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on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

TERESA AINSWORTH, an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

SEA COAST HOSPICE CARE, INC., a
California corporation; SAMSON
GAVRANIAN, an individual; and DOES
1 through 10, inclusive,

Defendant.

Case No.: 37-2020-00039584-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Authorize and Permit Rest Periods;
5. Failure to Timely Pay Wages Owed Upon Separation from Employment;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Timely Pay Wages During Employment;
8. Failure to Reimburse Necessary Business Expenses;
9. Violation of Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.
10. Civil Penalties Pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff Teresa Ainsworth ("Plaintiff"), on behalf of herself and all others similarly situated,
2 complains of Defendants Sea Coast Hospice Care, Inc. ("Sea Coast") and Samson Gavranian
3 ("Gavranian") (collectively, "Defendants") and alleges as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure section 382, on
6 behalf of herself and all non-exempt employees employed by Defendant in the State of California from
7 April 6, 2016¹ until the resolution of this lawsuit (the "Class Members").

8 2. Plaintiff also brings this representative action for recovery of civil penalties under California the
9 Private Attorneys General Act of 2004 ("PAGA") codified by California Labor Code sections 2698, et
10 seq. The PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of
11 themselves and all other current and former aggrieved employees to recover civil penalties and address an
12 employer's violations of the California Labor Code.

13 3. In this case, Defendant violated various provisions of the California Labor Code and Industrial
14 Welfare Commission ("IWC") Wage Orders. Specifically, Sea Coast maintained and implemented
15 policies and practices which result in failure to pay wages for all hours worked under California Labor
16 Code sections 1194 and 1197² including failure to separately compensate for non-productive time such as
17 rest periods, travel time, and documentation time outside patient visits; failure to properly calculate and
18 pay overtime wages for all hours worked in excess of eight hours in a workday and forty hours in a
19 workweek under section 510; failure to provide meal periods under sections 512, 226.7 and the applicable
20 wage order; failure to authorize and permit paid rest periods under section 226.7 and the applicable wage
21 order; failure to timely pay wages owed during employment under section 2014; failure to timely pay all
22 wages owed upon separation under sections 201, 202, 203; failure to timely pay all wages owed during
23 employment under section 204; failure to provide accurate, itemized wage statements under section 226;

26
27 ¹ Pursuant to Appendix I of the California Rules of Court, Emergency Rule 9(a), "the statutes of
28 limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until
October 1, 2020."

² Undesignated statutory references are to the California Labor Code.

1 and unfair business practices under Business and Professions Code section 17200, et seq. based on the
2 foregoing.

3 II. JURISDICTION AND VENUE

4 4. This Court has jurisdiction over this action pursuant to California Constitution Article VI, Section
5 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other
6 trial courts.”

7 5. This Court has subject matter jurisdiction over this action pursuant to Code of Civil Procedure
8 section 410.10.

9 6. This Court has personal jurisdiction over Sea Coast because it is a California corporation and
10 Gavranian is, upon information and belief, a resident of the State of California.

11 7. Venue is proper in this judicial district pursuant to Code of Civil Procedure section 395.5 because
12 Defendant’s principal place of business is in San Diego County and it conducts business and employs
13 numerous employees in San Diego County.

14 8. This Court also has jurisdiction in this matter because the civil penalties sought are presently
15 believed to be under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal
16 Court diversity jurisdiction and the aggregate potential damages and recovery by all of the claims of the
17 aggrieved employees placed in controversy by Plaintiff’s claims, is presently believed to be under the
18 five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is
19 no federal question at issue, as the issues herein are based solely on California statutes and law,
20 including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, and the California
21 Civil Code.

22 9. On June 29, 2020, Plaintiff complied with the notice requirements pursuant to California Labor
23 Code § 2699.3 and gave written notice via online filing and certified mail of the specific provisions alleged
24 to have been violated to the Labor and Workforce Development Agency (“LWDA”) and Defendant. A
25 true and correct copy of the notice is attached hereto as **Exhibit A** and incorporated herein by reference.

26 10. On July 14, 2020, Plaintiff filed an amended notice. A true and correct copy of the amended notice
27 is attached hereto as **Exhibit B** and incorporated herein by reference.
28

1 11. Sixty-five (65) days has passed since Plaintiff provided written notice required by Labor Code §
2 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code § 269.3(a)(1)-(2).

3 **III. THE PARTIES**

4 12. Plaintiff is a resident of California and was employed by Sea Coast from February 2020 to June
5 2020 as a full-time Licensed Vocational Nurse (“LVN”).

6 13. Defendant Sea Coast Hospice Care, Inc. is a California corporation with its principal place of
7 business in San Diego, California.

8 14. Sea Coast provides hospice care and home health services throughout San Diego County. Sea
9 Coast employs healthcare professionals including Registered Nurses, Licensed Vocational Nurses,
10 Certified Home Health Aides who travel to various facilities to assess and treat patients. Sea Coast
11 employs these employees as either full-time, part-time, or per-diem basis.

12 15. Defendant Samson Gavarian is the owner, Secretary and Chief Financial Officer of Sea Coast
13 Hospice Care, Inc. and, upon information and belief, the person responsible for the overtime and minimum
14 wage violations described herein. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 509; Lab. Code §§
15 558(a), 1197.1.

16 16. The true names and capacities of Defendants, whether individual, corporate, associate, or
17 otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore
18 sues such Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
19 informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE
20 is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of
21 court to amend this Complaint to reflect the true names and capacities of the Defendants designated
22 hereinafter as DOES when such identities become known.

23 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all
24 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
25 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the
26 other Defendants.

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IV. FACTUAL ALLEGATIONS

18. As Licensed Vocational Nurse, Plaintiff's job duties were to, among others, provide remote nursing services to patients in their homes, complete documentation of patient health and visits, and participate in various meetings and trainings conducted by Defendants.

19. During the relevant time period, Sea Coast employed Class Members pursuant to either an hourly or per diem compensation model in which a flat fee is paid for work related to a particular patient visit.

20. Under Sea Coast's pay-per-visit or "per diem" compensation model, Sea Coast compensated Class Members at a set rate for certain visits regardless of the amount of time spent on the visit. On information and belief, Sea Coast sets visit rates according to estimates for how much time it believes each visit requires on average.

21. Defendants' per diem compensation model did not compensate per-diem employees for non-productive time such as time spent between patient visits, travel time to and from patient visits, and document preparation completed outside of the patient visit.

22. In addition, Sea Coast did not separately compensate per-diem employees for rest periods pursuant to section 226.2.

23. Defendants also suffered or permitted Plaintiff and, upon information and belief, other Class Members to perform "off-the-clock" work without pay. For example, Defendants knew that Plaintiff was required to work during evenings and weekends in order to meet the productivity requirements imposed by Defendants including time spent charting and performing case management. However, Plaintiff was discouraged from reporting this time because she was informed by Gavarian that Sea Coast was purportedly not required to pay overtime wages. In addition, upon information and belief, Sea Coast did not compensate per diem employees for "non-productive" time including time spent traveling between patients and during rest periods. Moreover, Defendants knew or should have known that Plaintiff and other Class Members were working "off-the-clock" because Defendants tracked Class Members' activity using its home health care software known as "Kinnser", which shows that they were working before and after their record hours.

