

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Galen T. Shimoda (SBN 226752) Justin P. Rodriguez (SBN 278275) Brittany V. Berzin (SBN 325121) Renald Konini (SBN 312080) Jessica L. Hart (SBN 331441) SHIMODA LAW CORP 9401 E. Stockton Blvd, Suite 120, Elk Grove, California 95624 TELEPHONE NO.: 916-525-0716 FAX NO.: 916-760-3733 ATTORNEY FOR (Name): Plaintiff Elizabeth Coy		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 11/25/2020 rcaddick By _____, Deputy Case Number: 24 2020 00289482 CASE NUMBER: JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: 720 Ninth Street CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Civil Division		
CASE NAME: Coy, et al. v. Southern Home Care Services, Inc., et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less) Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Ten

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 25, 2020

Galen T. Shimoda

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed in sanctions).
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

FILED BY FAX

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SOUTHERN HOME CARE SERVICES, INC., a Delaware Corporation;

"Additional Parties Attachment form is attached"

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ELIZABETH COY, on behalf of herself and Aggrieved Employees

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Superior Court Of California,
Sacramento
12/03/2020
rcaddick
By _____, Deputy
Case Number:
34-2020-00289482

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Sacramento
720 Ninth Street
Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Galen T. Shimoda (SBN 226752) Justin Rodriguez (SBN 278275) Brittany V. Berzin (SBN 325121)
Renald Konini (SBN 312080) 9401 East Stockton Blvd, # 120, Elk Grove, California 95624 (916) 525-0716

DATE:

(Fecha)

DEC - 3 2020

Clerk, by

(Secretario)

R. CADDICK

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

SHORT TITLE:

Coy v. Southern Home Care Services, Inc.

CASE NUMBER:

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

RES-CARE CALIFORNIA, INC. (DBA RCCA SERVICES), a Delaware Corporation; RES-CARE, INC. (DBA ALL WAYS CARING HOMECARE), a Kentucky Corporation; RSCR CALIFORNIA, INC., a Delaware Corporation; CRISTINA KOVAL, an individual; ELIZABETH FLOREZ, an individual, and DOES 1 to 100, inclusive,

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Renald Konini (Cal. State Bar No. 312080)
3 Jessica L. Hart (Cal State Bar No. 331441)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
4 Elk Grove, CA 95624
Telephone: (916) 525-0716
5 Facsimile: (916) 760-3733

6 Attorneys for Plaintiff ELIZABETH COY
7 on behalf of herself and Aggrieved Employees

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 ELIZABETH COY, on behalf of herself and
12 Aggrieved Employees

13 Plaintiff,

14 vs.

15 SOUTHERN HOME CARE SERVICES,
16 INC., a Delaware Corporation; RES-CARE
CALIFORNIA, INC. (DBA RCCA
17 SERVICES), a Delaware Corporation; RES-
CARE, INC. (DBA ALL WAYS CARING
18 HOMECARE), a Kentucky Corporation;
19 RSCR CALIFORNIA, INC., a Delaware
Corporation; CRISTINA KOVAL, an
20 individual; ELIZABETH FLOREZ, an
21 individual, and DOES 1 to 100, inclusive,

22 Defendants.
23
24
25
26
27
28

Case No.

**COMPLAINT FOR DAMAGES AND
PENALTIES:**

1. Failure to Pay Overtime Wages
(Labor Code §§ 510, 1194)
2. Failure to Pay Minimum Wages
(Labor Code § 1194)
3. Failure to Provide Meal Periods
(Labor Code §§ 512, 226.7)
4. Failure to Provide Rest Periods
(Labor Code §§ 226.7)
5. Failure to Provide Accurate Itemized
Statements (Labor Code § 226)
6. Waiting Time Penalties (Labor Code §§
201-203)
7. Failure to Provide Reimbursement
Expenses (Labor Code § 2802)
8. Failure to Keep Accurate Time Records
(Labor Code § 1174)
9. Unfair Competition Law (Business &
Professions Code § 17200, *et seq.*)
10. Private Attorneys General Act
(Labor Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL

FILED
Superior Court Of California,
Sacramento
11/25/2020
rcaddick
By _____, Deputy
Case Number:
34-2020-00289482

