional
violation, two hundred dollars (\$200) for each failure to pay each
employee, plus 25 percent of the amount unlawfully withheld.

67. During the relevant time period, Defendants intentionally and willfully failed to pay
Plaintiff and other nonexempt employees all wages due to them within the time periods set forth
under Labor Code § 204. As such, Plaintiff is entitled to recover civil penalties on behalf of herself
and the other nonexempt employees pursuant to Labor Code § 210, as well as her reasonable

attorneys' fees and costs under Labor Code § 218.5.

SIXTH CAUSE OF ACTION

Failure to Furnish Accurate, Itemized Wage Statements

(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)

68. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as though fully set forth herein.

69. Section 7 of IWC Wage Order No. 15 requires employers to maintain accurate records showing when employees begin and end each work period, as well as the time of any off-duty meal periods. Similarly, Labor Code § 1174 requires that employers maintain accurate payroll records showing the hours worked and the wages paid to each employee.

70. Under Labor Code § 226(a), an employer must provide an accurate itemized statement in writing showing, among other things, the gross wages earned, the total hours worked by the employee, the inclusive dates of the period for which the employee is paid, the name and address of the legal employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

71. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of all actual damages or statutory penalties in the amount of \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a subsequent pay period, up to a maximum amount of \$4,000.

72. Injury occurs where the employer fails to provide accurate information and the employee cannot promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Labor Code §§ 226(e)(2)(A)-(B).

73. Labor Code § 226(e)(2)(C) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to other documents or information."

74. The wage statements Defendants provide to their employees do not comply with

1 California law because they do not accurately reflect the total hours worked, the applicable hourly
2 rates and the corresponding number of hours worked, and the gross wages earned by each
3 employee. Moreover, and other nonexempt employees are unable to ascertain whether or not they
4 were paid for all work performed without referencing other documents or outside information.

5 75. Defendants' unlawful policies and practices, as alleged herein, violate Labor Code
6 § 226(a) and entitle Plaintiff to recover statutory damages in the amount of \$50 for the initial
7 violation and \$100 for each subsequent violation, up to a maximum of \$4,000, as well as reasonable
8 attorneys' fees and costs. Pursuant to PAGA, Plaintiff is also entitled to recover civil penalties on
9 behalf of herself and all other aggrieved employees.

10 SEVENTH CAUSE OF ACTION

11 Failure to Provide Reporting Time Pay

12 (By Plaintiff in Her Individual and Representative Capacity Against All Defendants)

13 76. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
14 though fully set forth herein.

15 77. IWC Wage Order No. 15-2001 provides, in pertinent part, as follows:
16 Each workday an employee is required to report for work and does
17 report, but is not put to work or is furnished less than half said
18 employee's usual or scheduled day's work, the employee shall be paid
19 for half the usual or scheduled day's work, but in no event for less than
20 two (2) hours nor more than four (4) hours, at the employee's regular
21 rate of pay, which shall not be less than the minimum wage.

22 78. Labor Code § 1198 states, "The maximum hours of work and the standard conditions
23 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
24 of labor for employees. The employment of any employee for longer hours than those fixed by the
25 order or under conditions of labor prohibited by the order is unlawful."

26 79. Defendants' nonexempt employees generally have a fixed work schedule each
27 week. However, as a matter of policy and practice, Defendants do not provide reporting time pay
28 to employees who report to work as scheduled, but who are not put to work or are required to work
less than half of their usual or scheduled day's work. This practice violates IWC Wage Order No.
15-2001 and Labor Code § 1198.

80. As a result of Defendants' unlawful conduct, Plaintiff and other nonexempt

1 employees have been deprived of wages owed to them. Pursuant to IWC Wage Order No. 15-2001
2 and Labor Code § 1198, Plaintiff is entitled to recover unpaid wages. In addition, Plaintiff is entitled
3 to seek, and does seek, civil penalties on behalf of herself and all other aggrieved employees.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Reimburse Necessary Business Expenses**

6 **(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)**

7 81. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
8 though fully set forth herein.

9 82. Labor Code § 2802 provides that “an employer shall indemnify his or her employees
10 for all necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties, or of his or obedience to the directions of the employer.”

12 83. Section 2802 is subject to an anti-waiver provision. Specifically, Labor Code § 2804
13 states in relevant part, that “[a]ny contract or agreement, express or implied, made by any employee
14 to waive the benefits of this article or any part thereof, is null and void.”

15 84. Under California law, employers have a duty of due diligence to determine whether
16 or not employees have incurred expenses in the discharge of their duties, and to reimburse them for
17 any necessary expenses. *See Stuart v. RadioShack*, 641 F.Supp.2d 901 (N.D. Cal. 2009). When
18 employees are required to make work-related calls on their personal cellphones, the employer must
19 reimburse employees a reasonable percentage of their cellphone bills. *Cochran v. Schwan's Home*
20 *Service, Inc.*, 228 Cal.App.4th 1137, 1140 (2014). The California Supreme Court has made it clear
21 that the purpose of Labor Code § 2802 is “to prevent employers from passing their operating
22 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
23 (2007).