24. Class Members, including Plaintiff, were classified by Sea Coast as non-exempt employees eligible for overtime compensation and meal and rest periods. Sea Coast failed to accurately calculate

1 and pay Plaintiff and, upon information and belief, Class Members for all their overtime worked at a rate
2 of one and one-half times the regular rate of pay for all overtime hours and two times their regular rate
3 of pay for all double time hours. Indeed, Sea Coast maintained a uniform policy and practice of not
4 paying overtime and discouraged employees from recording more than 8 hours per day and/or 40 hours
5 per week because they were not compensable. For example, Plaintiff worked 88 hours during the pay
6 period from May 1, 2020 to May 15, 2020 but was not paid 8 hours of overtime. With regard to per diem
7 employees, they were paid a flat sum per visit regardless of the number of hours worked per day or per
8 week and were not paid for overtime hours worked.

9 25. As a result of Sea Coast's policies, as well as the productivity requirements and rigorous work
10 schedules implemented and enforced by Sea Coast, Plaintiff and Class Members were occasionally
11 unable to take off duty meal and rest breaks and were not fully relieved of their duties for meal and rest
12 breaks. On shifts lasting more than five hours, Plaintiff and Class Members were required to perform
13 work as directed by Sea Coast for more than five (5) hours during a shift without receiving a meal break
14 and were not provided a paid rest period for every four hours worked or major fraction thereof as
15 evidenced by daily reports for these employees. In addition, on shifts lasting more than ten hours,
16 Plaintiff is informed and believes that Class Members were not provided a second meal break or a paid
17 third rest break as required by law. Upon information and belief, Sea Coast failed to maintain a written
18 meal or rest period policy informing Class Members of their meal and rest period rights. Plaintiff and
19 Class Members therefore forfeited meal and rest breaks without additional compensation and in
20 accordance with Sea Coast's strict corporate policy and practice.

21 26. For example, Plaintiff was required to complete a certain number of patient visits during the day
22 including travelling between visits which did not allow for the opportunity to take uninterrupted, off-
23 duty meal periods and/or rest periods. Indeed, Plaintiff was forced to forego meal and rest periods or risk
24 being written up and potentially termination for being late to her appointments.

25 27. Moreover, Defendants failed to keep accurate time records, including time records of meal
26 periods taken by Class Members. Indeed, Defendants' "Staff Log in/Log Out" sheets do not contain a
27 space for Class Members to record their "start time" or "finish time" for meal periods.

28 28. Defendants further failed to timely pay wages to Plaintiff and Class Members during their
employment. Specifically, Defendants paid Plaintiff and the Class Members on the 1st day of following

1 month for labor performed between the 1st and 15th day of the previous month and on the 15th day of
2 the following month for labor performed between the 16th and last day of the previous month.

3 29. Defendants failed to pay all compensation due and owing to Plaintiff at the time of her
4 resignation. Defendants failed to pay Plaintiff her final paycheck within 72 hours of her resignation on
5 June 3, 2020, despite repeated requests for payment. Indeed, more than 30 days passed before
6 Defendants paid Plaintiff her final paycheck. Defendants failed to pay Plaintiff all compensation due
7 upon termination of employment as required under California Labor Code §§ 201 and 202, including her
8 straight wages, meal and rest period premium pay, overtime pay, and expense reimbursement.

9 30. Defendants also failed to reimburse Plaintiff and, upon information and belief, the Class
10 Members for all expenses incurred in the discharge of their duties, including but not limited to
11 reimbursement for mileage traveling to patient visits. For example, Defendants reimbursed \$0.50 per
12 mile for mileage, which is less than the IRS mileage rate of \$0.575 per mile and less than the actual
13 costs incurred by Ms. Ainsworth. In addition, Sea Coast refused to reimburse Ms. Ainsworth, and upon
14 information and believe other Class Members, for mileage between their home and their first and last
15 patient regardless of whether that distance was greater than the distance between their home and place of
16 employment.

17 31. Moreover, Defendants failed to reimburse Plaintiff's mileage whatsoever for the pay period May
18 16, 2020 to June 3, 2020.

19 32. Defendants willfully failed to furnish Plaintiff and the Class Members with accurate, itemized
20 wage statements. Specifically, the wage statements failed to accurately itemize and include the total
21 hours worked including non-productive time and rest periods, gross wages earned, net wages earned, all
22 applicable hourly rates in effect during the pay period including overtime rates for per diem employees,
23 meal period premiums, and rest period premiums.

24 33. Moreover, pursuant to Labor Code § 226.2, an employee paid on a piece-rate basis shall
25 be, among other things, compensated: (1) for rest and recovery periods and other nonproductive time
26 separate from any piece-rate compensation; (2) the itemized wage statements shall separate state (i) the
27 total hours of compensable rest and recovery periods; (ii) the rate of compensation; and (iii) the gross
28 wages for those periods during the pay period. Upon information and belief, Defendants violated Labor
Code § 226.2 by failing to provide itemized wage statements to Class Members paid on a per-diem basis

1 showing the total hours of compensable rest and recovery periods and non-productive time.

2 34. Pursuant to Labor Code § 558.1(a), “any employer *or other person* acting on behalf of an
3 employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and
4 days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
5 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”
6 Plaintiff is informed and believes that Gavarian, as the owner, Secretary, and Chief Financial Officer,
7 and the day-to-day manager of Sea Coast, violated or caused to be violated the above specified labor
8 code provisions.

9 **35. CLASS ALLEGATIONS**

10 36. On information and belief, the class members include hundreds of former and current non-
11 exempt employees of Defendants.

12 37. Plaintiff bring this action against Defendants on her own behalf and on behalf of all other
13 persons similarly situated, as a class action, under Code of Civil Procedure § 382. Plaintiff seek to
14 represent a class composed of and defined as follows (the “Class Members”):

15 All non-exempt employees employed by Defendant in the State of California from April 6,
16 2016 until the resolution of this lawsuit.

17 38. Plaintiff also seeks to represent sub-classes composed of and defined as follows:

- 18 i. Class Members who were paid on an hourly basis (“Hourly Sub-Class”)
19 ii. Class Members who were paid on a per diem basis (“Per Diem Sub-Class”)
20 iii. Class Members who worked “off-the-clock” without pay (“Off-The-Clock Sub-Class”)
21 iv. Class Members who did not receive at least minimum wage for all hours worked
22 (“Minimum Wage Sub-Class”);
23 v. Class Members who did not receive at least one-and-a-half times their regular rate of pay
24 for all hours worked in excess of eight (8) hours per workday or forty (40) hours per workweek
25 or at least double time their regular rate of pay for all hours worked in excess of twelve (12)
26 hours per workday or eight (8) hours on the seventh consecutive day of work (“Overtime Sub-
27 Class”);
28

vi. Class Members who worked in excess of five (5) hours in a workday and were not provided a first meal period or in excess of ten (10) hours in a workday and were not provided a second meal period and were not compensated one hour's additional pay for each workday a meal period was not provided ("Meal Period Sub-Class").

vii. Class Members who were not authorized and permitted a paid rest period for every four hours worked or major fraction thereof and were not compensated one hour's additional pay for each workday a rest period was not authorized and permitted ("Rest Period Sub-Class");

viii. Class Members who were not timely paid all wages due and owing upon termination or resignation from employment ("Waiting Time Sub-Class");

ix. Class Members who were not provided accurate itemized wage statements ("Wage Statement Sub-Class");

x. Class Members who were not timely paid all wages due and owing during employment ("Timely Wages Sub-Class"); and

xi. Class Members who were subject to Defendants' unfair business practices ("Unfair Business Practices Sub-Class").