1 Plaintiff ELIZABETH COY ("Plaintiff"), hereby files this Complaint against Defendants
2 SOUTHERN HOME CARE SERVICES, INC., a Delaware Corporation; RES-CARE
3 CALIFORNIA, INC. (DBA RCCA SERVICES), a Delaware Corporation; RES-CARE, INC. (DBA
4 ALL WAYS CARING HOMECARE), a Kentucky Corporation; RSCR CALIFORNIA, INC., a
5 Delaware Corporation; CRISTINA KOVAL, an individual; ELIZABETH FLOREZ, an individual,
6 and DOES 1 to 100, inclusive. On information and belief, Plaintiff alleges the following:

7 INTRODUCTION

8 1. In this Complaint, Plaintiff seeks unpaid overtime and minimum wages, unpaid meal and
9 rest period premiums, unpaid reimbursement expenses, and derivative penalties for inaccurate wage
10 statements, inaccurate time records, and waiting time penalties. Plaintiff is also seeking civil penalties
11 under the Private Attorneys General Act ("PAGA") on behalf of herself and other Aggrieved Employees
12 for reimbursement expenses, unpaid minimum and overtime wages, and unpaid Reporting Time Pay
13 wages, as well as derivative penalties for inaccurate wage statements, inaccurate time records, and
14 waiting time penalties.

15 JURISDICTION AND VENUE

16 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
17 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
18 Labor Code, California Business and Professions Code, and Wage Order Nos. 5 and 15.

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

24 4. Plaintiff has sought permission pursuant to California Labor Code section 2699, *et seq.*
25 to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on
26 behalf of herself and Aggrieved Employees. Pursuant to California Labor Code section 2699.3, Plaintiff
27 gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA")
28 on approximately June 24, 2020. Plaintiff provided facts and legal bases for her claims within the notice

1 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
2 Plaintiff also submitted the \$75.00 filing fee. The June 24, 2020, notice was also sent via certified mail
3 to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice
4 correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private
5 Attorneys General Act ("PAGA") and may bring this action on behalf of herself and Aggrieved
6 Employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.
7 App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but are not limited to, the
8 following: all of Defendants' non-exempt employees working in California at any time one-year prior to
9 June 24, 2020 to the present who were not properly paid reimbursement expenses, minimum and
10 overtime wages, and Reporting Time Pay wages.

11 PARTIES

12 5. ELIZABETH COY is an individual over the age of eighteen (18) and is a resident of the
13 State of California.

14 6. On information and belief, Plaintiff alleges, SOUTHERN HOME CARE SERVICES,
15 INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner
16 and operator of an industry, business and/or facility doing business in the State of California.

17 7. On information and belief, Plaintiff alleges, RES-CARE CALIFORNIA, INC. (DBA
18 RCCA SERVICES), is now and/or at all times mentioned in this Complaint was a Delaware Corporation
19 and the owner and operator of an industry, business and/or facility doing business in the State of
20 California.

21 8. On information and belief, Plaintiff alleges, RES-CARE, INC. (DBA ALL WAYS
22 CARING HOMECARE), is now and/or at all times mentioned in this Complaint was a Kentucky
23 Corporation and the owner and operator of an industry, business and/or facility doing business in the
24 State of California.

25 9. On information and belief, Plaintiff alleges, RSCR CALIFORNIA, INC., is now and/or
26 at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an
27 industry, business and/or facility doing business in the State of California.

28 //

1 10. On information and belief, Plaintiff alleges, CRISTINA KOVAL is an individual over the
2 age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that CRISTINA
3 KOVAL is an owner, director, officer, and/or managing agent of SOUTHERN HOME CARE
4 SERVICES, INC., RES-CARE CALIFORNIA, INC., RES-CARE, INC., and RSCR CALIFORNIA,
5 INC. and is responsible for causing the violations outlined in the first through tenth causes of action. As
6 such CRISTINA KOVAL is individually liable pursuant to California Labor Code section 558.1.

7 11. On information and belief, Plaintiff alleges, ELIZABETH FLOREZ is an individual over
8 the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that
9 ELIZABETH FLOREZ is an owner, director, officer, and/or managing agent of SOUTHERN HOME
10 CARE SERVICES, INC., RES-CARE CALIFORNIA, INC., RES-CARE, INC., and RSCR
11 CALIFORNIA, INC., and is responsible for causing the violations outlined in the first through tenth
12 causes of action. As such ELIZABETH FLOREZ is individually liable pursuant to California Labor
13 Code section 558.1.

14 12. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the
15 alter egos of each of the other Defendants named herein, corporate, or otherwise, who participated in
16 and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the
17 true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
18 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
19 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
20 Plaintiff.

21 13. At all times mentioned herein, each Defendant was the agent or employee of each of the
22 other Defendants and was acting within the course and scope of such agency or employment. The
23 Defendants are jointly and severally liable to Plaintiff.