24 85. Despite the clear language of Labor Code § 2802, and despite knowing that Plaintiff
25 and other nonexempt employees incurred mileage expenses and expenses associated with using
26 their personal cellphones, vehicles and internet for business purposes, Defendants maintain policies
27 and practices that fail to reimburse employees for those expenses. As such, Defendants violate
28 Labor Code § 2802 by forcing employees to bear their operating costs.

1 86. Under Labor Code § 2802, subdivision (b)-(c), Plaintiff is entitled to recover the full
2 amount of the expenses she incurred, interest thereon, reasonable attorneys' fees, and costs of suit.
3 In her representative capacity, Plaintiff is also entitled to recover civil penalties on behalf of herself
4 and all other aggrieved employees.

5 NINTH CAUSE OF ACTION

6 Failure to Pay All Wages Owed Upon Termination

7 **(By Plaintiff in Her Individual and Representative Capacity Against All Defendants)**

8 87. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
9 though fully set forth herein.

10 88. Labor Code § 201(a) states: "If an employer discharges an employee, the wages
11 earned and unpaid at the time of discharge are due and payable immediately."

12 89. Under Labor Code § 202(a):

13 If an employee not having a written contract for a definite period
14 quits his or her employment, his or her wages shall become due and
15 payable not later than 72 hours thereafter, unless the employee has
16 given 72 hours previous notice of his or her intention to quit, in which
17 case the employee is entitled to his or her wages at the time of
18 quitting. Notwithstanding any other provision of law, an employee
19 who quits without providing a 72-hour notice shall be entitled to
20 receive payment by mail if he or she so requests and designates a
21 mailing address. The date of the mailing shall constitute the date of
22 payment for purposes of the requirement to provide payment within
23 72 hours of the notice of quitting.

24 90. Labor Code § 203 further provides:

25 If an employer willfully fails to pay, without abatement or reduction,
26 in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
27 wages of an employee who is discharged or who quits, the wages of
28 the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but
the wages shall not continue for more than 30 days.

1 91. Although Defendants terminated her employment in May 2020, Plaintiff is informed
2 and believes, and thereon alleges, that Defendants failed to pay her all wages due upon termination
3 in accordance with Labor Code § 201-203, including regular, overtime, and premium wages.

4 92. Plaintiff is further informed and believes, and thereon alleges, that Defendants'

1 failure to pay all wages owed upon termination was willful and intentional.

2 93. Plaintiff did not secret or absent herself from Defendants, nor did she refuse to
3 accept any earned and unpaid wages from Defendants. Accordingly, Defendants are liable for
4 waiting time penalties for the unpaid wages pursuant to Labor Code §§ 201-203, as well as
5 Plaintiff's attorneys' fees and costs according to proof. Pursuant to Labor Code § 2699(c), Plaintiff
6 is also entitled to seek civil penalties, and does seek such penalties, on behalf of all former
7 employees.

8 TENTH CAUSE OF ACTION

9 Violation of Business and Professions Code § 17200 et seq.

10 (By Plaintiff in Her Individual Capacity Against Defendant IR Rehab Home Health Inc.)

11 94. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
12 though fully set forth herein.

13 95. As codified in Business and Professions § 17200 et seq., California's Unfair
14 Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or
15 practice."

16 96. The UCL permits a cause of action to be brought if a practice violates some other
17 law. In effect, the "unlawful" prong of the UCL makes a violation of the underlying law a per se
18 violation of Business and Professions Code § 17200. *Cel-Tech Commc'ns, Inc. v. Los Angeles*
19 *Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). Virtually any law or regulation—federal or state,
20 statutory or common law—can serve as predicate for a § 17200 violation. *See Farmers Ins. Exch.*
21 *v. Superior Court*, 2 Cal. 4th 377, 383 (1992).

22 97. Under the UCL, a practice may be "unfair" even if not specifically proscribed by
23 some other law. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003)
24 (internal citations omitted).

25 98. A business act or practice is deemed "fraudulent" under § 17200 where "members
26 of the public are likely to be deceived." *Blakemore v. Superior Court*, 129 Cal. App. 4th 36, 49
27 (2005). That is, a showing of actual deception, reasonable reliance, or damages is not required. *Id.*
28 The "fraudulent" prong of the UCL can be used to attack the deceptive manner in which otherwise

1 lawful contract terms are presented to an individual. *See Boschma v. Home Loan Ctr., Inc.*, 198
2 Cal. App. 4th 230, 253 (2011). Even a true statement may be unlawful under § 17200 if it is
3 “couched in such a manner that it is likely to mislead or deceive . . . , such as by failure to disclose
4 other relevant information.” *Id.*

5 99. As set forth in the preceding paragraphs, Defendants’ business practices
6 undoubtedly violate California’s UCL.

7 100. As a direct and proximate result of Defendants’ unlawful, unfair, and fraudulent
8 business practices, Plaintiff has suffered injury-in-fact and has lost wages and reimbursements
9 rightfully owed to her.