39. Numerosity: The proposed Class is so numerous that joinder of all such persons is impracticable. While the exact number of class members is unknown to Plaintiff at this time, upon information and belief, the class is estimated to include dozens of former and current employees of Defendants.

40. Ascertainability: The proposed class is easily ascertainable. The number and identity of the class members are determinable from Sea Coast's payroll records as are the patient visits assigned and worked, time records for each Class Member, and the per visit/hourly rates for each Class Member.

41. Commonality: There are common questions of law and fact involving and affecting the class members. The questions of law and fact common to the Class Members predominate over questions that may affect individual Class Members, including but not limited to the following:

a. Whether Sea Coast violated California Labor Code sections 1194 and 1197 by failing to pay at least minimum wage for all hours worked including time spent during rest periods;

- b. Whether Sea Coast violated Labor Code section 510 and the applicable IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to accurately calculate and pay overtime;
- c. Whether Sea Coast violated Labor Code sections 226.7 and the applicable IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to authorize and permit rest periods for every four hours worked or major fraction thereof and failing to compensate one hour of additional pay for such missed rest periods;
- d. Whether Sea Coast violated Labor Code sections 226.7, 512, the applicable IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to provide meal periods for work periods in excess of five hours and/or ten hours and failing to compensate one hour of additional pay for such meals periods;
- e. Whether Sea Coast violated the Labor Code including sections 1194 and 1197, and applicable IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to pay at least minimum wage for each hour worked;
- f. Whether Sea Coast violated Labor Code sections 201 through 203 by failing to pay all wages due and owing upon termination or resignation;
- g. Whether Sea Coast violated Labor Code section 226 by failing to provide accurate itemized wage statements;
- h. Whether Sea Coast violated Labor Code section 204 by failing to timely pay all wages owed during employment;
- i. Whether Sea Coast violated the California Unfair Competition Laws, Cal. Bus. & Prof. Code section 1700 et seq., for the foregoing violations; and
- j. Whether Sea Coast's conduct was willful.

42. Typicality: The claims of Plaintiff are typical of the claims which could be alleged by members of the proposed class, and the relief sought by Plaintiff is typical of the relief which would be sought by members of the proposed class in individual actions. Class members were subject to the same policies and practices of Sea Coast, as alleged herein including non-payment of overtime, lack of a meal and rest period policy, and failure to reimburse expenses. Sea Coast's compensation practices affects all class members similarly, and Sea Coast benefited from the same type of unfair and/or wrongful acts as to each

1 Class Member. Plaintiff and Class Members sustained similar losses, injuries and damages arising from
2 the same unlawful, policies, practices, and procedures.

3 43. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the
4 interests of all members of the class in that they have no disabling conflicts of interest that would be
5 antagonistic to those of the other members of the class. Plaintiff has retained counsel who are competent
6 and experienced in the prosecution of class action wage and hour violations.

7 44. Superiority: The common questions of law and fact, as identified above, predominate over any
8 pertinent questions involving only individual class members, which will relate solely to the quantum of
9 relief due to individual class members. A class action is superior to the other available means for the fair
10 and efficient adjudication of this controversy because:

11 a. Common issues of law and fact, as identified above, substantially diminish the interest of class
12 members in individually controlling the prosecution of separate actions;

13 b. A class action can be managed with efficiency and without undue difficulty because Defendants'
14 violations complained of herein have impacted the members of the proposed class uniformly; and

15 c. Individual damages to any one class member may be relatively small, making the expense of
16 individual litigation prohibitive or impracticable for any individual class member.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages**

19 **(Against All Defendants)**

20 45. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
21 fully set forth herein.

22 46. During all relevant periods, Sea Coast paid certain Class Members pursuant to a per visit
23 compensation plan, as described above.

24 47. The per visit compensation plan provides for payment of wages to Class Members based on
25 estimates of time that certain activities should take, not actual hours worked.

26 48. Class Members worked numerous hours for which they were not paid at least minimum wage,
27 including travel time to visit patients and time spent charting outside of the visit and time spent during
28 rest periods.

1 49. In addition, Plaintiff and Class Members were required to work during evenings and weekends in
2 order to meet the productivity requirements imposed by Defendants including time spent charting and
3 performing case management.

4 50. Sea Coast knew or should have known that employees worked “off-the-clock” to meet the
5 requirements imposed by Sea Coast including completing document preparation, case management,
6 travel between patient visits, and during rest periods.

7 51. During all relevant periods, the California Labor Code requires that employers fully and timely
8 pay all wages earned and due for all hours worked. By suffering or permitting Plaintiff and Class
9 Members to perform “off-the-clock” work without compensation, whether or not required to do so,
10 including, but not limited to, preparing clinical paperwork, and conducting calls with health providers in
11 the evenings and on weekends, Sea Coast knowingly and willfully failed to fully and timely pay the
12 Class, including Plaintiff, their regular straight-time wage rate for all hours worked “off-the-clock.”

13 52. Class Members were not paid at least minimum wage for non-productive time including time
14 spent between patient visits, traveling to and from patients visits, and between visits.

15 53. In addition, Plaintiff and Class Members were not separately paid for time spent during rest and
16 recovery periods.

17 54. Due to Defendants’ violations of the California Labor Code, Plaintiff and the Class Members are
18 entitled to recover from Sea Coast their unpaid wages, reasonable attorneys’ fees and costs in this action,
19 and pre-judgment and post-judgment interest, as well as liquidated damages.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 **(Against All Defendants)**

23 55. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
24 fully set forth herein.

25 56. Plaintiff, and on information and belief the Class Members, worked shifts in excess of eight (8)
26 hours per workday and/or to work in excess of forty (40) hours per workweek.

27 57. During all relevant periods, both the California Labor Code and pertinent wage orders required
28 that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day

1 of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and
2 one-half times the employee's regular rate of pay. In addition, all worked performed by an employee in
3 excess of twelve (12) hours in any workday, or eight (8) hours on the seventh day of work in any
4 workweek be compensated at two times the employee's regular rate of pay.

5 58. Defendants failed to properly calculate and to pay Plaintiff and the Class Members overtime
6 wages for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per
7 workweek and double time wages for all hours worked in excess of twelve (12) hours in any workday,
8 and/or eight (8) hours on the seventh day of work in any workweek. In addition, Class Members paid on
9 a per diem basis were not separately compensated for overtime hours worked.

10 59. Due to Defendants' violations of the California Labor Code, Plaintiff and the Class Members are
11 entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in
12 this action, and pre-judgment and post-judgment interest.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Provide Meal Periods**

15 **(Against All Defendants)**

16 60. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
17 fully set forth herein.

18 61. Pursuant to California Labor Code section 512, an employer may not employ an employee for a
19 work period of more than five hours per day without providing the employee with an uninterrupted meal
20 period of not less than thirty minutes, except that if the total work period per day of the employee is not
21 more than six hours, the meal period may be waived by mutual consent of both the employer and the
22 employee.

23 62. A second meal period of not less than thirty minutes is required if an employee works more than
24 ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period
25 may be waived by mutual consent of the employer and the employee but only if the first meal period
26 was not waived.