24 14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
25 were members of and/or engaged in a joint employment, joint venture, partnership and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
27 joint venture, partnership and common enterprise.

28 //

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

16. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully set forth herein.

18. Defendants provide 24-hour residential and home-based care services to disabled and/or elderly individuals in California. Because Defendants provide care to individuals on a 24-hour basis, they need to ensure there are employees available on an on-call basis to handle after hours staffing issues and emergencies. It was in this capacity, that Defendants hired Plaintiff. Although generally employees who worked on-call also worked as direct Care Providers, Plaintiff's pre-existing injuries made it impossible for her to provide physical, in person care to Defendants' clients. Defendants did not, however, give Plaintiff a separate job description, and classified her as a Care Provider. Plaintiff worked for Defendants as an on-call scheduler/Care Provider from approximately August 2017 to March 16, 2020.

19. As an on-call scheduler, Plaintiff worked from Monday at 5:00 p.m. through the following Monday at 8:00 a.m., on an alternate week schedule. Plaintiff's on-call time started at 5:00 p.m. and went until 8:00 a.m. the next morning. As an on-call scheduler, Defendants expected Plaintiff to handle all of Defendants' scheduling needs for Care Providers after hours, as well as prepare and submit detailed notes of her daily activities.

20. During the times Plaintiff was not taking notes or calls, she was still under the control of Defendants. At all times when Plaintiff was on-call, she had to have a phone immediately available, as well as a database of Care Providers' contact information. As such, Plaintiff was not free to go about her daily life; including going to dinner, to the movies, or socializing with friends or family, while she was on-call. Defendants further expected Plaintiff to report to Defendants in instances when she would not be immediately available by phone, whether this be for a doctor's appointment or some other engagement.

1 21. Despite the fact that Plaintiff was expected to be available and ready to work at all times,
2 she was not paid hourly for her on-call time, or for the time she spent notating the specifics of the
3 scheduling calls she handled. In fact, when Plaintiff began working as an on-call scheduler, Defendants
4 specifically informed Plaintiff that she would not be paid for her note taking time, even though
5 Defendants required her to submit detailed notes along with her call-log. Plaintiff estimates that she
6 spent about 45-50 percent of her active, working time preparing notes of her calls.

7 22. In fact, when Plaintiff began working for Defendants, they specifically informed Plaintiff
8 she would only be paid a flat rate of \$10.00 per day on weekdays and \$25.00 per day on weekends to be
9 on-call. In addition to this flat, daily rate, Plaintiff was paid \$15.00 dollars per hour for calls logged in
10 5-minute increments, as reported to Defendants in call-logs and emails. Plaintiff's hourly rate was
11 increased to \$15.75 in August 2019. Other Aggrieved Employees who performed on-call work were
12 similarly not compensated for their on-call hours and off-the-clock note taking time.

13 23. In addition to not being paid an hourly rate for her on-call time and note taking time,
14 Defendants did not keep accurate records of Plaintiff's actual time worked, which resulted in her being
15 consistently underpaid. Indeed, Plaintiff's weekly wage statements routinely miscalculated her reported
16 hours worked, applicable rate of pay, and inconsistently accounted for her flat/regular rate of pay and
17 on-call pay. Although Defendants' payroll errors were sometimes corrected, Plaintiff often had to wait
18 days or longer to receive their corrected payments.

19 24. Defendants also underpaid Aggrieved Employees due to their policy of only paying
20 employees a maximum of two (2) hours of Reporting Time Pay when they physically reported to work
21 but were sent home due to shifts being double booked or clients cancelling. Aggrieved Employees were
22 also not paid any Reporting Time Pay when they were notified at the last minute their shifts were
23 cancelled. These Reporting Time Pay violations happened frequently due to scheduling errors and client
24 cancellations.

25 25. Plaintiff was also not permitted uninterrupted rest and meal periods, as she was always
26 on-call and had to pick up the phone when it rang, even in the middle of the night and while she was
27 trying take a rest or meal break. There were also times when Plaintiff would have to work 5-6 hours
28

1 consecutively without a meal or rest break. Plaintiff logged 5-6 hours of consecutive, active working
2 time approximately once a week on weekends.