10 101. Through their unlawful, unfair, and fraudulent conduct, Defendants have reaped,
11 and continue to reap, benefits and profits at the expense of Plaintiff. Pursuant to Business and
12 Professions Code § 17203, Defendants should be enjoined from this activity and made to disgorge
13 all ill-gotten gains and restore to Plaintiff the wages and reimbursements wrongfully withheld from
14 her.

15 102. Moreover, the conduct alleged herein is continuing, and there is no indication that
16 Defendants will refrain from such activity in the future. Plaintiff believes and alleges that if
17 Defendants are not enjoined from the unlawful, unfair, and fraudulent conduct described herein,
18 they will continue to violate California’s wage and hour laws and public policy. Accordingly,
19 Plaintiff requests that the Court issue a preliminary and permanent injunction.

20 **ELEVENTH CAUSE OF ACTION**

21 **Violation of The Private Attorneys General Act (Labor Code § 2698 et seq.)**

22 **(By Plaintiff in Her Representative Capacity Against All Defendants)**

23 103. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
24 though fully set forth herein.

25 104. Labor Code § 2698 et seq., also known as the Private Attorney General Act of 2004
26 (“PAGA”), expressly provides that any provision of the Labor Code allowing for a civil penalty to
27 be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards
28 agencies or employees, for a violation of the Labor Code, may be recovered through a civil action

1 brought by an aggrieved employee on behalf of himself or herself, and other current or former
2 employees. These penalties are in addition to any other relief available under the Labor Code, and
3 pursuant to § 2699(i), must be allocated 75 percent to the LWDA and 25 percent to the aggrieved
4 employees.

5 105. Plaintiff is an aggrieved employee within the meaning of Labor Code § 2699(c), in
6 that she was employed by Defendants during the applicable statutory period and suffered one or
7 more of the Labor Code violations set forth in this complaint.

8 106. As set forth above, Defendants have committed, and continue to commit, numerous
9 violations for which the Labor Code entitles Plaintiff, as a private attorney general, to recover, on
10 behalf of herself, all other aggrieved employees, and the general public, attorneys' fees and costs,
11 as well as civil penalties against Defendants, for violations of Labor Code §§ 201, 202, 203, 204,
12 226, 226.7, 510, 512, 558, 1194, 1197, 1198, 2699(f), and 2802.

13 107. Cal. Labor Code § 2699(f) provides in pertinent part:

14 For all provisions of this code except those for which a civil penalty
15 is specifically provided, there is established a civil penalty for a
violation of these provisions as follows:

16 . . .

17 (2) If, at the time of the alleged violation, the person employs one or
18 more employees, the civil penalty is one hundred dollars (\$100) for
19 each aggrieved employee per pay period for the initial violation and
two hundred dollars (\$200) for each aggrieved employee per pay
period for each subsequent violation.

20 108. On May 18, 2020, Plaintiff notified the LWDA of her intent to assert the rights
21 granted to her under PAGA. The notice, which was submitted electronically through the LWDA's
22 website, set forth the specific violations alleged and the facts and theories supporting those
23 violations. A copy of the notice was also sent by certified mail to Defendants through their agent
24 for service of process.

25 109. Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA had until July 22, 2020 to
26 provide notice of whether it intended to investigate the violations alleged. As of the date of this
27 complaint, the LWDA has not provided such notice. Accordingly, Plaintiff files this action in her
28 representative capacity, on behalf of herself and all other aggrieved employees.

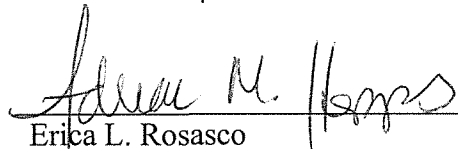
1 **PRAYER FOR RELIEF**

2 Plaintiff prays for judgment against Defendants as follows:

- 3 1. For unpaid wages owed;
- 4 2. For statutory penalties, as provided under Labor Code § 226(e);
- 5 3. For civil penalties, as provided under Labor Code §§ 2699(f) and 2699.5, for
- 6 violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194,
- 7 1197, 1197.1 and 1198;
- 8 4. For disgorged profits from Defendants' unlawful, unfair and fraudulent business
- 9 practices;
- 10 5. For all interest accrued to date pursuant to Labor Code § 218.6;
- 11 6. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194;
- 12 7. For appropriate equitable relief;
- 13 8. For appropriate declaratory relief; and
- 14 9. For such other and further relief as the Court may deem proper.

15 Dated: July 29, 2020

16 **McKAGUE | ROSASCO LLP**

17 

18 Erica L. Rosasco

19 Adrian M. Hoppes

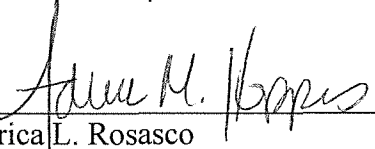
20 Attorneys for Plaintiff Carol Stiles

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a jury trial on all issues triable to a jury.

3
4 Dated: July 29, 2020

McKAGUE | ROSASCO LLP

5
6 
7 Erica L. Rosasco
8 Adrian M. Hoppes
9 Attorneys for Plaintiff Carol Stiles
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28