27 63. If an employer fails to provide an employee a meal period, the employer must pay one additional
28 hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided.

1 64. As a result of Sea Coast's policies, as well as the productivity requirements and rigorous work
2 schedules implemented and enforced by Sea Coast, Plaintiff and members of the Class were often
3 unable to take off duty meal periods and/or were not fully relieved of their duties for meal periods.
4 Plaintiff and Class Members were required to perform work as directed by Sea Coast for more than five
5 (5) and ten (10) hours during a workday (as the case may be) without receiving a lawful meal period(s)
6 as evidenced by daily reports for these employees.

7 65. During all relevant periods, Sea Coast had no policy in place to compensate Plaintiff and Class
8 Members for these missed meal periods as required by applicable law. Plaintiff and Class members
9 therefore forfeited meal periods without additional compensation and in accordance with Sea Coast's
10 strict corporate policy and practice.

11 66. In addition, Defendant failed to keep records of employees' meal period times.

12 67. Plaintiff and, upon information and belief, Class Members did not voluntarily or willfully waive
13 their meal periods.

14 68. Due to Defendants' violations of the California Labor Code and applicable wage orders,
15 Plaintiff and class members have been deprived of premium wages in amounts to be determined at trial,
16 wages for hours worked, and are entitled to recovery of such amounts, plus interest and penalties
17 thereon, attorneys' fees, and costs.

18 19 **FOURTH CAUSE OF ACTION**

20 **Failure to Authorize and Permit Paid Rest Periods**

21 **(Against All Defendants)**

22 69. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
23 fully set forth herein.

24 70. The applicable IWC Wage Order also requires employers to authorize and permit employees to
25 take a net 10-minute rest period for every four hours worked for major fraction thereof, which insofar as
26 practicable shall be taken in the middle of each work period.

1 71. If an employer fails to authorize and permit an employee to take a rest period, the employer must
2 pay one additional hour of pay at the employee's regular rate of pay for each workday that the meal
3 period and/or rest period is not provided.

4 72. As a result of Sea Coast's policies, as well as the productivity requirements and rigorous work
5 schedules implemented and enforced by Sea Coast, Plaintiff and members of the Class were from often
6 unable to take off duty rest periods and/or were not fully relieved of their duties for rest periods. Plaintiff
7 and Class Members were required to perform work as directed by Sea Coast for more than four (4) hours
8 during a workday without receiving a rest period and/or more than six (6) hours during a workday
9 without receiving a second rest period as evidenced by daily reports for these employees.

10 73. In addition, the applicable IWC Wage Order requires that authorized rest period time shall be
11 counted as hours worked, for which there shall be no deduction from wages.

12 74. Defendants did not separately compensate per-diem Class Members for time during rest periods.

13 75. As a result of Defendant's failure to provide rest periods or compensation in lieu thereof and its
14 failure to pay for time spent on rest periods (when given), Plaintiff and Class Members were not paid all
15 earned wages as required by California Labor Code section 204.

16 76. Due to Defendants' violations of the California Labor Code and applicable wage orders, Plaintiff
17 and class members have been deprived of premium wages in amounts to be determined at trial, wages
18 for hours worked, and are entitled to recovery of such amounts, plus interest and penalties thereon,
19 attorneys' fees, and costs.

20 **FIFTH CAUSE OF ACTION**

21 **Failure to Pay Timely Pay Wages After Termination or Resignation**

22 **(Against All Defendants)**

23 77. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
24 fully set forth herein.

25 78. Labor Code section 201(a) states: "If an employer discharges an employee, the wages earned and
26 unpaid at the time of discharge are due and payable immediately."

27 79. Labor Code section 202(a) states:
28

1 If an employee not having a contract for a definite period quits his or her employment, his
2 or her wages shall become due and payable not later than 72 hours thereafter, unless the
3 employee has given 72 hours previous notice of his or her intention to quit, in which case
4 the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
5 other provision of law, an employee who quits without providing a 72-hour notice shall be
6 entitled to receive payment by mail if he or she so requests and designates a mailing
7 address. The date of the mailing shall constitute the date of payment for purposes of the
8 requirement to provide payment within 72 hours of the notice of quitting.
9

10 80. Plaintiff resigned from her employment with Sea Coast on June 3, 2020 by written notice.
11 However, Defendant did not pay Plaintiff her final paycheck until approximately July 2020.

12 81. Moreover, Defendants willfully failed to timely pay Plaintiff and, upon information and belief,
13 other members of the class all their wages due for work performed including overtime wages and this
14 failure continued through the time in which Plaintiff and Class Members quit or were discharged from
15 their employment with Sea Coast. As a result, Sea Coast violated Labor Code sections 201 and 202.

16 82. Labor Code section 203(a) states:
17

18 If an employer willfully fails to pay, without abatement or reduction, in accordance with
19 sections 201, 201.3, 201.5, 202, and 202.5, any wages of an employee who is discharged or
20 who quits, the wages of the employee shall continue as a penalty from the due date thereof
21 at the same rate until paid or until an action thereof is commenced; but the wages shall not
22 continue for more than 30 days. An employee who secretes or absents himself or herself to
23 avoid payment to him or her, or who refuses to receive the payment when fully tendered to
24 him or her, including any penalty then accrued under this section, is not entitled to any
25 benefit under this section for the time during which he or she so avoids payment.

26 83. Plaintiff and the Class Members are entitled to compensation for all forms of wages earned, but
27 to date have not received such compensation therefore entitling them to penalties under Labor Code
28 section 203.

1 84. More than 30 days have passed since Plaintiff and other former Class members have left Sea
2 Coast's employ, and on information and belief, have not received payment pursuant to Labor Code
3 sections 201, 202, and 203. As a result of Defendants' willful conduct in not paying all earned wages,
4 Plaintiff and Class members are entitled to 30 days' wages as a premium wage or penalty under Labor
5 Code section 203.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Provide Accurate Itemized Wage Statements**

8 **(Against All Defendants)**

9 85. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
10 fully set forth herein.

11 86. California Labor Code § 226 provides an employer must furnish employees with an "accurate
12 itemized" statement in writing showing: "(1) gross wages earned, (2) total hours worked by the
13 employee..., (3) the number of piece rate units earned and any applicable piece rate if the employee is
14 paid on a piece-rate basis, (4) all deductions..., (5) net wages earned, (6) the inclusive dates of the
15 period for which the employee is paid, (7) the legal entity that is the employer..., (8) the name and
16 address of the employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee..."

18 87. During all relevant periods, Defendants willfully violated California Labor Code section 226 by
19 failing to provide accurate itemized wage statements that properly and accurately itemized the actual
20 hours worked, all rates of pay including overtime and rest periods, and meal and rest period premiums.

21 88. By failing to keep accurate records and provide accurate itemized wage statements as required by
22 section 226, Defendants has injured Plaintiff and Class Members by making it confusing and difficult to
23 calculate the unpaid wages and losses and expenditures (including wages, interest, and penalties
24 thereon) due Plaintiff and Class Members.