3 26. Finally, Defendants failed to reimburse Plaintiff and Aggrieved Employees for their use
4 of personal cell phones for work purposes. With respect to Plaintiff, although she was provided a
5 company phone, she often had to use her own personal phone to communicate with Care Providers and
6 to relay messages to supervisory staff regarding staffing and coverage issues. Plaintiff also used her
7 personal cell phone to prepare her on-call notes for the day. Other Aggrieved Employees were also
8 required to use their personal cell phones to log in and out of work through the time keeping application
9 system Telephony. Aggrieved Employees further had to consistently use their phones for work to
10 communicate with supervisory staff, management, and on-call staff when they worked shifts outside of
11 their regular scheduled time. Defendants were aware that Plaintiff and Aggrieved Employees used their
12 cell phones for work purposes, including to clock in and out of work, but still failed to provide
13 reimbursements.

14 27. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
15 wages, minimum wages, reporting time wages, the wage statements Defendants issued were defective.
16 Specifically, Defendants did not accurately list total hours worked and wages due and corresponding
17 rates of pay. With respect to Plaintiff only, the wage statements were also defective for failure to
18 account for meal and rest period premiums owed.

19 28. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all
20 regular and overtime worked, Defendants failed to provide all final wages owed to Plaintiff and
21 Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of
22 their resignation.

23 **CAUSES OF ACTION**
24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **(As to all Defendants)**

27 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
28 set forth herein.

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30. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order Nos. 5, 15, section (3)(A); Cal. Lab. Code §§ 510, 1194.

31. Plaintiff worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff for all overtime hours worked at their regular rate of pay.

32. Plaintiff was not exempt from overtime protections under the California Wage Orders and Labor Code.

33. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order Nos. 5 and 15, section 4(A); Cal. Lab. Code § 1194.

36. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so. Specifically, Defendants failed to pay Plaintiff for all her time worked, including mandatory note taking time, as well as her non-productive and on-call time.

37. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

//

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully set forth herein.

39. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

40. California Labor Code sections 226.7 and 512 and IWC Wage Order Nos. 5 and 15, section 11(A) require an employer to provide an uninterrupted meal period of no less than thirty (30) minutes for each work period of more than five (5) hours.

41. California Labor Code section 512 and Wage Order No. 15 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

42. Defendants employed Plaintiff for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff her first meal period before the completion of her fifth hour of work and failed to allow Plaintiff a second meal period before the completion of her tenth hour of work. Plaintiff did not waive her rights to all meal periods throughout her employment.

43. Defendants further failed to pay Plaintiff the applicable meal period premiums for any such missed meal breaks.

44. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

//

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

46. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

47. California Labor Code section 226.7 and Wage Order Nos. 5 and 15, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

48. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff to take paid rest periods of at least ten (10) minutes for each work period that she worked more than four (4) hours or a major fraction thereof.

49. Defendants further failed to pay Plaintiff the applicable rest period premiums for any such missed rest periods.

50. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and

the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

53. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. As a result, Plaintiff was not able to promptly and easily determine her total hours worked from her paystubs alone. Additionally, Plaintiff suffered confusion over whether she received all wages owed and was prevented from effectively challenging information on her wage statements.

54. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully set forth herein.

56. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

57. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

58. Plaintiff did not receive all wages, including minimum and overtime wages, and meal and

1 rest period premiums at the time of her termination or within the required time after her separation from
2 employment.

3 59. An employer who willfully fails to pay an employee wages in accordance with California
4 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
5 days. *See* Cal. Lab. Code § 203.

6 60. Defendants knew of their obligation to pay Plaintiff her final wages when her
7 employment terminated. Indeed, Defendants had knowledge that Plaintiff was not paid for all regular
8 and overtime hours worked because they knowingly only provided her with flat, daily on-call rate and
9 knowing denied her payment for time spent preparing on-call notes. Such conduct shows Defendants
10 had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay
11 the remaining wages owed.

12 61. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived
13 of her wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants'
14 failure to pay all wages due.

15 **SEVENTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE EXPENSES**
17 **(As to all Defendants)**

18 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
19 set forth herein.

20 63. California Labor Code section 2802(a) states that "An employer shall indemnify his or
21 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
22 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
23 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
24 unlawful."

25 64. Defendants required Plaintiff to use her cell phone and other electronic devices for work
26 purposes but failed to reimburse her for such use. For instance, Plaintiff often had to use her personal
27 cell phone and computer to communicate with Defendants and other Care Providers while she was on-
28 call.

65. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the

1 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
2 here in full.

3 **EIGHTH CAUSE OF ACTION**
4 **FAILURE TO KEEP ACCURATE TIME RECORDS**
5 **(As to Defendants)**

6 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
7 set forth herein.

8 67. California Labor Code section 1174(d) provides that employers must keep "payroll
9 records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall
10 be kept in accordance with rules established for this purpose by the commission, but in any case shall be
11 kept on file for not less than three years."

12 68. California Industrial Wage Order Nos. 5 and 15, section (7)(A) further requires
13 employers to "keep accurate information with respect to each employee including the following:

14 (3) Time records showing when the employee begins and ends each work
15 period. Meal periods, split shift intervals . . . shall also be recorded.

16 (5) Total hours worked in the payroll period and applicable rates of pay.

17 69. Throughout Plaintiff's employment with Defendants, Defendants did not keep accurate
18 information regarding all hours worked or meal periods taken. As elaborated above, Defendants had a
19 practice of not keeping track of all hours that Plaintiff worked. Further, Defendants had a practice of
20 paying Plaintiff for less hours than Plaintiff worked.

21 70. As a direct and proximate result of Defendants' conduct, California Labor Code section
22 1174 has been violated throughout the duration of Plaintiff's employment. Plaintiff is, therefore,
23 entitled to, and seeks, penalties pursuant to California Labor Code section 1174.5.

24 **NINTH CAUSE OF ACTION**
25 **UNFAIR COMPETITION**
26 **(As to SOUTHERN HOME CARE SERVICES, INC., RES-CARE CALIFORNIA, INC., RES-**
27 **CARE, INC., RSCR CALIFORNIA, INC., and DOES 1 to 100)**

28 71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though fully
set forth herein.

72. Unfair competition shall mean and include any unlawful, unfair, or fraudulent business
act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter

1 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
2 California Business and Professions ("B&P") Code § 17200.

3 73. Plaintiff was not paid all wages owed, including minimum and overtime wages, and meal
4 and rest period premiums, or reimbursed for business expenses, during her employment or any time
5 thereafter.

6 74. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
7 California Unfair Competition Law ("UCL") (Business and Professions Code 17200, *et seq.*) pursuant to
8 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

9 75. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
10 UCL (including B&P Code §17203), Plaintiff is entitled to restitution, including, but not limited to,
11 interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of
12 California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but
13 subject to proof at trial, for four (4) years from the filing of this Action.

14 **TENTH CAUSE OF ACTION**
15 **PRIVATE ATTORNEYS GENERAL ACT**
16 **(As to all Defendants)**

17 76. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 75 as though fully
18 set forth herein.

19 77. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
20 following provisions of the Labor Code in their dealings with Plaintiff and Aggrieved Employees:

- 21 • Violation of Labor Code §§ 510, 1194 (Failure to Pay Overtime Wages);
- 22 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Orders 5 and 15, § 4 (Failure to
23 Pay Minimum Wages);
- 24 • Violation of Labor Code §§ 1194, 1197.1, 1198; IWC Wage Order Wage Orders 5 and
25 15, § 5 (Failure to Pay Reporting Time Pay Wages);
- 26 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work
27 in Any Industrial Welfare Commission Order);
- 28 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);

- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages); and
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records).

78. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

79. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

80. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the FIRST CAUSE OF ACTION - Unpaid Overtime:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the SECOND CAUSE OF ACTION - Unpaid Minimum Wages:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the THIRD CAUSE OF ACTION - Meal Periods:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

1 5. As to the FOURTH CAUSE OF ACTION - Rest Periods:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 6. As to the FIFTH CAUSE ACTION - 226 Violations:

- 6 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 7 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 8 violation occurred and one hundred dollars (\$100.00) per employee for each
- 9 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 10 (\$4,000.00);
- 11 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 12 226(e);

13 7. As to the SEVENTH CAUSE OF ACTION - Reimbursement for Expenses:

- 14 a. An amount to be proven at trial;
- 15 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

16 8. As to the TENTH CAUSE OF ACTION – Private Attorney General Act:

- 17 a. For civil penalties as provided for in the Labor Code for each enumerated
- 18 violation;
- 19 b. For those Labor Code sections, the violation of which there is no civil penalty
- 20 provided, the default penalty provided in Labor Code section 2699(f): for any
- 21 initial violation, one hundred dollars (\$100) for each Aggrieved Employee per pay
- 22 period; For any subsequent violation, two hundred dollars (\$200) for each
- 23 Aggrieved Employee per pay period;
- 24 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 25 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 26 Court;

- 27 9. For such other and further relief as this Court may deem just and proper,
- 28 including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: November 25, 2020

Shimoda Law Corp.

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