25 89. Pursuant to Labor Code section 226, and in light of Defendants' violations alleged above,
26 Plaintiff and the class members are each entitled to recover up to a maximum of \$4,000, along with an
27 award of costs and reasonable attorneys' fees.
28

SEVENTH CAUSE OF ACTION
Failure to Timely Pay Wages During Employment
(Against All Defendants)

90. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

91. Pursuant to Labor Code § 204(a), “[a]ll wages, ..., earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

92. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

93. Sea Coast paid Plaintiff and the Class Members on the 1st day of following month for labor performed between the 1st and 15th day of the previous month and on the 15th day of the following month for labor performed between the 16th and last day of the previous month in violation of Labor Code § 204.

94. Pursuant to Labor Code § 210, if an employer fails to pay the wages of each employee as provided in Labor Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, the employer is subject to the following penalties in addition to and entirely independent and apart from any other penalty: “(1) For any initial violation, one hundred dollars (\$100) for each 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.”

95. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code §§ 204, 210, 218.5, 218.6, 510, 1194.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Meal Periods**

3 **(Against All Defendants)**

4 96. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if
5 fully set forth herein.

6 97. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary
7 expenditures incurred in direct consequence of the discharge of his or her duties.

8 98. Plaintiff, and on information and belief members of the Class, were required to incur expenses in
9 the performance of their assigned job duties including properly reimbursement mileage for travel to and
10 from patient visits.

11 99. Upon information and belief, Defendants did not fully reimburse Plaintiff or the Class Members
12 for such expenses.

13 100. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members have been
14 deprived of un-reimbursed sums in amounts to be determined at trial, and are entitled to the recovery of
15 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code
16 §2802.

17 **NINTH CAUSE OF ACTION**

18 **Unfair Competition**

19 **(Against Defendant Sea Coast Hospice Care, Inc.)**

20 101. Plaintiff incorporates each and every allegation set forth in all of the foregoing
21 paragraphs as if fully set forth herein.

22 102. By reason of Sea Coast's uniform conduct applicable to Plaintiff and Class Members, Sea
23 Coast committed acts of unfair competition in violation of the California Unfair Competition Law, Cal.
24 Bus. & Prof Code § 17200, et seq. (the "UCL"), as set forth herein.

25 103. The conduct of Sea Coast, as further alleged herein, constitutes false, unlawful, unfair,
26 fraudulent and deceptive business practices within the meaning of Bus. & Prof. Code section 17200, et
27 seq.
28

1 104. As a result of Sea Coast's unlawful and/or unfair and/or fraudulent acts, Sea Coast has
2 reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiff and other
3 members of the Class Members. Sea Coast should be enjoined from this activity and made to disgorge
4 these ill-gotten gains and restore Plaintiff and the class members the wrongfully withheld wages, to
5 provide the employees restitution for the withholding and for the delay in receiving the compensation
6 for overtime and premium wages due, pursuant to Bus. & Prof. Code section 17203.

7
8 **TENTH CAUSE OF ACTION**

9 **Violation of Private Attorneys General Act of 2004, Labor Code § 2698, Et Seq.**

10 **(Against all Defendants)**

11 105. Plaintiff incorporates the above allegations as if fully set forth herein.

12 106. Pursuant to California Labor Code § 2699.3,

13
14 (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section
15 2699 alleging a violation of any provision listed in Section 2699.5 shall commence
only after the following requirements have been met:

16 (1) (A) The aggrieved employee or representative shall give written notice by online
17 filing with the Labor and Workforce Development Agency and by certified mail to
18 the employer of the specific provisions of this code alleged to have been violated,
including the facts and theories to support the alleged violation.

19 (2) (A) The agency shall notify the employer and the aggrieved employee or
20 representative by certified mail that it does not intend to investigate the alleged
21 violation within 60 calendar days of the postmark date of the notice received pursuant
22 to paragraph (1). Upon receipt of that notice or if no notice is provided within 65
calendar days of the postmark date of the notice given pursuant to paragraph (1), the
aggrieved employee may commence a civil action pursuant to Section 2699.

23 107. On June 29, 2020, Plaintiff complied with the notice requirements pursuant to California
24 Labor Code § 2699.3 and gave written notice via online filing and certified mail of the specific provisions
25 alleged to have been violated to the Labor and Workforce Development Agency ("LWDA") and
26 Defendant. A true and correct copy of the notice is attached hereto as **Exhibit A** and incorporated herein
27 by reference.
28

1 108. On July 14, 2020, Plaintiff filed an amended notice. A true and correct copy of the amended
2 notice is attached hereto as **Exhibit B** and incorporated herein by reference.

3 109. Sixty-five (65) days has passed since Plaintiff provided written notice required by Labor
4 Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code § 269.3(a)(1)-
5 (2).

6 110. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(c). Plaintiff brings this
7 action on behalf of all non-exempt employees employed by Defendant in the State of California from
8 April 6, 2019³ until the resolution of this lawsuit (the “Aggrieved Employees”).

9 111. Plaintiff regularly worked in excess of five hours a day without being provided a meal
10 period of not less than 30 minutes in which they were relieved of all duties, as required by California
11 Labor Code §§ 226.7, 512 and Wage Order No. 7-2001. As a result of Sea Coast’s policies, as well as
12 productivity requirements and work schedules implemented and enforced by Sea Coast, Plaintiff was often
13 unable to take off duty meal periods and/or was not fully relieved of her duties for statutorily-required
14 meal periods. Plaintiff was required to perform work as directed by Sea Coast for more than five (5) and
15 ten (10) hours during a workday (as the case may be) without receiving a lawful meal period(s) and without
16 payment of one additional hour of pay at the employee’s regular rate of pay for each workday that the
17 meal period was not provided.

18 112. Defendants further failed to pay Plaintiff the premium pay mandated by Labor Code §
19 226.7(c) and Wage Order No. 4-2001, subd. 11(B) for each workday they did not receive a timely
20 uninterrupted meal period. As a result of violations of California Labor Code §§ 226.7 and 512 and Wage
21 Order No. 7-2001, Defendants are liable for civil penalties pursuant to California Labor Code § 2698 *et*
22 *seq.*

23 113. Plaintiff regularly worked in excess of four hours or major fraction thereof a day without
24 being provided a rest period of not less than 10 minutes in which he was relieved of all duties, as
25

26
27 ³ Pursuant to Appendix I of the California Rules of Court, Emergency Rule 9(a), “the statutes of
28 limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until
October 1, 2020.”

1 required by California Labor Code §§ 226.7 and Wage Order No. 7-2001. As a consequence of Sea
2 Coast's productivity requirements and work schedules implemented and enforced by Sea Coast, Plaintiff
3 was often unable to take a lawful net-ten-minute rest period for every four hours worked or major
4 fraction thereof. Further, on shifts over ten hours, Plaintiff was not provided with a third rest period as
5 required by law. Sea Coast further failed to pay Plaintiff premium pay mandated by Labor Code §
6 226.7(c) and Wage Order No. 7-2001, subd. 12(B) for each workday they did not receive a timely
7 uninterrupted meal period. As a result of violations of California Labor Code § 226.7 and Wage Order
8 No. 7-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

9 114. Defendants have violated California Labor Code §§ 510, 1194 and IWC Wage Order 7-
10 2001 by willfully failing to pay for all hours worked, including hourly wages for time spent on non-visit
11 related time and rest periods to the Aggrieved Employees paid solely on a per diem basis. By
12 Defendants' failure to pay wages for hours worked outside of the patient visits, including travel time,
13 meeting, and rest periods, Defendants failed to pay hourly wages, including minimum and overtime
14 wages earned. Moreover, Defendants failed to pay overtime to Plaintiff on days she worked in excess of
15 eight (8) hours per day and/or forty (40) hours per workweek. Defendants also failed to pay overtime to
16 Aggrieved Employees who were compensated on a per diem basis but worked more than eight (8) hours
17 per day and/or forty (40) hours per workweek or double time for hours worked in excess of twelve (12)
18 hours per workday or eight (8) hours on the seventh day of work. In addition, the Aggrieved Employees
19 are entitled to liquidated damages equal to unlawfully unpaid minimum wages with interest pursuant to
20 Labor Code § 1194.2. As a result of violations of California Labor Code § 510, 1194 and Wage Order
21 No. 7-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

22 115. Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay
23 all compensation due and owing to Plaintiff at the time employment was terminated. Defendants failed to
24 pay Plaintiff all compensation due upon termination of employment as required under California Labor
25 Code §§ 201 and 202, including her hourly wages, overtime wages, meal and rest period premium pay
26 and expense reimbursements. Accordingly, Defendant has violated California Labor Code §§ 201, 202,
27 and 203, Defendants are liable for civil penalties pursuant to Labor Code § 2698 *et seq.*
28

116. Defendants have violated Labor Code § 226(a) by willfully failing to furnish Aggrieved Employees with accurate, itemized wage statements showing the actual hours worked. As described above, Defendants deliberately failed to pay wages for time worked including overtime and failed to pay meal and rest period premiums, and, therefore, knew or should have known that the wage statements were inaccurate. Defendants also violated Labor Code § 226.2 by failing to provide itemized wage statements to Class Members paid on a per-diem basis showing the total hours of compensable rest and recovery periods and non-productive time. As a result of violations of California Labor Code § 226(a), Defendant is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

117. Labor Code § 558 provides:

a. “An employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

b. “(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

c. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recovery underpaid wages.”

118. Labor Code § 2699(f) provides:

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

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for 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.

119. As a direct and proximate result of Defendants’ conduct as alleged above, Plaintiff and the Aggrieved Employees are entitled to a civil penalty of at least fifty dollars (\$50) for the initial pay period, and at least one hundred dollars (\$100) for each subsequent pay period for which Defendant violated the Labor Code and applicable Wage Order as alleged herein.

120. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff seeks to recover civil penalties only as prescribed by the Labor Code Private Attorneys General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff and the Aggrieved Employees.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That Plaintiff be appointed as the representative of the Subclasses; and
4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay Minimum Wages)

1. For the unpaid balance of the full amount of any minimum wages and regular wages owed, as well as interest thereon,
2. Penalties according to statute;
3. Liquidated damages;
4. Reasonable attorneys' fees, and costs of suit;
5. For interest; and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to Pay Overtime Wages)

1. For the unpaid balance of the full amount of overtime earned;
2. Penalties according to statute;
3. Liquidated damages;
4. Reasonable attorneys' fees, and costs of suit;
5. For interest; and

6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted;
2. For interest;
3. For reasonable attorneys' fees and costs pursuant to statute; and
4. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages At Separation from Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 201, 202, 203;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Seventh Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

(Violation of the Unfair Competition Law)

1. For an order enjoining Defendants from continuing to engage in the aforementioned unlawful business practice in violation of California Business & Professions Code §17200; and
2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum wages, overtime and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4) years in an amount according to proof;
3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;
4. For pre-judgment interest on any unpaid minimum wages, straight time wages, overtime wages and premium wages due from the day that such amounts were due;
5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under the Labor Code; and

On the Tenth Cause of Action

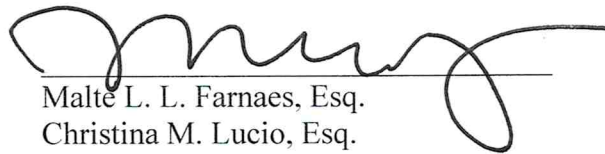
(Civil Penalties Pursuant to PAGA)

1. For recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*;
2. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code sections 2698, *et seq.*; and
3. For such other and further relief as the Court deems just and proper.

Dated: October 29, 2019

Respectfully submitted,

FARNAES & LUCIO, APC



Malte L. L. Farnaes, Esq.
Christina M. Lucio, Esq.
Mitchell J. Murray, Esq.

Attorneys for Plaintiff

Exhibit A

June 29, 2020

Via Online Filing

Labor and Workforce Development Agency
Attn: PAGA Administrator

Via Certified U.S. Mail

Certified Mail No. 70192280000185022724
Vagram Shalvardzhyan
Norvan Mardirosian
VS Accounting, Inc.
500 N. Central Ave.
Suite 600
Glendale, CA 91203

Certified Mail No. 70192280000185022731
Sea Coast Hospice Care, Inc.
Attn: Samson Gavranian
8380 Miramar Mall
Suite 109
San Diego, CA 92121

Re: PAGA Notice Pursuant to California Labor Code § 2699

Dear Sir or Madam:

Please be advised that Teresa Ainsworth has retained Farnaes & Lucio, APC to represent her and other aggrieved employees for wage and hour violations against his former employer, Sea Coast Hospice Care, Inc. ("Sea Coast") and its owner Samson Gavranian.

Sea Coast is a hospice care center located in San Diego, California. Sea Coast employed Ms. Ainsworth as a full time Licensed Vocational Nurse from approximately March 2020 to June 2020. Ms. Ainsworth was classified as a non-exempt employee and paid on an hourly basis. Ms. Ainsworth seeks to represent a group of aggrieved employees defined as all current and former non-exempt employees employed by Sea Coast in the State of California.

Sea Coast has violated, and/or has caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged against it below. This letter will serve as notice of these allegations pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2699.3. The filing fee of \$75 will be mailed to the Department of Industrial Relations Accounting Unit with sufficient information to identify this notice.

Failure to Pay Hourly Wages

California Labor Code §§ 201-204, 1194, 1197 and Wage Order 5-2001 requires that employers fully and timely pay all wages earned and due for all hours worked. Sea Coast suffered or permitted Ms. Ainsworth and, upon information and belief, other aggrieved employees to perform "off-the-clock" work without pay. For example, Sea Coast knew that Ms. Ainsworth was required to work during evenings and weekends in order to meet the productivity requirements imposed by Sea Coast including time spent charting and performing case

management. However, Ms. Ainsworth was discouraged from reporting this time. In addition, upon information and belief, Sea Coast did not compensate per diem employees for “non-productive” time including time spent traveling between patients and during rest periods.

Failure to Pay Overtime and Double Time Wages

Sea Coast violated Labor Code §§ 510, 1194, 1198 and IWC Wage Order 4-2001 by failing to pay all wages owed including overtime. The Wage Order and Labor Code § 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code §1182.12 sets the minimum wage. Labor Code § 510 and IWC wage order 4-2001 provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

During the relevant time, Ms. Ainsworth worked hours in excess of eight (8) hours per day and/or forty (40) hours per week without being paid overtime, in violation of the California Labor Code and the Wage Order. Sea Coast had a policy and practice of not paying overtime and discouraged employees from recording overtime hours because they were not compensable. With regard to per diem employees, they were paid a flat sum per visit regardless of the number of hours worked per day or per week and were not paid for overtime hours worked.

Failure to Provide Uninterrupted Off-Duty Meal Periods

Ms. Ainsworth regularly worked in excess of five hours a day without being provided a meal period of not less than 30 minutes in which she was relieved of all duties, as required by California Labor Code §§ 226.7, 512 and Wage Order No. 4-2001. As a result of Sea Coast's scheduling practices and work demands placed on Ms. Ainsworth, she was unable to take an uninterrupted, off-duty meal periods. For example, Ms. Ainsworth was required to complete a certain number of patient visits during the day including travelling between visits which did not allow for the opportunity to take uninterrupted, off-duty meal periods. Indeed, Ms. Ainsworth was forced to forego meal periods or risk being written up and potentially terminated for being late to her appointments. Moreover, Sea Coast failed to maintain a written meal period policy informing Ms. Ainsworth and the aggrieved employees of their meal period rights.

Sea Coast failed to pay Ms. Ainsworth the premium pay mandated by Labor Code § 226.7(c) and Wage Order No. 4-2001, subd. 11(B) for each workday she did not receive a timely uninterrupted meal period. As a result of violations of California Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Failure to Authorize and Permit Uninterrupted Off-Duty Rest Periods

Ms. Ainsworth regularly worked in excess of four hours or major fraction thereof a day without being provided a rest period of not less than 10 minutes in which he was relieved of all duties, as required by California Labor Code § 226.7 and Wage Order No. 4-2001. As a result

of Sea Coast's scheduling practices and work demands placed on Ms. Ainsworth, she was unable to take an uninterrupted, off-duty rest period including a second rest period on shifts over six hours as required by law. For example, Ms. Ainsworth was required to complete a certain number of patient visits during the day including travelling between visits which did not allow for the opportunity to take uninterrupted, off-duty rest periods. Indeed, Ms. Ainsworth was forced to forego rest periods or risk being written up and potentially terminated for being late to her appointments. Moreover, upon information and belief, Sea Coast did not separately compensate per diem employees for 10-minute rest periods. In addition, Sea Coast failed to maintain a written rest period policy informing Ms. Ainsworth and other aggrieved employees of their rest period rights.

Sea Coast failed to pay Ms. Ainsworth the premium pay mandated by Labor Code § 226.7(c) and Wage Order No. 4-2001, subd. 12(B) for each workday they did not receive a timely uninterrupted rest period. As a result of violations of California Labor Code § 226.7 and Wage Order No. 4-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Failure to Pay Wages Due Upon Resignation or Termination

Sea Coast violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Ms. Ainsworth at the time of her resignation. Sea Coast failed to pay Ms. Ainsworth her final paycheck within 72 hours of her resignation on June 2, 2020, despite repeated requests for payment. In fact, Sea Coast has still failed to pay Ms. Ainsworth all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202, including her straight wages, meal and rest period premium pay, overtime pay, sick pay, and expense reimbursement. Pursuant to §§ 203 and 256 of the Labor Code, Ms. Ainsworth is now also entitled to recovery up to 30 days of wages due to Sea Coast's willful failure to comply with the statutory requirements of §§ 201 and 202 of the Labor Code. Additionally, because Sea Coast has violated California Labor Code §§ 201, 202, and 203, Sea Coast is liable for civil penalties pursuant to Labor Code § 2598 *et seq.*

Failure to Reimburse Necessary Business Expenses

Under California Labor Code § 2802, an employee is entitled to be reimbursed by his or her employer "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Here, Sea Coast failed to reimburse Ms. Ainsworth for all expenses incurred in the discharge of her duties, including but not limited to reimbursement for mileage traveling to patient visits. For example, Sea Coast reimbursed \$0.50 per mile for mileage, which is less than the IRS mileage rate and less than the actual costs incurred by Ms. Ainsworth. In addition, Sea Coast refused to reimburse Ms. Ainsworth, and upon information and belief other aggrieved employees, for mileage between their home and their first and last patient regardless of whether that distance was greater than the distance between their home and place of employment. Because Sea Coast has violated California Labor Code § 2802, Sea Coast is liable for civil penalties pursuant to Labor Code § 2598 *et seq.*

Failure to Pay Sick Leave

Sea Coast violated Labor Code §246(i) by failing to accurately record Ms. Ainsworth's accrued sick leave balance and itemize her sick leave balance on her wage statements. Ms. Ainsworth should have accrued one hour per every 30 hours worked, yet there is no record that Plaintiff was accruing any sick leave.

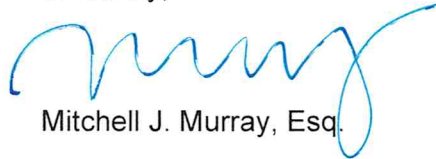
Failure to Keep and Provide Accurate, Itemized Wage Statements

Sea Coast also violated Labor Code § 226(a) by willfully failing to furnish Ms. Ainsworth with accurate, itemized wage statements. Specifically, Sea Coast failed to provide Ms. Ainsworth and, upon information and belief, other aggrieved employees with itemized wage statements showing, inter alia, the total hours worked, gross wages earned, net wages earned, hourly rates, etc. Instead, Ms. Ainsworth merely received a check without a wage statement. As a result of violations of California Labor Code § 226(a), Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 226(e), 226.3 and 2698 *et seq.*

Conclusion

As described above, Sea Coast has violated or has caused to be violated a number of California wage and hour laws. Ms. Ainsworth requests the agency inform him within 60 days if it does not intend to investigate these violations so that she may proceed with a civil action pursuant to Labor Code § 2699, *et seq.*

Sincerely,

A handwritten signature in blue ink, appearing to read "Murray", with a stylized flourish extending from the end.

Mitchell J. Murray, Esq.

Exhibit B

July 14, 2020

Via Online Filing

Labor and Workforce Development Agency
Attn: PAGA Administrator

Via E-Mail

Timothy Williams, Esq.
Berger, Williams & Reynolds, LLP
401 B Street, Suite 2000
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Attorneys for Sea Coast Hospice Care, Inc.

Re: Amended PAGA Notice Pursuant to California Labor Code § 2699

Dear Sir or Madam:

Please be advised that Teresa Ainsworth has retained Farnaes & Lucio, APC to represent her and other aggrieved employees for wage and hour violations against his former employer, Sea Coast Hospice Care, Inc. ("Sea Coast") and its owner Samson Gavranian. This notice supplements Ms. Ainsworth's previous notice submitted on June 29, 2020.

Sea Coast is a hospice care center located in San Diego, California. Sea Coast employed Ms. Ainsworth as a full time Licensed Vocational Nurse from approximately March 2020 to June 2020. Ms. Ainsworth was classified as a non-exempt employee and paid on an hourly basis. Ms. Ainsworth seeks to represent a group of aggrieved employees defined as all current and former non-exempt employees employed by Sea Coast in the State of California.

Sea Coast has violated, and/or has caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged against it below. This letter will serve as notice of these allegations pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2699.3. The filing fee of \$75 will be mailed to the Department of Industrial Relations Accounting Unit with sufficient information to identify this notice.

Failure to Pay Hourly Wages

California Labor Code §§ 201-204, 1194, 1197 and Wage Order 5-2001 requires that employers fully and timely pay all wages earned and due for all hours worked. Sea Coast suffered or permitted Ms. Ainsworth and, upon information and belief, other aggrieved employees to perform "off-the-clock" work without pay. For example, Sea Coast knew that Ms. Ainsworth was required to work during evenings and weekends in order to meet the productivity requirements imposed by Sea Coast including time spent charting and performing case management. However, Ms. Ainsworth was discouraged from reporting this time. In addition, upon information and belief, Sea Coast did not compensate per diem employees for "non-productive" time including time spent traveling between patients and during rest periods.

Failure to Pay Overtime and Double Time Wages

Sea Coast violated Labor Code §§ 510, 1194, 1198 and IWC Wage Order 4-2001 by failing to pay all wages owed including overtime. The Wage Order and Labor Code § 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code § 1182.12 sets the minimum wage. Labor Code § 510 and IWC wage order 4-2001 provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

During the relevant time, Ms. Ainsworth worked hours in excess of eight (8) hours per day and/or forty (40) hours per week without being paid overtime, in violation of the California Labor Code and the Wage Order. Sea Coast had a policy and practice of not paying overtime and discouraged employees from recording overtime hours because they were not compensable. With regard to per diem employees, they were paid a flat sum per visit regardless of the number of hours worked per day or per week and were not paid for overtime hours worked.

Failure to Provide Uninterrupted Off-Duty Meal Periods

Ms. Ainsworth regularly worked in excess of five hours a day without being provided a meal period of not less than 30 minutes in which she was relieved of all duties, as required by California Labor Code §§ 226.7, 512 and Wage Order No. 4-2001. As a result of Sea Coast's scheduling practices and work demands placed on Ms. Ainsworth, she was unable to take an uninterrupted, off-duty meal periods. For example, Ms. Ainsworth was required to complete a certain number of patient visits during the day including travelling between visits which did not allow for the opportunity to take uninterrupted, off-duty meal periods. Indeed, Ms. Ainsworth was forced to forego meal periods or risk being written up and potentially terminated for being late to her appointments. Moreover, Sea Coast failed to maintain a written meal period policy informing Ms. Ainsworth and the aggrieved employees of their meal period rights.

Sea Coast failed to pay Ms. Ainsworth the premium pay mandated by Labor Code § 226.7(c) and Wage Order No. 4-2001, subd. 11(B) for each workday she did not receive a timely uninterrupted meal period. As a result of violations of California Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Failure to Authorize and Permit Uninterrupted Off-Duty Rest Periods

Ms. Ainsworth regularly worked in excess of four hours or major fraction thereof a day without being provided a rest period of not less than 10 minutes in which he was relieved of all duties, as required by California Labor Code §§ 226.7 and Wage Order No. 4-2001. As a result of Sea Coast's scheduling practices and work demands placed on Ms. Ainsworth, she was unable to take an uninterrupted, off-duty rest period including a second rest period on shifts over six hours as required by law. For example, Ms. Ainsworth was required to complete a certain

number of patient visits during the day including travelling between visits which did not allow for the opportunity to take uninterrupted, off-duty rest periods. Indeed, Ms. Ainsworth was forced to forego rest periods or risk being written up and potentially terminated for being late to her appointments. Moreover, upon information and belief, Sea Coast did not separately compensate per diem employees for 10-minute rest periods. In addition, Sea Coast failed to maintain a written rest period policy informing Ms. Ainsworth and other aggrieved employees of their rest period rights.

Sea Coast failed to pay Ms. Ainsworth the premium pay mandated by Labor Code § 226.7(c) and Wage Order No. 4-2001, subd. 12(B) for each workday they did not receive a timely uninterrupted rest period. As a result of violations of California Labor Code § 226.7 and Wage Order No. 4-2001, Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Failure to Pay Wages in a Timely Manner

Sea Coast violated California Labor Code § 204 by failing to pay wages in a timely manner. Pursuant to Labor Code § 204, “[a]ll wages, ..., earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Lab. Code § 204(a).

Here, Sea Coast paid Ms. Ainsworth and the aggrieved employees on the 1st day of following month for labor performed between the 1st and 15th day of the previous month and on the 15th day of the following month for labor performed between the 16th and last day of the previous month.

Per Labor Code Section 210, if an employer fails to pay the wages of each employee as provided in Labor Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, the employer is subject to the following penalties: “(1) For any initial violation, one hundred dollars (\$100) for each 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.”

Failure to Pay Wages Due Upon Resignation or Termination

Sea Coast violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Ms. Ainsworth at the time of her resignation. Sea Coast failed to pay Ms. Ainsworth her final paycheck within 72 hours of her resignation on June 2, 2020, despite repeated requests for payment. Sea Coast failed to pay Ms. Ainsworth all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202, including her straight wages, meal and rest period premium pay, overtime pay, and expense reimbursement. Pursuant to §§ 203 and 256 of the Labor Code, Ms. Ainsworth is now also entitled to recovery up to 30 days of wages due to Sea Coast’s willful failure to comply with the statutory requirements of §§ 201 and 202 of the Labor Code. Additionally, because Sea Coast

has violated California Labor Code §§ 201, 202, and 203, Sea Coast is liable for civil penalties pursuant to Labor Code § 2598 *et seq.*

Failure to Reimburse Necessary Business Expenses

Under California Labor Code § 2802, an employee is entitled to be reimbursed by his or her employer "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Here, Sea Coast failed to reimburse Ms. Ainsworth for all expenses incurred in the discharge of her duties, including but not limited to reimbursement for mileage traveling to patient visits. For example, Sea Coast reimbursed \$0.50 per mile for mileage, which is less than the IRS mileage rate and less than the actual costs incurred by Ms. Ainsworth. In addition, Sea Coast refused to reimburse Ms. Ainsworth, and upon information and believe other aggrieved employees, for mileage between their home and their first and last patient regardless of whether that distance was greater than the distance between their home and place of employment. Because Sea Coast has violated California Labor Code § 2802, Sea Coast is liable for civil penalties pursuant to Labor Code § 2598 *et seq.*

Failure to Keep and Provide Accurate, Itemized Wage Statements

Sea Coast also violated Labor Code § 226(a) by willfully failing to furnish Ms. Ainsworth with accurate, itemized wage statements. Specifically, Sea Coast failed to provide Ms. Ainsworth and, upon information and belief, other aggrieved employees with accurate, itemized wage statements showing, inter alia, the total hours worked, gross wages earned, net wages earned, hourly rates, etc. Ms. Ainsworth's wage statements did not accurately itemize her meal and rest period penalties as well as overtime wages.

Moreover, pursuant to Labor Code § 226.2, an employee paid on a piece-rate basis shall be, among other things, compensated: (1) for rest and recovery periods and other nonproductive time separate from any piece-rate compensation; (2) the itemized wage statements shall separate state (i) the total hours of compensable rest and recovery periods; (ii) the rate of compensation; and (iii) the gross wages for those periods during the pay period. Upon information and belief, Sea Coast violated Labor Code § 226.2 by failing to provide itemized wage statements to aggrieved employees paid on a per-diem basis showing the total hours of compensable rest and recovery periods and non-productive time.

As a result of violations of California Labor Code § 226(a), Sea Coast is liable for civil penalties pursuant to California Labor Code §§ 226(e), 226.3 and 2698 *et seq.*

Conclusion

As described above, Sea Coast has violated or has caused to be violated a number of California wage and hour laws. Ms. Ainsworth requests the agency inform him within 60 days if it does not intend to investigate these violations so that she may proceed with a civil action pursuant to Labor Code § 2699, *et seq.*

Sincerely,

s/ Mitchell J. Murray, Esq.